



COMMONWEALTH OF AUSTRALIA

SENATE

Hansard

MONDAY, 26 FEBRUARY 2007

CORRECTIONS

This is a **PROOF ISSUE**. Suggested corrections for the Official Hansard and Bound Volumes should be lodged in writing with the Director, Chambers, Department of Parliamentary Services **as soon as possible but not later than:**

Monday, 5 March 2007

Facsimile:	Senate	(02) 6277 2977
	House of Representatives	(02) 6277 2944
	Main Committee	(02) 6277 8368

BY AUTHORITY OF THE SENATE

PROOF

Monday, 26 February 2007

The **PRESIDENT (Senator the Hon. Paul Calvert)** took the chair at 12.30 pm and read prayers.

AUSTRALIAN CITIZENSHIP BILL 2006

AUSTRALIAN CITIZENSHIP (TRANSITIONALS AND CONSEQUENTIALS) BILL 2006

Second Reading

Debate resumed from 7 February, on motion by **Senator Ian Campbell**:

That these bills be now read a second time.

upon which **Senator Bartlett** had moved by way of amendment:

At the end of the motion, add:

“but the Senate:

- (a) recognising that:
 - (i) dual citizenship is part and parcel of Australian society,
 - (ii) a significant proportion of Australians hold dual citizenship, and
 - (iii) these Australians are disenfranchised in the sense that they are not able to run for election to the Federal Parliament without relinquishing their dual citizenship;
- (b) calls on all parties in the Parliament to support, as a matter of urgency, legislation to initiate a referendum to remove the prohibition on dual citizens being able to run for Federal Parliament;
- (c) calls on the Government to:
 - (i) instruct the Department of Immigration and Citizenship to develop and implement a comprehensive public information campaign to describe and promote the operation of the new Australian Citizenship Act,
 - (ii) allocate sufficient funds for a television, radio and newspaper advertising campaign in Australia and overseas about the operation of the new Act,
 - (iii) require the Department of Immigration and Citizenship and the Department of Foreign Affairs and Trade to coordinate the dissemination of written information about the operation of the new Act to be available in Australian diplomatic posts overseas, and
 - (iv) require the Department of Immigration and Citizenship to work closely with the Privacy Commissioner, to restrict to the maximum extent possible the collection, access, use and disclosure of personal identifying information.”

Senator FORSHAW (New South Wales) (12.31 pm)—I rise to make some remarks on the Australian Citizenship Bill 2006 and cognate bill. In doing so, I acknowledge that many of the aspects of the legislation are non-controversial. I want to particularly highlight

some recent events that occurred with regard to a citizenship ceremony in the Sutherland shire on Australia Day which certainly were controversial. When this bill was first introduced the then minister, in his second reading speech, stated:

Today I have the honour to present the Australian Citizenship Bill 2005 which deals with the core of our national identity—Australian citizenship.

This bill, once passed by the Parliament will replace legislation which introduced the concept and reality of Australian citizenship on Australia Day 1949.

During debate in the House, many members reflected on citizenship ceremonies they had attended. They commented on the obvious pride and joy of former migrants and humanitarian entrants to this country making the pledge, which is the final step in becoming an Australian citizen.

Like all members of parliament, both in the House and in the Senate, I have attended many Australian citizenship ceremonies over the years. I refer particularly to Australia Day citizenship ceremonies held in the Sutherland shire each year. These are very large occasions. Indeed, usually there are some 150 to 200 people taking out citizenship that day. It is a major event on the shire calendar and, as Sutherland shire people are prone to be very parochial, they regard this part of Australia as the birthplace of the Australian nation, when Cook first landed in 1770. They are always significant events. All the state and federal politicians and local councillors attend, and it is a great day. After the ceremony is concluded there is always a good old-fashioned Aussie barbecue. It is wonderful to see not only the new Australian citizens who attend that day and take out citizenship but also the many families and friends who come along to enjoy that special occasion.

They have always been bipartisan events. Indeed, as I said, I have been attending these ceremonies since I came into this parliament in 1994. I can say, without contradiction, that they have always been treated appropriately by the respective members of parliament, whichever political persuasion they come from. My federal colleagues Danna Vale and Bruce Baird and state members always treat the occasion as an opportunity to express their appreciation to new citizens and to welcome them as part of the great Australian nation. Until this year, I cannot recall any one occasion where there has been an attempt to use that event as a political platform. But, sadly, this year that is what happened. The Australia Day ceremony received a fair amount of coverage in the media, both in print and on radio in Sydney, so I want to set the record straight.

Prior to Australia Day, the leader of the New South Wales opposition, Mr Debnam, approached the council requesting an invitation to attend and speak at the Australia Day ceremony. He is not a local member of parliament for that area; he is in fact the member for Vaucluse. He sought not to attend an Australia Day citizenship ceremony in his own electorate but to come to the

Sutherland shire and attend one in that region. I think the reasons are pretty obvious. Firstly, the Liberal Party hopes to win two state marginal seats in that area, Miranda and Menai. The second—unfortunately, as we all recall—is the Cronulla riots two years ago. There is no doubt in my mind, and in the mind of many others, that the NSW Leader of the Opposition sought to use the occasion to try to gain some cheap political advantage by attending and speaking at the ceremony in Sutherland. He sought an invitation and it was granted. The mayor—who happens to have been a member of the Liberal Party but decided to run as an Independent for mayor—extended an invitation to Mr Debnam and welcomed him to the occasion. Indeed, as a result of that, other local members of parliament declined the opportunity to speak on that occasion because it would have extended the ceremony for a much longer period.

Mr Debnam provided a copy of his speech to the council, to the mayor, prior to Australia Day. There were a number of paragraphs in that speech which were blatantly political. For instance, he directly referred to candidates for the Liberal Party in the two seats I have just mentioned. He sought to highlight the fact that they were running for the seats and to give them some support. He also made a number of comments which were clearly an unfortunate reflection upon the history surrounding the Cronulla riots, which, I must say, people from all political persuasions in the shire have been working hard to overcome. I pay particular tribute to my federal colleague Bruce Baird. Along with the council and other members of parliament, he has endeavoured to improve community relations in that area. For instance, a program has been running where young people of Muslim faith have been encouraged to join the local surf clubs and train to be lifesavers. A range of programs such as this have been initiated and I think they have been working well.

We have a situation where on Australia Day the leader of the Liberal Party opposition in New South Wales decided that he wanted to go to the Sutherland shire and make a big partisan political speech to try and promote his state candidates. Naturally there was an objection from the mayor and the council to the content of the speech and Mr Debnam was asked to take out the offending paragraphs. I might interpose here by reminding all senators, not that they need reminding, that it is a specific requirement of the government, and an appropriate requirement of the government—it has been a long-standing requirement of governments, whether they be Labor or Liberal—that these ceremonies be treated in a bipartisan way. I quote from the letter forwarded to me and other members of parliament by Andrew Robb, who was Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs in January this year. In the section that refers to the conduct of ceremonies the letter states:

The Code makes clear, at page 28, that “All elected local representatives, at the Federal, State/Territory and Local Government level, shall over time have an opportunity to provide a welcoming speech ...”.

I stress that the reference is to ‘elected local representatives’. It continues:

There is reference to the possibility of brief messages of welcome from local clubs and associations and/or any local celebrity—

I do not think Mr Debnam is a local celebrity in the Sutherland shire; he might be trying to be one—

and that “ ... it is essential that the dignity and bipartisan significance of citizenship ceremonies be maintained at all time. Citizenship ceremonies shall not be used as forums for political or partisan expression ...”.

I read that out because it was very clear that the first speech prepared by Mr Debnam which he intended to give on that day contravened those specific requirements for bipartisan and non-political content. When Mr Debnam was asked to take out the offending paragraphs in his speech he embarked upon a media campaign in Sydney. He claimed that he was being banned from speaking, that he was being muzzled, that he was being censored. On one occasion he said that he did not really care whether or not the mayor liked his speech. He said he would give his speech either inside the council centre at the citizenship ceremony or on the footsteps of the council building. He became very defiant and built it up as if his right to make a speech was being rejected. The fact is that he had no right, technically, to make the speech. He had sought an invitation which had been acceded to and then he sought to abuse it.

Eventually Mr Debnam redrafted his speech and took out the offending paragraphs. At least he backed down in that respect. However, on the morning of Australia Day he was all over the radio running this campaign, attacking the mayor and attacking the council, saying they were trying to ban him. Indeed, there were articles and editorials in the newspapers—I refer particularly to the *Daily Telegraph* of Saturday, 27 January, the day after Australia Day—which picked up the theme that Mr Debnam was promoting and which were critical of the mayor and the council for seeking to have Mr Debnam abide by the code.

The fact of the matter is that on that day Mr Debnam, I thought in a most outrageous and disgraceful manner, tried to hijack an Australian citizenship ceremony for base partisan political motives. You ask the question: why would the state member for Vaucluse, the New South Wales Leader of the Opposition, on Australia Day seek to travel to the Sutherland shire—an area with which he has had no association at all up until recently—to give a citizenship speech? Normally members do that in their own electorate, or they might attend a major function in a capital city. But no; it was quite obvious what Mr Debnam was doing. During his

speech he referred to what had happened at Cronulla. As I said earlier, there has been a lot of good work done by a lot of people to heal the wounds that were so disgracefully opened in late 2005 with the Cronulla riots. Frankly, I think Mr Debnam's conduct deserves to be condemned.

I am particularly concerned that radio commentators such as Alan Jones picked up on this, and again ran Mr Debnam's mantra that he was being denied free speech. We all recall—the record is very clear—the conduct of Alan Jones on the radio in the weeks leading up to the Cronulla riots. He was on the radio, some might say, inciting people to come down to Cronulla that weekend to those protest rallies. Certainly they turned ugly. I am particularly intrigued by that because Mr Jones, like Mr Debnam, would normally have trouble even finding his way to the Sutherland shire. I can give a direct instance of that. A couple of years ago Alan Jones was the guest speaker at the opening of an art exhibition at the local gallery in the Sutherland shire. I was there. Mr Jones came out, and in his opening remarks to the assembled gathering he commented upon the fact that it had been a long, long time since he had been to the Sutherland shire and that he had really had trouble finding his way there. He normally only drives on the outskirts of the shire as he heads down to his country estate—somewhere in the Kangaroo Valley, I think. Probably the last time he had visited the shire was when he was coaching Balmain, back in the days when they were not terribly successful—they were probably playing a game at Shark Park. Why do I mention this? It is because Alan Jones is on the radio speaking as if he is an expert on community relations, crime, ethnic tensions and so on in the Sutherland shire, when he would not have the first iota of knowledge of what happens in our community.

I wanted to put this on the record today because I find it intriguing that members of this government have, from time to time, taken the opportunity to condemn mayors or other politicians—generally from our side of the fence—for making what they believe are partisan political speeches at citizenship ceremonies. If they did make those partisan political speeches, then I would accept that they should not have done so. But this is the government's code. I find it incredible that the person who seeks to be the next Premier of New South Wales would so abuse the requirements of a code that is laid down by his fellow Liberal government here in Canberra. People in the Sutherland shire, like any other community, do not appreciate people from outside coming in and stirring up trouble—and that goes for politicians like Mr Debnam as much as it goes for anyone else.

Question negatived.

Original question agreed to.

Bills read a second time.

In Committee

Australian Citizenship Bill 2006

Bill—by leave—taken as a whole.

Senator IAN CAMPBELL (Western Australia—Minister for Human Services) (12.49 pm)—by leave—I move:

- (1) Clause 19B, page 21 (line 18), omit “(7)”, substitute “(7A)”.
- (2) Clause 19D, page 24 (line 5), before “has been”, insert “subject to subsection (7A),”.
- (3) Clause 19D, page 24 (after line 20), after subclause (7), insert:
 - (7A) The Minister may decide that subparagraph (6)(a)(ii) does not apply in relation to a person if, taking into account the circumstances that resulted in the person's conviction, the Minister is satisfied that it would be unreasonable for that subparagraph to apply in relation to the person.
- (4) Clause 19G, page 26 (line 4), omit “(4B)”, substitute “(4C)”.
- (5) Clause 24, page 34 (line 17), before “has been”, insert “subject to subsection (4C),”.
- (6) Clause 24, page 34 (after line 32), after subclause (4B), insert:
 - (4C) The Minister may decide that subparagraph (4A)(a)(ii) does not apply in relation to a person if, taking into account the circumstances that resulted in the person's conviction, the Minister is satisfied that it would be unreasonable for that subparagraph to apply in relation to the person.
- (7) Clause 28A, page 41 (line 10), omit “(6)”, substitute “(7)”.
- (8) Clause 30, page 43 (line 19), before “has been”, insert “subject to subsection (7),”.
- (9) Clause 30, page 43 (after line 34), at the end of the clause, add:
 - (7) The Minister may decide that subparagraph (5)(a)(ii) does not apply in relation to a person if, taking into account the circumstances that resulted in the person's conviction, the Minister is satisfied that it would be unreasonable for that subparagraph to apply in relation to the person.

There are some tabling notes on the amendments to the bill, which I now table and which summarise the amendments. This might benefit Democrat and Green senators, who also have some amendments to move. The amendments effectively change the wording of the current bill, which would require the minister to refuse a citizenship application from a stateless person born in Australia who has been convicted of an offence for which they have been sentenced to a period of imprisonment of at least five years. The gist of the amendments is that they will now provide for a discretion to refuse—putting a discretion in the hands of the minister, as opposed to a mandated requirement that the minister shall refuse. The amendments recognise that there

may be cases where the operation of a mandatory refusal provision would not be reasonable because of the particular circumstances resulting in a person's conviction. So they create a bit of leeway for the minister to look at the circumstances and some flexibility to take those into account.

I table a supplementary explanatory memorandum and a replacement explanatory memorandum which relate to the government amendments moved to this bill. They go into more detail than I have done.

Senator BARTLETT (Queensland) (12.51 pm)—I apologise for not being here at the start of the committee stage. Given how much the government has talked about the crucial importance of citizenship and its central and pivotal nature to the strength of our future nation, I thought the minister might have at least summed up the debate for the second reading stage, so the committee stage started rather earlier than I anticipated. However, the amendment that the minister has spoken about is a sensible one. I appreciate he is here in a representative capacity rather than being the actual minister responsible for citizenship.

It is important to address the matter that the minister raised. My understanding is that this is one of a number of proposals or issues that were identified during the Senate committee inquiry into this legislation. It is a little bit hard to remember, because the Senate committee inquiry was 12 months ago. Despite the 'pivotal and crucial importance' of citizenship to the Australian government, it has taken them 12 months to actually bring on the legislation for debate. But as I said in the second reading stage, there are a number of positive measures that were in the original piece of legislation. They were supported by me and, I think, all parties in the Senate committee report 12 months ago, and we were keen to get on with them. There were constructive recommendations in that report about additional measures. This extra bit of flexibility that the minister has indicated is certainly one of those, and it merits support.

Question agreed to.

Senator BARTLETT (Queensland) (12.53 pm)—I move Democrat amendment (1) on sheet 4868:

(1) Clause 3, page 6 (after line 8), after the definition of *foreign law*, insert:

good character is a discretionary test which a person does not pass if:

- (a) the person has a substantial criminal record; or
- (b) the person has or has had an association with another person, or with a group or organisation, whom the Minister reasonably suspects has been or is involved in criminal conduct; or
- (c) having regard to either of the following:
 - (i) the person's past and present criminal conduct; or

- (ii) the person's past and present general conduct;
 - the person is not of good character; or
- (d) in the event the person were allowed to enter or to remain in Australia, there is a significant risk that the person would:
 - (i) engage in criminal conduct in Australia; or
 - (ii) harass, molest, intimidate or stalk another person in Australia; or
 - (iii) vilify a segment of the Australian community; or
 - (iv) incite discord in the Australian community or in a segment of that community; or
 - (v) represent a danger to the Australian community or to a segment of that community, whether by way of being liable to become involved in activities that are disruptive to, or in violence threatening harm to, that community or segment, or in any other way.

Note: *Substantial criminal record* is defined in subsection 501(7) of the *Migration Act 1958*.

This amendment deals with the definition of good character. The amendment is there before the chamber, so senators can read it. It deals with 'good character' being a discretionary test. This area is one of those that I think merit close scrutiny. It is an appropriate one to consider when we are having genuine debates about what citizenship is about rather than some of the populist frippery that occasionally passes for it: what are the circumstances under which somebody will be deemed to be not of good character?

This is an important area, and not just the specifics of what is in the amendment before us. We hear from time to time not just media commentators and talkback radio shock jocks talking about throwing somebody out of the country whenever something unpopular is done. Unfortunately we also hear it from time to time from senior government ministers. Indeed, since we last debated this legislation a couple of weeks ago, in the intervening period between then and now, we had such commentary from as esteemed a figure as the Treasurer, Mr Costello, the Deputy Leader of the Liberal Party and someone who sees himself as a Prime Minister in waiting. He made comments, I think it was on Melbourne radio, saying that even for people with dual citizenship—that is, people who have already had citizenship granted to them—if they acted in a way that he said would be seen as divisive in Australia, there should be the potential to cancel Australian citizenship. If they have another citizenship—by no coincidence at all he used the example of somebody with Egyptian citizenship—we could cancel their Australian citizenship and send them back.

This issue of how tightly we define character is a very important one. It is, I should hasten to add, not a facet of the legislation currently before us—at least, I

hope it is not; I do not think it is—that a person, once they have been granted Australian citizenship, can have it cancelled on the grounds of matters such as character or subsequent criminal behaviour. There are very limited grounds under which somebody's citizenship can be cancelled once it has been granted. But it is important at this stage of the debate around a topic like this that we get it clearly on the record from the government representatives in the chamber that such ideas as those put forward by Mr Costello are not government policy and are not going to become government policy.

If we are genuinely going to have an approach of encouraging this pathway from migration to residency to citizenship—and that is one I strongly support—then people need to know if they take up Australian citizenship whilst remaining a dual citizen of another nation that they are not going to have that Australian citizenship cancelled capriciously for political reasons or because a government decides that they are being divisive. We all know that one of those core Australian values that is about citizenship is the right to freedom of speech, and that includes of course the right to freedom of speech about matters that we might find we disagree very strongly with. I am sure the Egyptian-Australian dual citizen that Mr Costello had in mind is one such person.

It is very important that people who come here and become migrants and citizens know that that is a secure choice, because many of them come from precisely those countries where voicing an unpopular opinion—being accused of being divisive—is enough to get them offside with the government of the time. That is why it is important to have clear definitions. I am going a bit wider than what my amendment specifically relates to because, I might say, since we last debated this legislation Mr Costello has made those comments. He is not just a maverick backbencher. He is a very senior member of this government putting forward a clear-cut proposal that people who become Australian citizens should be able to subsequently have their citizenship cancelled if they are seen to behave in a sufficiently divisive way. That, I suggest, is a very destructive notion to put forward. It would be very constructive for it to be made clear in this debate that it is not government policy and it is not going to become government policy.

It has been, as I understand it, a bipartisan or a multipartisan view in this parliament for some time that dual citizenship is a good thing. Previous amendments to the Citizenship Act prior to this one have specifically encouraged people to retain other citizenships and become Australian as well. Indeed, some of the core amendments contained within the primary legislation before us go further in that regard, to further expand it and to enable people to become Australian citizens

without suffering the penalty of losing citizenship of another country.

Those are developments I welcome. I welcome the fact they are being advanced further by the government's constructive components of this legislation, but we also have this parallel message being put out by the Treasurer, a senior government minister, suggesting that dual citizenship is a risky business because it might mean that, down the track, we have got an out to get rid of you and somewhere else to send you. That is a very destructive notion that runs counter to what I would have thought was government policy. It reinforces why it is important to have clear definitions of character.

Character in this case goes more to granting in the first place, not the cancelling down the track, but it has similar sorts of issues. You cannot have a minister deciding that a person of bad character is someone who says things that we find offensive or that we deem to be against undefined notions, like Australian values. That is why we need to have it more clearly detailed, and that is the intent of this amendment.

Senator LUDWIG (Queensland) (1.01 pm)—I want to indicate Labor's support for the position put by the Democrats. I will not go into great detail; Senator Bartlett has summed up the debate rather well as to why he is arguing for a definition of good character. The definition of good character that is included in Senator Bartlett's amendment does seem to accord with that which you would think would be included in a statute such as this. Therefore, on that basis, we do think it is a good idea and deserves support.

Senator IAN CAMPBELL (Western Australia—Minister for Human Services) (1.01 pm)—The government read the Senate committee report. It is recommendation 8 that Senator Bartlett's amendment has picked up. The government believes that the term is sufficiently broad to include any and all of the circumstances which can be taken in isolation or together that need to be considered in assessing whether or not a person is of good character for the purposes of Australian citizenship. It needs to be pointed out that applicants refused on the basis of not being of good character have the right to a merits review of the decision by the AAT.

Question negatived.

Senator BARTLETT (Queensland) (1.02 pm)—I move Australian Democrat amendment (2) on sheet 4868:

(2) Page 12 (after line 31), after clause 10, insert:

10A Best interests of a child

- (1) Whenever a decision is taken under this Act in relation to a child, the best interests of the child must be the paramount consideration.

- (2) For the purposes of this section, *best interests of the child* include:
- (a) a child's right to stability, security and adequate and responsible care; and
 - (b) a child's own social networks and his or her ongoing ability to maintain such networks; and
 - (c) a child's school, sporting and other leisure activities; and
 - (d) any other special needs of the child.

This amendment details, as its heading suggests, an insertion to be added to the legislation to detail the best interests of the child and to specifically state that, when a decision is taken under the citizenship act in relation to a child, the best interests of the child must be the paramount consideration. That does not mean the only, sole, single consideration; it means the paramount consideration. The best interests of the child include their right to stability, security, adequate and responsible care, a child's own social networks and his or her ongoing ability to maintain such networks, their school, and sporting or other leisure activities.

I am on record in this chamber, from the many times when I have spoken on immigration issues and citizenship issues, acknowledging that these are difficult areas of law, that you do, from time to time, come up against specific circumstances that present very difficult decisions because they are decisions that affect people's lives. A decision about whether or not someone has citizenship obviously can relate—and when it is being contended it often does relate—to whether or not they are able to remain in the country, whether or not they have the security of being able to stay in that country.

Obviously a decision around that, in many circumstances, can be a hugely significant decision about the path that person's life goes down. Often some of the more difficult ones are the ones where children are involved. They are not particularly common, but they do happen. There have certainly been cases in the past where decisions have been made that I believe would be immensely harmful to the child's long-term interests. As the amendment suggests, some of this can go to stability, security and adequate and responsible care, particularly whether or not they would be in a position to be able to receive the best care. Often it can relate to whether or not they would be torn away from a very secure environment—one where they have lots of networks of support, adequate educational assistance and other sorts of things that are crucial for their development—and moved to somewhere where those things are either absent or far weaker.

I believe that it is of merit to specifically detail that when those sorts of factors come into play the best interests of the child are made paramount. As I said, that does not mean overriding absolutely everything else completely so that nothing else gets taken into account, but it does indicate that the interests of the child do not

get pushed below other matters. Too often that happens, particularly when, in some cases, these decisions do have a political atmosphere about them, regardless of which party is in government. In those circumstances it is often quite easy to let the politics of the day dictate something and use that to cull the various factors that are taken into account rather than take into account the things that I believe should be given primacy. The best interests of the child or children is one of those factors. It does not negate other things completely, but it does mean that it should be given the primacy that it deserves.

Senator LUDWIG (Queensland) (1.06 pm)—In this instance the matter was not central to the committee recommendations, although it was briefly discussed. The arguments that Senator Bartlett has put forward, although persuasive, are not persuasive enough for us to find favour with them. The Labor Party is not minded to support the amendment that the Australian Democrats propose in the form that they propose it.

I do understand the point that Senator Bartlett has made. I think that decision makers do have to reflect on all the criteria, but in this instance—applying for Australian citizenship—when children are applying in their own right, or when they are included in their parents' citizenship application, under the existing law they are not required to be a permanent resident or satisfy the usual residency requirements. So there are considerations already taken into account when children apply for Australian citizenship. Of course, in some cases, to meet the residency requirements it is possible to include periods spent outside Australia while the person is on a permanent visa. There are matters that I think have to be further considered when looking at the amendment that you have proposed to see how it also interacts with other rights. In short, without going into great detail, before that matter would find favour we would want more information and perhaps a further look at it through a committee process. But, in the first instance, without having had the opportunity the Labor Party cannot support it.

Senator IAN CAMPBELL (Western Australia—Minister for Human Services) (1.08 pm)—The government will not be supporting the amendment. I think Senator Bartlett's instincts are absolutely noble, but his recommendations and indeed this amendment are even broader than, for example, the Convention on the Rights of the Child, which requires that, in all actions concerning children, the best interest of the child is a primary consideration. This amendment talks about a 'paramount' consideration. It is not an amendment that adds to this act. Its intentions are noble, but I think it is a potentially dangerous change in the context of this act.

Question negatived.

Senator NETTLE (New South Wales) (1.09 pm)—I move Australian Greens amendments (1), (6) and (7):

- (1) Clause 17, page 19 (line 21) to page 20 (line 7), omit subclause (4).
- (6) Clause 24, page 34 (lines 5 to 32), omit subclause (4).
- (7) Clause 30, page 43 (lines 6 to 34), omit subclause (4).

I have spoken to these amendments in my second reading speech, which was some time ago now. This legislation gives ASIO the power to veto any citizenship application. These amendments seek to remove the power given to ASIO by this piece of legislation to veto any citizenship application. As I explained in my second reading speech, it is the view of the Greens that the decision about who is granted citizenship should be made by the government of the day. We accept that there is a role for ASIO in this process. We believe that ASIO should continue to do what they do now—that is, they should be able to provide advice to the government in relation to citizenship applications; they should have the capacity to vet applications and make recommendations. But the decision maker should be the government and the minister.

This piece of legislation allows ASIO to tell the government who should become a citizen, but it is the view of the Greens that the government of the day should make the decision on who can or cannot become an Australian citizen. It is perfectly acceptable for ASIO, like any other department, to make recommendations to the government—to say yes in this case or no in that case. That is ASIO's job, but we do not think it is the role of ASIO, our secret police force, to make the decision on who is granted citizenship. The Greens believe that is a decision the elected government should make. This amendment seeks to return us to the situation that we have today, which is that ASIO can say they think a person should or should not be granted citizenship. That is entirely appropriate. But it is the view of the Greens that the government should be the decision maker.

In my second reading speech I spoke about a number of issues and community groups such as the New South Wales Council for Civil Liberties, which raised this issue in its submission to the inquiry into this bill. They called the bill:

... an unwelcome intrusion of faceless secret agents into the process of defining who is a citizen in our free and democratic society.

They went on to say:

The proposal violates the Statelessness Convention because the Minister will not be able to prevent a person from becoming stateless.

The clause that the Greens are seeking to have removed says that, if ASIO says, 'Don't give this person citizenship,' the minister has no power to say that he will or will not take ASIO's advice. Under what is pro-

posed in this legislation, if a stateless person is applying for Australian citizenship the minister is required to deny them citizenship because ASIO has told the minister to do so. Whether they have told them the reasons or not, certainly nobody else knows; whether the minister knows or not is unclear to me. The minister has to take ASIO's recommendation and say, 'You cannot become a citizen.' They make people stateless by having to refuse them citizenship. If a stateless person applies to become a citizen of Australia, and the minister is required under the legislation to take ASIO's recommendation that they not become a citizen, then the minister is making somebody stateless.

This is why the New South Wales Council for Civil Liberties, in its submission to the inquiry into this bill, criticised the legislation for violating the statelessness convention, to which Australia is a signatory. The legislation does that because it does not allow the minister to prevent someone from becoming stateless. The Greens want to give the power to determine who gets citizenship or not to the government of the day, rather than to ASIO, as this piece of legislation seeks to do. The New South Wales Council for Civil Liberties was:

... concerned that, in the current political climate, this proposal will disproportionately impact upon the Muslim community. This could undermine the desirability of Australian citizenship in the eyes of some, rather than fostering a strong multicultural community of citizens—our strongest defence against terrorism.

This is something that I have spoken of many times before, including in relation to this bill. We as a nation should be extremely proud of the fact that people from all around the world want to come and live in Australia. Indeed, many of them take out Australian citizenship. That is a great thing and something that we can all be proud of. The concern that I have raised on behalf the Greens in relation to this legislation is that it puts more barriers in front of people in doing that, as does the government's proposal around citizenship tests and English language tests.

Just yesterday I spent time with a number of people who work with newly arrived migrants—many of them are young Sudanese men, some from Darfur, and there was a young Burmese woman. There was a range of people that they work with. They teach an intensive English course supported by the federal government. They try to help them to understand how to engage in the Australian community. When you have a young man in your class and he thinks, 'It's hot—I'll take my clothes off,' that is something you have to struggle with. They have to say: 'We don't do that in Australia. If it is hot, you don't just take all of your clothes off in the middle of a classroom.' The young Burmese girl is so bruised from the beatings that she has received but, extraordinarily, she managed to have a child as a result of rape that she experienced in Burma and she is here in Australia trying to learn and understand English.

What this piece of legislation and the government's proposals around citizenship and English language tests do is make it even harder.

You have this young Sudanese boy who may be very comfortable and competent sitting on a hill looking after a herd of goats in Darfur, but he does not know how to cross the road or use a traffic light or what to do in the Australian community. He needs an intensive amount of assistance for that. That needs to be supported. It cannot be provided at the level that is required right now. The government's proposals are that he also needs to learn English to a point where he is able to do a multiple choice test on a computer. This is a guy who has never learnt a language. He has never been to a school. I am sure he is extraordinarily competent at many things. He is probably a great athlete as well. He has arrived in Australia and this is his new home. He wants to become a citizen. We should be supporting him in that process, not putting steps and barriers in place.

Those are the concerns that the Greens have about not just this bill but also other proposals that the government is putting forward to make it harder for new migrants to be able to become citizens. We do not think that everyone should be given citizenship—by no stretch of the imagination. But we think that the process that exists in Australia allows us to do that. I will get onto that issue later when we talk about how long people should wait before they can make an application for citizenship. The justifications we have heard from the government on this issue are questionable. Given that the government's argument has been that we need to protect people from terrorism so we need to extend the citizenship waiting period from two years to four years, what are they saying about the system that exists now? I will be interested to hear from the minister on that point.

What the amendments that we are currently dealing with are saying and what the Greens believe is that the government of the day should determine who can become an Australian citizen. That is the system we have now. We think that ASIO has an important role to play in providing advice to the government. But we think that the government, not the secret police force, should determine who is able to be a citizen in Australia. I commend these amendments to the Senate.

Senator IAN CAMPBELL (Western Australia—Minister for Human Services) (1.18 pm)—The government will oppose these amendments. We believe that the ASIO Act needs to be complied with before someone seeking to become a citizen can avail themselves of the provisions of the citizenship laws of this country, including what we hope will be a new law as a product of this debate today. The system as it has been described to me is that, if a person wanting to become a citizen has an adverse assessment by ASIO, they will

obviously need to have that dealt with before they can seek to become a citizen. It is effectively saying that the ASIO Act, which is put in place to protect this country, needs to be complied with. Until that is complied with, no application can be considered under this act.

Senator LUDWIG (Queensland) (1.19 pm)—Senator Nettle, we do see the principles that you enunciate clearly in terms of the way this has proceeded. It is wrapped up in a broader issue. In part you are arguing, if I understand correctly, that the minister should have a separate decision-making process apart from ASIO. In other words, ASIO would make a decision and the minister would then be able to agree or disagree with that.

That always creates an interesting position. Based on which criteria is the minister exercising a power? ASIO would make an assessment based on the intelligence assessment that is available to them. It might include confidential information. It could include a range of information from various sources that has been drawn together by ASIO and related agencies. ASIO, as our national intelligence organisation, would then make that assessment. The minister would then, in the normal course of events, rely on that assessment in making the determination. That is the way that I would see it operating.

It has operated in the past in that same way for a range of decisions by ministers. Decisions are based on assessments by, in this instance, ASIO. Departing from that I think would be fraught with some concern. What you then have to do is step the minister into the position of ASIO. You then have to say that the minister should assess the primary documents, the primary sources and all of the other evidence that might be garnered by ASIO in order to be in a position to make a determination—that is, if I understand the question correctly from the way that you have framed your amendment.

On that basis I could not see why we would support such a position. Effectively, you then would not be exercising a ministerial decision based on an ASIO report; you would have to make the primary decision yourself, as the minister. Why then would you have ASIO make the security assessment in the first place? I guess you would then have to have the minister or his delegates go and search out all of the relevant information to make a decision.

The usual course of events is that the minister does have to rely on security assessments. There is nothing to suggest that ASIO would not be making the appropriate security assessment in any event. Even in matters where ASIO do make security assessments, they are challengeable. If I remember correctly, that was challenged in the Scott Parkin matter and there was a judicial determination in that area. I know it is separate

from it, but the primary area is that we are not minded to support the proposed amendment. We do see the points that you raise. We have read the committee report about this issue as well. It seems to suggest that there are differing legal views about this area as well and the matter remains unsettled. Although the proposed amendment does raise a matter regarding stateless people, we are not able to support it in total because of the way it is drafted.

Senator NETTLE (New South Wales) (1.23 pm)—I thought it was worth making clear what the proposed amendment actually does. Whilst I am very happy for Senator Ludwig to make comments on my discussion here in the chamber, the amendment proposes to omit the clauses that the government is proposing to put into this legislation that give ASIO the power to veto somebody's citizenship. So rather than our setting up a new system, which is perhaps what Senator Ludwig thought that I was proposing, the amendment actually removes the government's proposal in this legislation to give ASIO the veto power. What we are proposing is that we operate under the system by which decisions are currently made, with advice from ASIO, but we are not supportive of giving ASIO the power to veto every individual citizenship application.

Senator Ludwig interjecting—

Senator NETTLE—It does.

Question negatived.

Senator BARTLETT (Queensland) (1.24 pm)—by leave—I move Australian Democrat amendments (3), (8) and (9) on sheet 4868:

(3) Clause 17, page 19 (after line 28), after subclause (4), insert:

(4AA) Subsection (4) does not operate so as to refuse the application of a stateless person unless the person has been convicted of a national security offence.

(8) Clause 24, page 34 (after line 12), after subclause (4), insert:

(4AA) Subsection (4) does not operate so as to refuse the application of a stateless person unless the person has been convicted of a national security offence.

(9) Clause 30, page 43 (after line 13), after subclause (4), insert:

(4A) Subsection (4) does not operate so as to refuse the application of a stateless person unless the person has been convicted of a national security offence.

These proposed amendments relate to the treatment of a stateless person and basically go to trying to increase the protection of such people from being put in a circumstance where they are at risk of being removed from Australia and in a position of statelessness globally. It was an area that was examined during the Senate committee inquiry and it is one where I believe there are not adequate protections.

The first amendment goes to adverse security assessments. We have just been talking about that to some extent—where a person cannot be approved to become a citizen at a time when an adverse security assessment is in place. I should point out that adverse security assessments do not automatically mean a person is a sure-fire terrorist or something like that. The relevant provision in the bill before us says at clause 17(4) that that adverse security assessment relates to whether somebody is directly or indirectly a risk to security. An indirect risk to security can be a lot wider and a lot looser than people may suggest.

The current wording in the legislation at clause 17(4) says that 'the Minister must not approve the person becoming an Australian citizen at a time when an adverse security assessment ... is in force'. The Democrat amendment suggests that that should not operate so as to refuse the application of a stateless person unless they have been convicted of a national security offence. It is basically an exemption if it is applying to a stateless person. Again, at least as I would read it, it does not mean that the minister would be forced to give that person citizenship but it does mean that it would give them some leeway rather than as currently applies under subclause (4), where the minister simply cannot approve that person becoming an Australian citizen if they are subject to an adverse security assessment.

It should also be emphasised that my understanding of things currently under the Migration Act is that if people are subject to an adverse security assessment and they are outside the country, they cannot get in in the first place. So this would be an assessment that would apply to people who are already resident in Australia and do not have citizenship of any other country. That would apply to a fairly small number of people. But, as I said earlier, there are those rare occasions that throw up fairly difficult decisions. In the case of stateless people, there are people that, by definition, at least in some respects, are in quite a vulnerable circumstance. We believe that the stronger test of refusing an application if they are convicted of a national security offence is a better one for stateless people in those rare circumstances than the current one where an adverse security assessment is in place.

It does, to some extent, touch on the previous amendment moved by Senator Nettle. For the record, I should note that the Democrats were supportive of that amendment. We saw this not in relation to a citizenship matter but in relation to a migration matter—not just with the Scott Parkin circumstance but also and perhaps even more unforgivably in regard to the two Iraqi refugees who were marooned on Nauru for years as a consequence of an adverse security assessment. Because they were outside the country, they were in an

even worse circumstance where they were not able to have any sort of judicial review.

As Senator Ludwig rightly said, in circumstances where people are in the country there is a limited scope of judicial review, although I should note with the Scott Parkin case there has been fairly strong resistance by ASIO and by the federal government themselves about the scope and nature of what is being able to be reviewed. I understand that matter is still being determined and assessed by the courts so I will not go into it further, but it is not a particularly comprehensive and thorough form of review that is available to people or at least may well turn out to be the case.

I think the very small number of vulnerable people who are in a stateless circumstance should not have the security of a citizenship application refused automatically just because of the adverse security assessment. As I said, that does not mean in itself that they are a serious risk to the community. An indirect risk to security can mean a lot of things, as we saw of course with one of those two refugees who were stuck on Nauru. A couple of years later that person, after having been brought to Australia because of serious health concerns, then had another ASIO review and, for reasons that I suspect nobody will ever know, was suddenly found not to present an adverse security risk to Australia. Quite what could have changed for that person when all they did in the intervening year or two was to stay stuck on Nauru, how they could over that period of time have ceased to be a security risk, we will probably never know. Attempts to try and question ASIO about this in Senate committee hearings met with the not unexpected stonewall that they were not able to comment on national security matters. It is all well and good for us to note this circular catch-22 situation of being unable to get information about security matters because it is a security matter. But when you are the person stuck with that adverse assessment, and the consequence is a lifetime of insecurity and uncertainty and of being in limbo, then it is not just a curious logical conundrum, it is a very serious circumstance. That is why we believe these amendments are desirable.

It should be re-emphasised that what we are putting in place here is a whole new citizenship act. The bill before us updates, modernises and improves, by and large, the existing Citizenship Act and replaces it—and if there is ever a time to make sure we get it right it is at the beginning, when we are putting it in place. I believe this is one area where, whilst it will only affect a small number of people, an improvement can be made. It is an important improvement for ensuring better rights for people who are vulnerable, for stateless people who may otherwise be left in limbo due to what is, in effect, a completely unchallengeable and unknowable security risk assessment from ASIO.

Senator HURLEY (South Australia) (1.32 pm)—As Senator Bartlett quite rightly just pointed out, the bulk of the bill we are considering is very good and puts our Australian Citizenship Act on a very good footing; it is just that there are some lingering concerns about particular aspects of it. Indeed, during the committee hearings the Human Rights and Equal Opportunity Commission made the point that they had not been consulted, I believe, prior to the bill being drafted. That surprised me a great deal. They were particularly concerned about the issue of statelessness. Senator Bartlett has quite rightly pointed out some of the difficulties that may arise under this bill.

I would like to hark back to other difficulties that I pointed out during my speech in the second reading debate in relation to people who, through renunciation, lost their citizenship under section 18 of the old bill. While I am on my feet I might also go through a few questions that I have about how the bill, when it is enacted and becomes law, will be dealt with. During the additional estimates we heard stories of a Maltese person who lost their Australian citizenship not under section 18, as most Maltese people do, but under section 17. This is quite a complicated bill and that particular section makes it very complicated, as do issues like statelessness and so on. I am wondering whether increased resources will be made available to the department, particularly in those key overseas locations where a lot of people will apply for or inquire about resumption of citizenship—Malta being one and the United States and Papua New Guinea being others—and what protocols will be in place. For example, will elderly people such as the United States war brides, who are in their 80s or even 90s, be treated as a priority and assisted through the process?

I think it may also assist the process of people assessing whether they themselves or members of their family are eligible under the new citizenship rules if the Australian citizenship instructions, which I understand are currently only available to migration agents, are made more widely available. I understand, of course, that they have to be rewritten to take into account the new rules, but I think it would assist the process greatly if they could be more generally available to the public. There is also the question for people who are already here in Australia under working visas or other arrangements of what arrangements will be made for them to be advised of whether they might be able to take up Australian citizenship or resume their Australian citizenship if they are eligible and how that will come about. I raise these issues at this point hoping that the minister might have some response to them later in the piece.

Senator IAN CAMPBELL (Western Australia—Minister for Human Services) (1.36 pm)—If the minister believes we need increased resources at those posts,

I am sure that he will seek them through the normal budget process. It is what we would expect him to do, if that is the case.

In response to the amendment moved by Senator Bartlett, I just make the point that the government accepted the Senate committee amendment that he refers to—committee recommendation No. 10—and it included in the bill, by way of an amendment in the House of Representatives on November 28 last year, to install a new section 4A. That says:

If the person is covered by subsection (4B), the Minister must not approve the person becoming an Australian citizen if the person has been convicted of a national security offence.

Effectively, this achieves the aim sought by Senator Bartlett's amendment—and I will not quote that because it is in front of all senators. But, in longhand, I am saying that the policy intent sought by Senator Bartlett has been achieved by the government amendment and, therefore, the bill before us requires no further amendment; otherwise, effectively, you would have a clause 4A, which would say exactly the same as Senator Bartlett's new clause 4AA.

Senator LUDWIG (Queensland) (1.38 pm)—That, in fact, was one of the questions I was going to ask of Senator Bartlett: in terms of the current position that the government seems to have moved to, does your amendment go to that or to some additional required matter that you have seized on, which is within the committee recommendations? The committee made a range of recommendations, but particularly in respect of stateless persons—and invariably I am looking at the report of the Legal and Constitutional Legislation Committee at 3.50, which deals with stateless people. The committee's view was highlighted at 3.58, which states:

The Committee notes that the proposed Bill does change the law in two important ways. Further, while the Committee appreciates that legal opinion may differ, there is a legitimate question as to whether proposed paragraph 21(8)(c)—

and I will not go into the detail there—

is sufficient to meet the objectives of the Convention. Australia may have adopted an unduly restrictive interpretation of its obligations in this regard.

But recommendations 10 and 11 go to those issues, in addition to recommendations having been made more generally. I do not know whether that, in fact, answers the amendment that you suggest. On the basis that, as I understand it, we have come to the position where the government has now conceded there were issues surrounding the original drafting of the bill dealing with this matter, Labor is not in a position to support your amendment without more being put. We do see that the government has moved to address the issue to ensure that, as far as was raised by the Legal and Constitutional Legislation Committee, it is remedied. If that is

not the case, Senator Bartlett, I would like to hear more.

Senator BARTLETT (Queensland) (1.41 pm)—My understanding is that the amendment I had just further reinforced the principle in place. It may be, as the minister says, that it is unnecessary because of the amendments made in the House of Representatives. It should be noted that the bill before the Senate is not the same bill that was before the Senate committee, because it was subsequently amended many months later by the House of Representatives, which included changes being made in response to the Senate committee report and one key change in particular regarding the period of residency requirement, which was not flagged at all when the Senate committee considered the legislation a year ago. However, in any case, my understanding is that the Democrat amendments here just reinforce the principle sought to be applied from the issues that were brought up in the Senate committee hearings.

From time to time I hear government ministers say, 'All these amendments aren't necessary because they are already covered,' which in my view usually means that it does not hurt if they are passed. But I am quite happy to accept the minister's assurance regarding the effect of the amendments that have already been made in the House of Representatives.

Question negatived.

Senator LUDWIG (Queensland) (1.42 pm)—We have already dealt with the government amendments, by leave, in total. I now seek leave to move amendments (1) to (8) and (11) on sheet 5172.

Leave granted.

Senator LUDWIG—I move:

- (1) Clause 19D, page 24 (line 6), omit "or a foreign law,".
- (2) Clause 19D, page 24 (after line 10), after subclause (6), insert:
 - (6A) If the person is covered by subparagraph (7)(b)(i), and the person has been convicted of an offence against a foreign law for which the person has been sentenced to a period of imprisonment of at least 5 years, the Minister may grant the person citizenship.
 - (6B) If the Minister makes a decision under subsection (6A), the Minister must cause notice of the making of the decision and the reasons for the decision to be laid before each House of Parliament within 15 sitting days after the day on which the decision was made.
- (3) Clause 21, page 28 (line 32), after "17", insert "or 18".
- (4) Clause 22, page 30 (line 4), omit "4", substitute "3".
- (5) Clause 22, page 30 (line 8), omit "4", substitute "3".
- (6) Clause 22, page 30 (line 15), omit "4", substitute "3".
- (7) Clause 22, page 31 (line 3), omit "4", substitute "3".
- (8) Clause 24, page 34 (line 18), omit "or a foreign law,".

(11) Clause 30, page 43 (after line 24), after subclause (5), insert:

- (5A) If the person is covered by subparagraph (6)(b)(i), and the person has been convicted of an offence against a foreign law for which the person has been sentenced to a period of imprisonment of at least 5 years, the Minister may grant the person citizenship.
- (5AB) If the Minister makes a decision under subsection (5A), the Minister must cause notice of the making of the decision and the reasons for the decision to be laid before each House of Parliament within 15 sitting days after the day on which the decision was made.

These amendments are relatively self-explanatory, unless there is a great need to go into the detail of any one specifically. Half the difficulty here, of course, is that this is truncated from the original second reading debate we had. However, at that time I did foreshadow the amendments that Labor would be moving. They relate to the policies that this bill was to introduce. One was to render certain types of stateless persons ineligible for citizenship if they were convicted of an offence under a foreign law for which the sentence is five years imprisonment or more; the minister in such a case had to refuse citizenship.

There is in that instance a problem in the government allowing another country to determine our citizenship—it is a matter I raised during the second reading debate where I used a range of examples. I will not go to those again but it would seem clear that in circumstances where other countries are used to determine the decision of the minister it is appalling and should not be countenanced in any way. It could get to a situation where countries that do not have our view of the world would be determining outcomes. It would be improper and wrong, under the government's proposal, that somebody of the stature of a person such as Mahatma Gandhi would be refused citizenship to Australia if this were applicable. Yes, a conviction under a foreign law should definitely raise alarm bells. There is no argument about that. It should be a matter that the government should consider, but it is not to determine our citizenship. That is where we fall out with the government's view.

I take up what Senator Hurley said earlier—that this bill introduces many good measures. While the committee stage will focus on amendments to the bill, it is not the central thrust of the bill. The central thrust is to re-write the citizenship legislation in such a way that it provides a significant improvement and that it has by and large cross-party and minor party support.

This is the time for debate on the particulars. We are seeking to ensure in this particular instance that other countries do not determine our citizenship laws. That would be wrong. The government should not outsource our citizenship to other regimes which do not have

views similar to ours. The government did introduce an amendment to add a test of reasonableness, which Labor had been calling for. We are glad that the government paid attention to Labor's concerns, but it was only after much argument. In this instance, we think our amendments should be supported and we commend them to the Senate.

Senator IAN CAMPBELL (Western Australia—Minister for Human Services) (1.47 pm)—I thank Senator Ludwig for picking up the fact that the government has indeed amended the bill in a way we believe makes this new amendment unnecessary. It is an example of the government engaging in a constructive legislative process. The government amendment does not differentiate between Australian and foreign law and is consistent with our obligations under the Convention on the Reduction of Statelessness. The mandatory provision to refuse an application need not apply 'if taking into account the circumstances that result in the person's conviction the minister is satisfied that it would be unreasonable for that provision to apply in relation to that person'—the reasonableness test to which the senator was referring. That is an amendment which the government has made. We believe it addresses the concerns of Senator Ludwig and the opposition, therefore rendering this amendment unnecessary. It is also important to note that there is a right of review of any of the decisions to refuse to exercise the discretion included in the government's amendment. It instils an amount of fairness, which the opposition is seeking. We believe the amendment moved is no longer necessary.

Senator LUDWIG (Queensland) (1.48 pm)—After hearing that, I acknowledge that you have moved some way and I think I said that, but not far enough. Although you might consider you have met the obligation in meeting our concerns, we think it goes to a further point that you have not picked up. On that basis we still prefer our amendment over yours, particularly in relation to the notice of and the reasons for decision to be laid before each house of parliament within 15 sitting days. Matters such as that are not unusual for this government to deal with. On that basis, it is worth acknowledging that the government has moved. I would not want to omit that from my contribution today, but it certainly has not moved far enough. We still prefer our amendment.

Question negatived.

Senator BARTLETT (Queensland) (1.50 pm)—Democrat amendment (4) goes to paragraphs (e) and (f) of the general eligibility for applying for citizenship. Before formally moving it, I might ask a couple of questions in regard to this. Basically we put it down as a protective amendment prior to Senate estimates—uncertain of how the government's new citizenship test announced at the end of last year under the former par-

liamentary secretary, Mr Robb, would be implemented. It was made clear at Senate estimates that to implement this new test will require legislative change which, from the timetable put forward in estimates by the government or by the department, was to be put before the parliament this year some time prior to the election. I want to clarify in that case how, in the interim, the government or the department will be planning to assess these parts of the general eligibility requirements under the new Australian Citizenship Act, which is before us today. The parts that my foreshadowed amendment go to detail an eligibility requirement for a person to become an Australian citizen if the minister is satisfied that the person:

(e) possesses a basic knowledge of the English language at the time of the Minister's decision on the application; and
(f) has an adequate knowledge of the responsibilities and privileges of Australian citizenship at the time of the Minister's decision on the application.

I know we already have in place the basic English language test and that this could be seen as just a continuation of that but, given the change in the government's policy to implement a specific test regarding knowledge of Australia, Australian society and perhaps the ubiquitous Australian values, I wanted to get an indication of whether there will be any change in the way these parts of the eligibility requirements will be assessed between now and when the legislative changes that have been foreshadowed in Senate estimates come into being.

I understand, again from what was said at Senate estimates, that there will not be a separate English language test under the new regime the government is proposing—that the test of someone's basic knowledge will be part and parcel of the computer based multiple choice test of knowledge of Australia that is still being developed. As I understand it—and I am happy to be corrected on any of the things I am saying here when the minister responds—that is different from how things are now, which is that the level of basic knowledge is assessed via the general standard interview that is done with the department and delegate of the minister.

I really want to ascertain whether these provisions in the new bill, parts (e) and (f), will be implemented differently in any way from what has applied to date, or whether it will just be business as usual up until any further legislative changes are brought in to implement a change in policy in regard to eligibility testing for acquiring Australian citizenship.

Senator IAN CAMPBELL (Western Australia—Minister for Human Services) (1.54 pm)—The last comment that Senator Bartlett made was correct; it will be business as usual until there is an announcement or until the new legislation comes in.

Senator LUDWIG (Queensland) (1.54 pm)—I have a question at this stage of Senator Bartlett: does the amendment that you are moving take out the current citizenship test that we have? It seems to suggest that. If it does, then what does it replace it with? I understand that there are some concerns about what the government might be intending to do; however, that is currently not before us. The current test requires that a person:

(e) possesses a basic knowledge of the English language at the time of the Minister's decision on the application; and

(f) has an adequate knowledge of the responsibilities and privileges of Australian citizenship at the time of the Minister's decision on the application.

And it goes on. If Senator Bartlett is seeking to take out that current test then Labor would have some concerns and, as a consequence, would not support the amendment. How we deal with what the government does in the future is a matter for when we see the legislation, and the shadow minister responsible will obviously have something to say at that point. Already, I think the relevant shadow minister has spoken about this particular area but I do not want to get that confused with this debate. The debate we are having now is about Senator Bartlett's amendment vis-a-vis the current test in the legislation. I was wondering if Senator Bartlett could clarify that position and let me know whether I am right about that.

Senator BARTLETT (Queensland) (1.56 pm)—As I said in my comments, I foreshadowed the amendment rather than formally moved it because I wanted to clarify the situation with the minister, which I was able to do to some extent in the estimates committee process. That was before this committee stage of the debate. I had a concern that the changes that the government announced on their new tests would be done administratively under this component of the bill here, but it has been made clear that that is not going to happen and that there will be a new legislative framework put forward for this new test. That being the case, I will not proceed with that foreshadowed amendment. I will let that one sit and we can look at the actual legislation dealing with citizenship when it does come in at some stage down the track. I will take the final opportunity before we hit the suspension at two o'clock for question time to get one final response from the minister as to whether there is any rough timetable he can give for when the legislation dealing with the new test might be introduced or when we could see an exposure draft.

Senator IAN CAMPBELL (Western Australia—Minister for Human Services) (1.57 pm)—As I said, that will be a matter for announcement by the minister responsible. As I recall from the estimates committee process, the senator was given very thorough answers to questions about what the government has in mind and where we are at with the process. Apart from that,

we are opposed to the amendment because it quite clearly on the face of it removes the provision in the bill that refers to a knowledge of the English language. That is something that has been part of the citizenship process in Australia for some time and I think it would be very silly—and I think most Australians would regard it as silly—to remove it from the law.

Senator LUDWIG (Queensland) (1.58 pm)—Senator Bartlett, have you formally moved the amendment?

Senator Bartlett—No.

Senator LUDWIG—I understand that he has not, so I will not talk to it any further. I understand the point that he makes and I understand what he would like to get the government to do. We would all like to get the government to do that but, unfortunately, I suspect that that is not a matter for the current minister before us; it is a matter for the minister dealing with citizenship to bring that forward. It would be helpful if they could comply; however, that is a matter for the minister of the day to determine.

On the broader issue, I have noted Senator Bartlett's position of being able to pursue both in Senate estimates and here an issue that you seek greater information on and I concur with that. It would be helpful if the minister did make it plain what the current position is. In any event, without the amendment having been moved, I indicate that Labor does not support the amendment that Senator Bartlett foreshadowed and, until he does move it, we will not need to formalise our position on it.

Progress reported.

QUESTIONS WITHOUT NOTICE

Iraq

Senator CHRIS EVANS (2.01 pm)—My question is directed to Senator Minchin in his capacity representing the Prime Minister. I refer the minister to the announcement by the Prime Minister of the United Kingdom, Tony Blair, last week that he will start withdrawing British troops from Iraq later this year, and Denmark's decision to withdraw its 430 ground troops in August. I also refer the minister to Vice President Cheney's acknowledgement at the weekend that he did not think that the withdrawal of Australian troops from Iraq would harm our alliance with the United States. Didn't also the Iraqi deputy foreign minister say last week that the Iraqi government would have no problem with a timetable for the withdrawal of Australian troops? Don't these developments totally destroy each pillar of the government's rationale for not planning a timetable for withdrawing Australian combat troops from Iraq? Will the government now accept the need for Australia to develop a strategy for exit from Iraq?

Senator MINCHIN—As the Leader of the Opposition in the Senate well knows, the government cate-

gorically rejects any proposition based on the notion that our ultimate withdrawal from Iraq should be based on the calendar and not on conditions. Our position is clear. Our position in Iraq and any ultimate withdrawal of our troops should be based on the conditions in that country permitting such a withdrawal and not on some arbitrary timetable as indicated by the opposition.

Senator Sherry—When will that be?

Senator MINCHIN—I make the point that the opposition, as is now clear from its position on those issues, walks on both sides of the street. It says to the left of its party and to the left of Australia: 'We have got to rush to get out of Iraq. It's a terrible war. Yes, we thought there were weapons of mass destruction there. We agreed with President Bush and Mr Howard on that. But now let us get out of there as fast as possible.' On the other hand, it then says to those who do support and value the US alliance—

Senator Sherry—Five years!

The PRESIDENT—Order, Senator Sherry!

Senator MINCHIN—who are concerned about the position in Iraq and do not want to see that country descend into further chaos: 'Of course we are going to leave all the combat troops there. We are going to make sure that the embassies are guarded et cetera.' If you read between the entrails and try to work out which side of the street Labor is actually walking on this issue, you find that there is not much of a withdrawal proposed by Labor apparently. Yet at the same time it says, 'We must get out of Iraq.' It is impossible to try to navigate your way through what on earth the Labor position is on this matter. It is a matter of enormous importance not only to Australia but also to our alliance with United States and to the global war on terror.

Our position is absolutely clear. We are committed to maintaining our forces in Iraq as long as they are required to ensure peace and stability in that country. We are not going to leave the Iraqi people in their time of need. We are not going to leave our most important ally at the time of their need. We do note what Mr Cheney said in his remarks. As the Prime Minister said, we note that Mr Cheney is a diplomat and did not want to interfere in Australian domestic politics. But we have absolutely no doubt that a precipitate withdrawal by Australia, which on one day of the week Mr Rudd apparently supports, would do damage to that alliance. It would be very damaging to our relationship with our most important ally, the United States.

As to the position of Great Britain, as the opposition well knows, this is a reduction in troops from some 7,000-plus to 5,000-plus. The UK will continue to have nearly 10 times the number of combat troops in Iraq that we have. They are reducing their numbers in the province for which they have been responsible for the very reason that they have been successful in restoring

The purpose of the bill is to impose excess non-concessional contributions tax to give effect to the limit on non-concessional contributions to superannuation.

Full details of this bill are contained in the explanatory memorandum already presented.

SUPERANNUATION (EXCESS UNTAXED ROLL-OVER AMOUNTS TAX) BILL 2006

This bill is a companion Bill to the Tax Laws Amendment (Simplified Superannuation) Bill 2006.

The purpose of the bill is to impose the top marginal tax rate, plus Medicare levy, on excess lump sum payments made from untaxed schemes—that is, lump sum payments in excess of \$1 million. These arrangements ensure comparable treatment of taxed and untaxed schemes, given annual contribution limits apply to taxed schemes.

Full details of this bill are contained in the explanatory memorandum already presented.

SUPERANNUATION (DEPARTING AUSTRALIA SUPERANNUATION PAYMENTS TAX) BILL 2006

This bill is a companion bill to the Tax Laws Amendment (Simplified Superannuation) Bill 2006.

The purpose of the bill is to replace the Income Tax (Superannuation Payments Withholding Tax) Act 2006 to reflect the new components of superannuation benefits created by the Simplified Superannuation Bill. It realigns the tax treatment of Departing Australia Superannuation payments with the new superannuation taxation regime that applies from 1 July 2007.

Full details of this bill are contained in the explanatory memorandum already presented.

SUPERANNUATION (SELF MANAGED SUPERANNUATION FUNDS) SUPERVISORY LEVY AMENDMENT BILL 2006

This bill is a companion Bill to the Tax Laws Amendment (Simplified Superannuation) Bill 2006.

The purpose of the bill is to facilitate the collection of a self-managed superannuation fund's supervisory levy with its income tax liability, by removing the current specific penalty for late lodgement of a fund's regulatory return. This will allow the general interest charge to be applied for late lodgement of the return, consistent with income tax arrangements.

Full details of this bill are contained in the explanatory memorandum already presented

Debate (on motion by **Senator Scullion**) adjourned.

Ordered that the bills be listed on the *Notice Paper* as indicated at item 14(c) of today's *Order of Business*.

EXPORT FINANCE AND INSURANCE CORPORATION AMENDMENT BILL 2006

Returned from the House of Representatives

Message received from the House of Representatives returning the bill without amendment.

COMMITTEES

Treaties Committee

Broadcasting of Parliamentary Proceedings Committee

Electoral Matters Committee

Membership

Message received from the House of Representatives notifying the Senate of the appointment of Mr Laming to the Joint Standing Committee on Treaties in place of Mrs Mirabella, Mr Hardgrave to the Joint Committee on the Broadcasting of Parliamentary Proceedings in place of Mr Lindsay, and Mr Forrest to the Joint Standing Committee on Electoral Matters in place of Mr Lindsay.

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION AMENDMENT (AUDIT INSPECTION) BILL 2007

CUSTOMS TARIFF AMENDMENT (INCORPORATION OF PROPOSALS) BILL 2007

LAW AND JUSTICE LEGISLATION AMENDMENT (MARKING OF PLASTIC EXPLOSIVES) BILL 2007

TAX LAWS AMENDMENT (2006 MEASURES No. 6) BILL 2007

CUSTOMS LEGISLATION AMENDMENT (BORDER COMPLIANCE AND OTHER MEASURES) BILL 2007

EXPORT FINANCE AND INSURANCE CORPORATION AMENDMENT BILL 2007

MIGRATION AMENDMENT (EMPLOYER SANCTIONS) BILL 2007

Assent

Messages from His Excellency the Governor-General were reported informing the Senate that he had assented to the bills.

AUSTRALIAN CITIZENSHIP BILL 2006

AUSTRALIAN CITIZENSHIP (TRANSITIONALS AND CONSEQUENTIALS) BILL 2006

Consideration resumed.

In Committee

AUSTRALIAN CITIZENSHIP BILL 2006

Senator BARTLETT (Queensland) (5.18 pm)—I think the next thing on the list is an opposition amendment, but I am happy to wax lyrical rather than have a quorum called.

The TEMPORARY CHAIRMAN (Senator Marshall)—I am advised that we have finished with the opposition amendment and that we are now on your amendment (4).

Senator BARTLETT—I indicated before question time that I would not be proceeding with that amendment.

The TEMPORARY CHAIRMAN—In that case, Senator, you are correct: we are now moving to opposition amendment (3).

Senator BARTLETT—I will not speak on the opposition's behalf. Rather than call a quorum, I will recap on a couple of matters whilst we are waiting for the opposition shadow minister to come into the chamber. This debate has again come on rather more quickly than people might have anticipated. I will take the opportunity to indicate that the Democrats will support opposition amendment (3) when it is moved.

The important issue with regard to this legislation that is worth re-emphasising is that we are putting in place an entire new piece of law. We are not just amending the existing Citizenship Act; we are putting in place a brand-new one. It is worth reminding senators that until, I think, 1948 there was actually no such thing as a formal Australian citizen in law. In my speech in the second reading debate, I recalled going through some papers of my father's not too long ago and discovering a resume he had written in the late 1940s detailing some of his experiences and qualifications to date. He was born in Sydney, his parents were both born in Sydney and yet on that resume he had put his nationality as British. It came as a bit of a shock to me to discover that my father was theoretically British.

It shows how much the notion of what Australian citizenship has evolved and continues to evolve. It is worth noting that the very notion of being a British subject and what is and is not an alien under the Constitution is something that is still being resolved at law. We have had two different High Court cases just in the last few years which have come down on different sides of the fence. They were four-three decisions in both cases but took different positions with respect to the status of people who are not Australian citizens but may have been very long-term residents in this country—whether they are or are not an alien and whether they are a noncitizen nonalien and all sorts of things like that.

That can sound like lots of arcane legal argument—and to some extent it is, except for the people who are directly affected by the case at hand—but it is a reminder of how the notion of citizenship is still evolving. It is also a reminder that there is still no precise head of power under the Constitution regarding citizenship. There is a head of power regarding the treatment of aliens, but that is not necessarily the same thing.

I also wanted to draw attention to the fact—and many of these amendments, including the one that is about to be moved, go to some of these issues—that there are people whose parents may have had citizenship but it lapsed for various reasons, particularly people who had no say in the changing status of their citizenship when they were children. These may be people

who, as we know, have lived here for decades and often assumed they were Australian citizens and did not realise until it was drawn to their attention—often in less than pleasant circumstances—that they were not citizens. Many of them had been registered on the electoral roll and all sorts of things because they assumed that that they were Australian citizens. The notion that people who are citizens, who have this bit of paper, are somehow full-blown, 100 per cent Aussies and all the rest are somehow not true Australians is a pretty misleading concept.

I also want to emphasise again the expansion of the ability of people to be Australian citizens whilst also being citizens of another country; that is, being a dual citizen. I had this in a second reading amendment and was disappointed that it was not supported by the government. This is what we have seen both in many of the changes that are contained in this legislation and the whole new act that is about to be adopted and indeed in major amendments that were made a few years ago. Indeed, in some cases, we have people who are citizens of more than two countries—of three countries. Some years back it was actually not legal: if you became an Australian citizen, you automatically forfeited your citizenship of another country. That approach has changed and I think it is a very significant approach. It is an important part of expanding the strength of multiculturalism and expanding the benefits that we as Australians can get from the diverse range of backgrounds we have of people who are part of our community and our country.

It is worth remembering that Australia has one of the highest proportions of overseas born people. I think it is almost one-quarter of all Australians are overseas born. When you add on top of that people who have at least one parent who is overseas born, you are getting an extremely significant proportion of the Australian community. Very large numbers of those people will be dual citizens. Previous attempts I have made to ascertain exactly how many Australians are also citizens of another country have come up against a bit of a blank. Nobody actually knows. But, if we have nearly one-quarter of our community overseas born and a significant number on top of that whose parents are overseas born, there is a fair chance that the number of dual citizens we have is actually greater than the 20 per cent that is often used as an estimate. The more we go down this path—and it is a path that I support us going down—the more we are coming up against a major impediment in our Constitution, which is that anybody who is a dual citizen is precluded from running for the federal parliament. That is something that all parties have said they would support amending. Unfortunately we have not seen it progressed to the stage where they would take action to make it happen.

Senator Bob Brown interjecting—

Senator BARTLETT—I thank you for the reminder, Senator Brown. Senator Brown put forward a private senator's bill that came to a vote in this chamber. The Democrats have had legislation in the past as well—we may well even have some before the chamber at the moment as part of an omnibus bill—which sought to generate a referendum to make that change. Even though it has been official party policy of the coalition parties to support that change, when that came to a vote in this chamber they did not support it. They voted against it and therefore the bill did not progress. It was actually passed by a majority of the Senate at the time but, because such bills need to have an absolute majority—it does not take into account people who are absent for pairs or other reasons on the day—it did not meet the hurdle.

This bill is an opportunity to strongly emphasise once again that we are going further and further down this path of disqualifying a growing number of Australians from being able to run for parliament because of that barrier in the Constitution. If all of us recognise and support dual citizenship, as we all do under our parties' policies, and we are all passing more and more laws expanding the number of people who are dual citizens, then it is about time that we initiated that referendum to amend the Constitution. If all parties support that policy, as I think we all do, then it is all the more reason to initiate a referendum to be conducted at the same time as a federal election so we can make that change. It is not only a matter of equality; it is a matter of Australia missing out on the skills that many of those people would bring to our political system. It is not just missing out on the skills they would bring to parliament; they are not even able to be candidates. They are precluded from even contributing as candidates and being part of the debates and engagement with the populace that happens throughout the electoral and democratic process.

There is one point I would like to make before I allow Senator Ludwig to get on with his amendment. It is of a reverse nature. We are emphasising the importance of citizenship, the rights of citizens and the obligations of citizens. One of the key rights you have when you become a citizen is the right to vote. It is probably one of the key incentives that people would think of when they decide to become an Australian citizen. Yet significant inconsistencies in that area are sticking out more and more. The more than we want to emphasise and promote the importance of our obligations and responsibilities as citizens—and that is meant to be a key reason behind the government's arguments with the citizenship test they are proposing—the more we need to get consistency in how those rights and obligations are implemented. The simple fact is that there is a group of Australians now who have been quite consciously and deliberately disenfranchised, even though they are Australian citizens—that is, prisoners.

All prisoners have now been disenfranchised under the Electoral Act.

Another inconsistency that sticks out, and is looking more and more outdated, is the fact there is a significant group within the community who are not Australian citizens but who can still vote, and that is all people who are British subjects who were eligible to be on the roll prior to 1984. I think that is when the Australia Act was implemented—on Australia Day 1984. There was a savings clause, what is often known as a grandfathering provision, which meant that all British subjects—not just British citizens but British subjects—eligible at that stage to be on the roll would remain on the roll. All of those people, if they were eligible at that time, remain eligible now, 23 years later.

There are many thousands of people in that circumstance. I am not seeking to pick on them, to somehow target them or to cast aspersions on them, but the simple fact is there are many thousands of people who are not Australian citizens who have had the right to vote now for over 20 years. At a time when we are reaffirming the importance of Australian citizenship and encouraging people to take up citizenship, we are keeping in place a measure in the Electoral Act that removes incentive for those people to become citizens. I think it is time to once again draw attention to that. I urge the government to amend the Electoral Act or, at the least, to explain what the rationale is for that savings provision to still be operating 23 years later. It would probably have been quicker to call a quorum, but I have all of those things on the record now. I will allow Senator Ludwig to move his amendment.

Senator LUDWIG (Queensland) (5.31 pm)—Thank you, Senator Bartlett. It certainly did give you an opportunity to put all of those things on the record. I move:

(3) Clause 21, page 28 (line 32), after "17", insert "or 18".

I will keep it brief. This was a matter to which I referred extensively in my contribution to the second reading debate, when I foreshadowed I would move this amendment. The government is aware of Labor's concerns. It is a matter which was raised in the House of Representatives as well. The situation facing the Maltese community regarding children whose parents had to renounce their citizenship under section 18 of the act was discussed in detail.

It is recognised that the government has, to some extent, tried to fix the situation for children whose parents lost their citizenship automatically under the now repealed section 17 of the previous act, which effectively prohibited dual citizenship. However, those who took out citizenship of countries that also prohibited dual citizenship had to formally renounce their citizenship under section 18 of the Citizenship Act. The discrepancy has to be an oversight by the government. Labor strongly urges the government to make a minor

amendment to the bill to fix the situation for a small section of the Maltese community that is currently severely disadvantaged by these laws. It is a matter that has been argued strenuously by the Maltese community for some time. They have been quite vocal in what you might call their perseverance in trying to persuade the government to adopt the position they have argued.

They have persuaded Labor that there is a need to alter the legislation to remedy the circumstances their children face. Labor supports their position and urges the government to alter the legislation, and that is what this amendment will do. The government has argued that these children do not have a sufficient connection to Australia. I think, and Labor thinks, that is absurd. The connection is called a mum and a dad. I said that in my speech in the second reading debate and I reiterate it here. It is a simple amendment and it deserves the support of this house.

Senator SCULLION (Northern Territory—Minister for Community Services) (5.34 pm)—The government will not be supporting this amendment. The children's parents have made a conscious decision to renounce their Australian citizenship. At the time of doing so, they could have had no expectation of being able to resume it without migrating to Australia and applying for citizenship in the same way as any other migrant would. As the senator would well know, the Senate report stated:

... that this matter has been fully considered by the Government over a number of years and that renunciation is properly regarded as a more significant and conscious relinquishing of the bonds of allegiance to Australia.

Significantly, the bill also removes the 25-year age limit for the resumption of citizenship for people who have renounced their Australian citizenship. Former citizens who resume their Australian citizenship can also sponsor non-citizen family members, including their children, for migration to Australia. We will not be supporting the amendment

Question negatived.

Senator LUDWIG (Queensland) (5.35 pm)—by leave—I move:

- (4) Clause 22, page 30 (line 4), omit "4", substitute "3".
- (5) Clause 22, page 30 (line 8), omit "4", substitute "3".
- (6) Clause 22, page 30 (line 15), omit "4", substitute "3".
- (7) Clause 22, page 31 (line 3), omit "4", substitute "3".

I note that there are what seem to be equivalent Australian Greens amendments, but I will leave that for the Australian Greens. Alternatively they may choose not to move them. I have spoken at some length in this chamber in my speech to the second reading debate about how this government has seemingly—you could only say to score cheap political points—flouted the advice of ASIO in departing from the residency requirements of three years that Labor had agreed to.

This bill seeks to change the period to four years of residency and the government still have not answered the primary question: where is the advice that four years is in the best interests of this nation in terms of national security? If they seek to underline it with, 'Four is better than three,' then it is no argument at all.

What they need to be able to do is substantiate the argument about why they say precisely four years is the required number. Where is the ASIO advice? Does it in fact exist in the first instance? And is it the best balance between the importance of needing to integrate migrants into our community and needing to ensure that citizenship is not something that is easily achieved or taken up lightly? Why does the government say that four years strikes that balance? Labor urges the government to heed the original advice provided by ASIO by making the residence requirement three years. It is a sensible amendment. I think, and Labor thinks, that it went to four years because of what could only be described as opportunistic political point-scoring by this government on a bill that does not need it.

As I think the Senate committee first said in their explanation of the bill itself, it is a bill that intends to replace the Australian Citizenship Act 1948. It has broad support. Its main proposals include the restructuring of citizenship law to make it more coherent, accessible and easy to use. It will also increase access to citizenship by simplifying provisions and changing the laws relating to citizenship by descent and resumption of renounced citizenship. It aims to strengthen the protection of national security by extending residence requirements by 12 months, to three years. Amongst the areas I have mentioned, there are two in which the government has it wrong: resumption of renounced citizenship and the extension of residence requirements by 12 months.

On many of the other provisions the government have it right, and Labor agrees with those positions. What the government are now seeking to do is use what would otherwise be a bill that would be broadly supported to find cheap political points of differentiation. This is but one of them. The government should and can—even as late as today—say: 'We think we're wrong. We don't have advice. We did seek to make cheap political points on it and we were wrong about that. And, for the sake of ensuring that this bill does get through the Senate with bipartisan support, on this issue we agree with Labor's amendment.' That would be the sensible path to take. I am not under any illusion. I do not think the government will do that. They should do it, and perhaps deep in their hearts they too know they should do it. I am a realist: they will not do that. But I have moved the amendment. Having said all of that, it is disappointing to see that the government have used these provisions to again try to score cheap political points.

Senator BARTLETT (Queensland) (5.40 pm)—The Democrats support Labor's amendment, the effect of which would bring the residence requirement back to three years instead of four years. I place on the record—and this is also for the benefit of you, Temporary Chairman Marshall—that there was a proposed Democrat amendment to oppose clause 22. I now signal that we will not proceed with that. The preferred Democrat view was placed on the record when the government first announced that they were looking to extend the residence requirement from two years to three years. We stated that we were prepared to support that. That is not something completely out of proportion to what has been done in the past or by comparable countries. At that time, I think I said that the rationale given for extending it from two years to three years—that it might somehow assist with security concerns; and there was some debate after the London bombings—was simply ludicrous. Any suggestion that making people reside in Australia for three years instead of two, or four years instead of two, would somehow assist in any security issues regarding terrorism is farcical. Indeed, I would suggest that to some extent it is a bit offensive.

We need to work hard enough as it is to try and ensure that unreasonable prejudices towards migrants are not developed or validated in the community. Any suggestion that somehow there are security concerns with regard to whether or not migrants decide to become citizens just totally distorts where the debate needs to be when we are looking at how we deal with security and terrorism issues. It is a difficult and important debate. I certainly do not suggest that I have all the answers, but I do know that one of the answers is not going down a completely ridiculous and irrelevant dead-end side alley about how long people have to live in a country before they become citizens.

There are some valid debates with regard to integration and those sorts of things. It is useful to have those debates. The more we can have those sorts of debates without having some sort of undercurrent of attempts to look for dog-whistling opportunities and to play on some of the prejudices that exist in the Australian community, as they do in any community around the world, the more constructive the debate would be. Whilst I was prepared to accept that extending the period of residency for citizenship from two years to three years was reasonable enough and acceptable enough, I do not think that extending it for a further year, to four years, is justified. I certainly do not think the case has been made.

As always, the Democrats are prepared to consider the arguments. We are willing to look at the issues, hear people's views and change our views if the case has been made. No case has been made. It was just straight off the top of the head of the government:

'Let's just push this out another year and make it look like we somehow need to make things a bit harder for migrants because they somehow need to be tested a bit further because there's some problem.' I do not think any case was made that there was any problem to start with. Frankly, I do not think there was any case made that there was a problem with two years. Having it bounced from not two to three years but two to four years—without any sort of consultation, any sort of flagging or any sort of case being made about what the problem was—was pathetic, frankly.

It actually offends me to some extent because I do believe citizenship is an important issue and something that does not get the attention it deserves in policy debate and public debate. That off-the-cuff, politically motivated shift in a pretty fundamental area regarding citizenship is too dismissive of an important issue. I agree that we need to more strongly promote the importance and value of Australian citizenship. I believe we need to much more strongly affirm not just the responsibilities but the rights attached to Australian citizenship. In that area, I think we are letting down some of our citizens. If you want to encourage people to become citizens, which I think is the public position of all parties in this chamber, why would you double the length of time people have to live here before they can become citizens if you cannot demonstrate that that is necessary to their effective integration? That has not been demonstrated at all.

My preferred position is that the residency requirement be three years; if that is not adopted, my second preferred position would be for it to stay at two years, which was what my foreshadowed amendment was meant to achieve, although I think it probably went a little wider than that—I think we can cover it with the vote on the amendment that provides for three years. If that is not successful we are stuck with the four years.

I want to point to one another issue I have with this extension to four years and ask a question of Minister Scullion regarding this. It is the first time I have asked him a question, I think, in his new ministerial role. If this bill is passed, section 21 of the new act will say that a person is eligible to become a citizen if the minister is satisfied the person fits a whole range of criteria. The bill provides that the person must either satisfy the residence requirement—which is what we are talking about at the moment, be it four years or three—or, as an alternative, has completed relevant defence service, which is under section 23. I can accept the different qualifications there for either a residence requirement or relevant defence service, but the longer the residence requirement—and now we are stretching it to four years; quite a big disparity—the greater the disparity with the required length of defence service.

As I read it, and the minister can correct me if I am wrong, new section 21 provides that the person can

either satisfy the residence requirement, which is to be present in Australia for at least four years including at least one year of permanent residence immediately preceding their application, or complete relevant defence service of at least three months in the permanent forces of the Commonwealth or six months service in the Australian Naval Reserve, Army Reserve or Air Force Reserve.

Frankly, I think it would surprise a lot of Australians that we are advertising to get non-Australians to enlist in our defence forces. That is okay—I presume they get screened and go through all the appropriate criteria. It is a bit anomalous that we are saying, on the one hand, that people have to live here for four years before we can be sure they are real Aussies and not terrorists and that we have to be sure they know everything about Australia but, on the other hand, we will have them straight away in our permanent defence forces of the Commonwealth. And if they serve just three months they are immediately eligible for citizenship. It seems a bit anomalous to me. I am not saying that people should not be able to do that, but it seems like rather a mixed message.

My question to the minister is: firstly, is it currently the case that we accept people who are not Australian citizens and, indeed, not Australian residents to serve in our Defence Force; secondly, is my reading accurate that, if those people who are not Australian residents serve just three months in the permanent forces of the Commonwealth, it in effect can be a fast track to citizenship? I ask the question because the more we lengthen the residency requirement, in this case to four years, the bigger the anomaly. If it was two years residence or a certain period in the Defence Force, it might not stick out so much. But when you push the residence requirement out to four years, this does appear to be quite an anomaly. I would appreciate an indication of whether, currently, people who are not residents are able to immediately enter the permanent forces of the ADF. If that reading is correct, is three months service in those permanent forces sufficient for them to meet the eligibility test for citizenship?

Senator SCULLION (Northern Territory—Minister for Community Services) (5.50 pm)—I thank the senator for the question. I am informed there is no intention at all to change the provisions with regard to serving time in the Defence Force being sufficient to gain citizenship. I am also informed that, regarding the issue of serving in the Defence Force, whether for three months or any other period, substantially the reason that the Australian government puts so much weight on the eligibility test for serving in the Defence Force is that there are a whole range of criteria that must be met to gain entry to the Australian Defence Force. I do not think it is proper in this place or in these particular circumstances to discuss the criteria necessary to enter the

Defence Force, but in effect the answer to your question is that the provisions regarding enlistment in the Defence Force leading to the capacity to apply for citizenship still apply and are unchanged by this bill. However, I should make something clear. I used the term ‘enlistment’. I do not want to mislead the Senate. The provision involves having ‘completed’ a period of time in the Defence Force.

I would like to thank the contribution from the Senate, particularly that from Senator Ludwig. I recognise his acceptance that the bill is substantially a good one. I am disappointed that he cannot agree with the bill completely, and the amendments that are put forward reflect that.

The bill as drafted changes the residence requirements from two years of permanent residence to four years of lawful residence, including at least 12 months as a permanent resident. Absences from Australia of up to 12 months during the four-year period are allowed, for no more than three months in the year before making the application. Up to three years of temporary residence could be counted towards the four years that are required. In addition, the requirements would ensure that the applicants will have spent sufficient time in Australia to develop a sense of what it is to be an Australian and to fully understand the commitment they need to make to become an Australian citizen. The requirements also recognise the changes in the migration program over the years which have resulted in an increasing number of people spending significant periods of time in Australia as temporary residents prior to becoming permanent residents.

Senator BARTLETT (Queensland) (5.53 pm)—I will respond briefly to that and save a bit of time by foreshadowing an amendment that I will move. The argument Senator Scullion put—and I appreciate he is representing the minister and is not the minister directly responsible—about needing to allow sufficient time for people to get an understanding of what it is to be an Australian and those sorts of things are nice-sounding words and a nice-sounding concept, but what does it mean in practice? We are making laws that people are required to meet.

The issue goes back in part to the point I was making before which, if I understand the minister’s answer to my previous point, he actually confirmed. People will not need to reside here for four years if they have completed just three months service in the permanent forces of the Commonwealth. Spending three months in the permanent forces of the Commonwealth is a fairly intensive activity. It may be that you are not getting a full understanding of all of those other things, whatever they might be—and they are always things we cannot quite nail down—about what it is to be an Australian. Three months is not necessarily a lot of time to do that, particularly if those three months are

spent as a permanent member of the ADF. It is a nice rhetorical flourish, but it does not actually make the case for what is wrong with the current period of two years. Why does it need to be doubled to four years?

I emphasise that the change that is made of enabling part of that to be residency on a temporary visa is a welcome change and reflects the significant shift in the nature of our migration program. I wish there were a much greater acceptance and acknowledgement of that shift in public debate around migration issues. The number of people who came here on permanent residency visas in the last year, for example—that is what people normally think of when thinking of migrants and potential future citizens—is far smaller. I think it is about a third or even a quarter of the number of people who come here on temporary residency but residency nonetheless and long-term residency in many cases. Many of those then transition to permanent visas. The bulk of our annual migration program—of residency visas, anyway—issued each year is people on temporary visas. They have long-term temporary residency and residency rights, usually with work rights, Medicare entitlements and the like, although not always.

It is very different from the way the Prime Minister announced the change of the name of the department to the Department of Immigration and Citizenship—the idea of a progression, with people migrating and then becoming citizens. The world does not work in that nice straight-line way anymore. The fact that we have such a large proportion of people on temporary residency visas demonstrates that. The fact that we now have so many people who are dual citizens demonstrates that. The fact that we have hundreds of thousands of Australians living overseas—I think the diaspora is estimated at around a million—also demonstrates that. It is much more dynamic than the linear approach we used to have. That is another reason why a much more substantial case needs to be made.

This also provides me with the opportunity to raise a core problem with the government's approach, which is reflected in the amendment I will move shortly, of providing certain refugees with only temporary visas. Some people who have been accepted as refugees and given refugee visas in Australia have been given five-year or three-year temporary visas. When that visa has expired they have been entitled only to another temporary visa. We have people who are recognised as refugees and are living in the community but are not entitled to permanent residency. I believe that the time in Australia of all of those people should be counted as if they were permanent residents, as it is only because of the politics surrounding asylum seekers—some of which we debated earlier today—that those people are in that situation.

That also cuts across the argument the government are putting forward. I will touch on that again in

slightly more detail when I speak later, but this is a core part of the legislation and it is worth trying to get on the record—at least trying to draw out of the government on the record—what possible rationale they have for what they are doing and what the potential consequences are. Whilst the recognition of temporary residents in Australia goes some way to encouraging citizenship, for all the talk about encouraging citizenship stretching out the time period to four years works against that. Without a case being put, it is hard to see how we could do anything other than support the ALP amendment.

The TEMPORARY CHAIRMAN (Senator Marshall)—The question is that opposition amendments (4) to (7) be agreed to.

Question put.

The committee divided. [6.03 pm]

(The Chairman—Senator JJ Hogg)

Ayes.....	32
Noes.....	33
Majority.....	1

AYES

Allison, L.F.	Bartlett, A.J.J.
Bishop, T.M.	Brown, B.J.
Brown, C.L.	Campbell, G. *
Crossin, P.M.	Faulkner, J.P.
Fielding, S.	Forshaw, M.G.
Hogg, J.J.	Hurley, A.
Hutchins, S.P.	Kirk, L.
Ludwig, J.W.	Marshall, G.
McEwen, A.	McLucas, J.E.
Milne, C.	Moore, C.
Murray, A.J.M.	O'Brien, K.W.K.
Polley, H.	Ray, R.F.
Sherry, N.J.	Siewert, R.
Stephens, U.	Sterle, G.
Stott Despoja, N.	Webber, R.
Wong, P.	Wortley, D.

NOES

Abetz, E.	Adams, J.
Barnett, G.	Bernardi, C.
Boswell, R.L.D.	Brandis, G.H.
Calvert, P.H.	Campbell, I.G.
Chapman, H.G.P.	Colbeck, R.
Eggleston, A.	Ferguson, A.B.
Ferris, J.M.	Fieravanti-Wells, C.
Fifield, M.P.	Humphries, G.
Johnston, D.	Joyce, B. *
Kemp, C.R.	Lightfoot, P.R.
Macdonald, I.	Macdonald, J.A.L.
Mason, B.J.	McGauran, J.J.J.
Nash, F.	Parry, S.
Patterson, K.C.	Payne, M.A.
Ronaldson, M.	Scullion, N.G.
Troeth, J.M.	Trood, R.B.
Watson, J.O.W.	

PAIRS

Carr, K.J.	Heffernan, W.
Lundy, K.A.	Coonan, H.L.
Evans, C.V.	Vanstone, A.E.
Nettle, K.	Santoro, S.
Conroy, S.M.	Minchin, N.H.

* denotes teller

Question negatived.

Senator SIEWERT (Western Australia) (6.08 pm)—by leave—I move Greens amendments (2) to (5) on sheet 5173:

- (2) Clause 22, page 30 (line 4), omit “4 years”, substitute “2 years”.
- (3) Clause 22, page 30 (line 8), omit “4 year”, substitute “2 year”.
- (4) Clause 22, page 30 (line 15), omit “4 years”, substitute “2 years”.
- (5) Clause 22, page 31 (line 3), omit “4 year”, substitute “2 year”.

This relates to the residence requirement being two years rather than four years. I am not going to bother reiterating the discussion that we just had.

Senator BARTLETT (Queensland) (6.08 pm)—I have already indicated this in my main comments but, just for the record, the Democrats are supportive of three years but are willing to support these amendments.

Senator LUDWIG (Queensland) (6.09 pm)—It is a relatively short matter in the sense that I will not speak at length. Labor do not support the amendments. We prefer the position that we argued for and divided over.

Question negatived.

Senator BARTLETT (Queensland) (6.09 pm)—I move Democrat amendment (5) on sheet 4868:

- (5) Clause 22, page 32 (line 26), at the end of subclause (10), add “and includes a same sex partner”.

This relates to the definition of ‘spouse’. Under the residence requirements of the new act that we have been debating, proposed subsection 22(9) deals with ‘spouse’ and a ministerial discretion. I will read it out for the benefit of the chamber:

Ministerial discretion—spouse, widow or widower of Australian citizen

(9) If the person is the spouse, widow or widower of an Australian citizen at the time the person made the application, the Minister may treat a period as one in which the person was present in Australia as a permanent resident if:

- (a) the person was a spouse of that Australian citizen during that period; and
- (b) the person was not present in Australia during that period; and
- (c) the person was a permanent resident during that period; and

(d) the Minister is satisfied that the person had a close and continuing association with Australia during that period.

For the purposes of that subsection, ‘spouse’ is also defined as ‘de facto spouse’. What that does, as I understand it, is allow the minister to treat the spouse of an Australian citizen who has permanent residency as having been in Australia even though they were not if they are the spouse of an Australian citizen. It is a ministerial discretion that can be applied to spouses, including de facto spouses, of Australian citizens who are permanent residents to enable them to become citizens as well.

We can all detail examples of how that circumstance could happen. I imagine many of us would know examples of that—Australian citizens who are married to people from other countries or who have a de facto partner who is from another country, while the spouse has a permanent residency visa for Australia, quite possibly a spouse visa although not necessarily; it could be any sort of skilled visa, even a refugee protection visa. For various reasons the Australian citizen could be off working somewhere else and their spouse could be with them—quite a common occurrence in the modern world. In those circumstances, if the spouse is interested in becoming an Australian citizen, it is in Australia’s interests for them to be able to do so without waiting out unnecessary extra lengths of time under the residency requirement.

The Democrat amendment is aimed at ensuring that the definition of ‘spouse’ includes not only de facto spouses but also same-sex partners. This is a long-standing campaign of the Democrats to try to reduce discrimination under Australian federal legislation towards people with same sex-partners. For quite some time the Prime Minister and a number of other members of the coalition, both senior and not so senior, have spoken about how they do not support discrimination against people on the basis of the gender of their partner.

A Human Rights and Equal Opportunity Commission inquiry underway at the moment has been detailing all of the different Commonwealth pieces of law where people are discriminated against on the grounds of their sexuality, one of which is the Migration Act and another of which is the Citizenship Act. The commission has held hearings and taken evidence from people around the country who have given real-life personal examples of how this discrimination impacts upon them.

Let me remind the committee that we are putting in place a whole new citizenship act here. Many times in the past, when the Democrats have moved amendments to ensure people with same-sex partnerships are treated the same way as people with opposite-sex partners, we have had the response, ‘Well, you can’t do it bit by bit;

you have to do it as one big piece of legislation and do it all at once otherwise you will just get lots of anomalies.'

Last year, when the Democrats brought on for debate once again our one big bit of legislation that would actually do that, the Sexuality and Gender Identity Discrimination Bill, which has been in this chamber since 1995, we had government senators say, 'We support this totally.' I remember a particularly eloquent speech from Senator Brandis. Maybe that is why he ended up being in the ministry, because the Prime Minister was so impressed by his eloquent defence of the need to eliminate discrimination on the grounds of sexuality. He gave an eloquent defence, an eloquent speech—as did a few other Liberal senators—about the importance of this principle. He said that we could not do it all in one big thing like this; what we should do is do it piece by piece.

Now here is the opportunity. And it is not piece by piece; it is not even a tiny little amendment to one little part of the legislation. This is ensuring that we get the Citizenship Act—the brand spanking new, sparkly, squeaky-clean, updated, upmoded, modern Australian Citizenship Act—correct right from the start, right from when it is first in place. We are not just making a small amendment on the side, tacking on a little thing with a bit of sticky tape that will stick out and offend people's sensibilities because it is not nice and neat enough. This is making sure the new act is spot-on when it comes in.

So I can only assume that the government will not put up the argument that we need to do this all at once, in one big go, and that we cannot possibly do it one act at a time. There is only one way to do it, which is one act at a time. And the human rights commission have been detailing those acts. Whether they have been detailing them or not, it is pretty obvious that that is what we have here: the definition of spouse includes *de facto* spouse; it does not include same-sex partner.

A particular reason it needs to be done is that we already have anomalies in the immigration act. We have the absurdity of the government themselves making a change to the treatment of spouses under one class of visa. And this was after all those years of saying: 'No, we couldn't possibly support an amendment that would generate equality for people with same-sex partners because it would be too messy and you would create anomalies. We need to do it all at once; we need to do it to whole acts, not just in one bit.' It is after all those years of citing that as a reason to vote against Democrat amendments in this area—even though they supported the principle, totally supported the principle, were proud of the principle! 'Great principle! Just can't do it here.'

Yet what we saw from the former minister, Minister Vanstone, was a change to the criteria just for skilled

visas. Under skilled migration visas, spouses include same-sex spouses. If you are applying for a skilled visa in Australia and you have got a same-sex partner, we will recognise that relationship. I supported that because at least it was some recognition of that relationship; it was a move forward. Yet we have an absurdity under our migration law. We are desperate to get people here on skilled visas—and I support our sizeable migration program; I support bringing in people on skilled programs; I support the 457 visa program; I am not criticising all that. But we have this bizarre situation where we are so desperate to get people here on skilled visas that the government have reversed their own longstanding, obstinate refusal to support these sorts of changes and made an administrative decision that same-sex partners count as spouses for skilled visas.

It was very important. We had clear evidence—and I recall former senator Brian Greig from the Democrats raising this in question time as an example—of doctors and nurses, people who we were desperately trying to get here, who would not come here because their partner could not come with them on the same visa. Everybody else's spouse could come with them; same-sex partners could not. That was changed and that was good. It was self-serving, because we needed the skilled people. But then we had the bizarre situation where people could come here and have their partner recognised on a skilled visa, but they could not come here and have their partner recognised on a spouse visa. That anomaly is sitting there today; that continues, in any of those family categories.

People in same-sex relationships normally have to go through the interdependency visa; that is a round-about way that has been used. That was a Democrat initiative, going back over 10 years now, to at least provide some mechanism, some way, for the government to allow in same-sex partners without admitting to the reactionary part of their constituency that that was what they were doing.

We already have all these anomalies in the Migration Act, so any argument that this cannot be agreed to because it would create an anomaly is just absurd. But we also have that anomaly where people can come here on a visa—not just on an interdependency visa now but also on a skilled visa—and have their same-sex partner recognised as a spouse. Yet, when people have a same-sex partner who is an Australian citizen, we do not recognise that as a spousal relationship. So I say to the government: by not fixing this up, by not agreeing to this amendment, you will actually create an anomaly that you are halfway to fixing—only halfway to fixing—in the migration area.

This has nothing to do with the gay marriage debate. And I would put on the record that the Prime Minister has made clear, as have most people in the coalition—

and Mr Entsch from the electorate of Leichhardt in my own state of Queensland has pushed this to some extent in the coalition—that, whilst the government are about removing discrimination against same-sex couples, they are not about legalising same-sex marriage. It is not about adoption; it is nothing to do with that. It is simply making de facto partnerships, de facto spouses, equivalent, whether they are in same-sex relationships or opposite-sex relationships.

It is a very clear amendment. It is very simple. It removes discrimination. It ensures that our supposedly modern, new, updated Citizenship Act actually is that. It was raised in some submissions in the Senate inquiry over a year ago. So we cannot have the excuse that we did not have any warning about this and that nobody raised it, which is also sometimes used as a reason not to support this. Dare I suggest it is time, on this occasion, for equality to finally be implemented clearly and unequivocally in one Commonwealth act right from its very outset. I would urge all senators to recognise that and support this amendment.

Senator LUDWIG (Queensland) (6.22 pm)—I listened very carefully to Senator Bartlett's speech on this issue. He has done his homework. I will not speak for those on the other side, but I have used arguments in the past about not agreeing to piecemeal legislation. I have also used the argument that it is outside the terms of the committee's inquiry. Yes, those are arguments I have put in respect of not only this type of amendment but others of the same order, although not on the same topic. In other words, generally we do not agree with piecemeal amendments and we reserve our position for those areas where amendments put forward fall outside the terms of the committee's recommendations or the committee's examination of the bill itself, or where amendments fall outside the bill's intention—in other words, the object of the bill.

In this instance, Senator Bartlett, you have managed to find an argument that does deserve support. The argument is that this is a new act and redrafting all of those provisions will put it in a logical, sensible position. Therefore, the argument that you raise does find favour with the Labor Party. It is right to argue for it in this instance. It is an argument where you have been able to clearly differentiate between a piecemeal approach and one that creates a coherent whole.

This legislation does require an amendment such as this dealing with same-sex partners. I make the point, perhaps a minor one, that the way you have used the definition section is a little inelegant. For example, if same-sex partners were included in the definition section of the act under a definition of 'de facto partner', those same-sex partners would be required to meet a similar standard of proof as heterosexual de facto partners. The only criticism I make is that it could have

been better drafted. I understand the intent behind it and I understand the principle you enunciated.

I recognise that it is also time for this government to move on. Senator Bartlett is right: Senator Brandis did provide a very eloquent speech on these issues. I was actually persuaded that he might be changing his view, or the government's view at least, on this issue. We were subsequently disappointed and I suspect we will be disappointed again. I cannot see the government picking it up. I think they should; I think it is an appropriate amendment to pick up. They should have included it in the original legislation, and I will be interested to hear why the government will not deal with this issue now. I could be surprised, as I suspect Senator Bartlett was surprised—although I hope he was not too surprised—by Labor's decision to adopt the amendment. It was well argued and it is sensible. The government should agree to it as well, although I recognise that this government is stuck in the past and they will not.

Senator SCULLION (Northern Territory—Minister for Community Services) (6.22 pm)—I thank Senator Bartlett and Senator Ludwig for their contributions. The additional comments by the Democrats did not go unnoticed, Senator Bartlett. I am not sure if you are aware but, whilst it was not a specific recommendation of the committee, these bills have been amended to include the provision of a residence discretion that has been made for persons granted a visa as the interdependent partner of an Australian citizen. I refer specifically to clause 22(11), page 32, line 27 of the bill. These amendments were passed by the House of Representatives on 28 November 2006 and that is why the government will not be supporting the Australian Democrats' amendment.

Senator BARTLETT (Queensland) (6.27 pm)—I was not surprised that Labor supported our amendment; I thought you would—although I was worried there for a second that you might have knocked it down on the grounds of inelegance! The point the Minister for Community Services makes is true: there is recognition in the bill of a partner in an interdependent relationship. However, the point needs to be made that there have been repeated comments by many coalition MPs, not just Mr Entsch but also Mr Howard and others, that people should not be discriminated against because of the gender of their partner—I am paraphrasing but I am certainly not misrepresenting them—but that is what you are doing when you define 'spouse' in a way that recognises de facto opposite-sex relationships but does not recognise de facto same-sex relationships. It puts them on a different footing.

The interdependency component in there is welcome. It is similar to the current arrangements in the Migration Act. There is an interdependency visa. That was created many years ago, as I said, specifically as a

result of Democrat pressure and action. It was before I was elected to the Senate, so it is going back quite a while. But we still have a scenario where there are limited numbers under the interdependency category. It is, if you like, a second-hand approach to circumventing the requirement to recognise people's same-sex relationships—not to in any way recognise them in a marriage like sense but recognise them in the same way that de facto relationships have long been recognised under Commonwealth law. An interdependent relationship is not just a same-sex relationship. Indeed, it is good that those wider interdependent relationships are recognised because it shows the immense diversity of relationships. But to continue to put same-sex relationships in that basket and treat them differently from opposite-sex relationships maintains that discrimination.

Sitting suspended from 6.30 pm to 7.30 pm

The TEMPORARY CHAIRMAN (Senator Ferguson)—The committee is considering the Australian Citizenship Bill 2006, as amended. The question is that Democrat amendment (5) on sheet 4868 be agreed to.

Question negatived.

Senator BARTLETT (Queensland) (7.31 pm)—I move Democrat amendment (6) on sheet 4868:

(6) Clause 22, page 33 (after line 11), at the end of the clause, add:

- (12) For the purpose of subsection (1), the Minister must, if the person was the holder of a Temporary Protection Visa during that period, treat that period as one in which the person was present in Australia as a permanent resident.

Note: Temporary Protection Visas are provided for under the *Migration Regulations 1994*.

I have reflected on this already to some extent so I will not go on at great length. Basically the intent of this amendment is to address an issue for those people who have been residing in Australia on temporary protection visas. During their period of residency the minister should treat—must treat—that period as if the person were present in Australia as a permanent resident. Senators would know that people on temporary protection visas, by and large, do not leave the country at all whilst they are on the visas. They do not have rights to re-enter the country if they do leave, except by special dispensation, and so the vast majority of them on temporary protection visas spend their entire time living as residents in Australia. There are discretionary components within the legislation which do allow waiver of the residency requirement under special circumstances, and I recognise that there is a discretion there, but I think that it would be better if it were automatic for refugees who have been here on temporary protection visas to have that counted as permanent residency.

I accept that under the changes in this legislation there is only a requirement for 12 months permanent residence rather than two years—the 12 months imme-

diately preceding the day the person made the application—but there have to be four years of residence in total. So people who have been on a temporary protection visa, once they have a permanent visa, would only be required to reside here for a further 12 months. I believe that it would be appropriate for them not to need to wait that extra 12 months if they have already resided here for the four years.

It should also be emphasised, on top of that, that many people that have had that period of extended residency in Australia on TPVs have also had quite a number of years prior to that stuck in detention centres. Quite explicitly in the legislation that does not count as time spent in Australia. To some extent that is logical and I accept that. If you are in Australia as an unlawful noncitizen according to the act, whether or not you are in a detention centre or out in the community—as I would prefer people to be—then it is reasonable for that not to count as time residing in Australia because in the legal sense of the word you are not a resident. But, once people are given a temporary protection visa, an acknowledgement that they are a refugee, then I believe that period should be counted straightaway as the start of permanent residence for the purposes of becoming a citizen.

My understanding is that, on average, people on refugee visas are quicker to take up citizenship than other migrants, which is quite a logical situation. Most refugees have, by definition, experienced a lot of instability in their lives and have had fairly significant uprooting of their existence. They are fairly keen to fully connect with their new country as quickly as possible and remove any further instability from their future. As I am sure all senators would acknowledge, Australia has benefited enormously from the contribution of many refugees, whether they have come through the humanitarian program or via boat arrivals. I will not revisit the debate from earlier today about asylum seekers arriving by boat, but it is widely acknowledged by all sides of politics that we have benefited a lot from the contribution of many people who have arrived by boat and have been accepted as refugees. There is always the occasional bad apple, as there is in the wider migration program and as there is, of course, amongst the Australian-born section of the community. But I am not aware of any evidence that shows there is any greater risk from people who have arrived as asylum seekers or, indeed, that theirs has been a lesser contribution over time.

The intent of this amendment is to try to remove what I believe is an unnecessary barrier to these refugees being able to become citizens as soon as possible after they have fulfilled the four-year residency requirement that will now be in place. By any measure, that is a very long period of time. I believe it is particularly beneficial, not just for the refugees but for Australia.

lia, for these refugees to be able to get on with their lives. The sooner that security and stability is present in their lives, the more completely they will be able to fully participate in the Australian community.

As it is somewhat related, I once again ask the minister a question relating to clause 22. As I noted before, under clause 22(1)(b) time spent in Australia as an unlawful noncitizen does not count as being part of the four-year residency requirements. There is an exemption to that under subclause 4A. For the purposes of subclause (1)(b), the minister may waive that requirement if the person was an unlawful noncitizen because of administrative error. I was wondering whether we could get a clearer detailing of what constitutes 'administrative error' with regard to somebody being an unlawful noncitizen. Does that relate to perhaps a Cornelia Rau type circumstance, without wanting to be provocative by using that example—she is someone who was deemed mistakenly to be an unlawful noncitizen—or would it also relate to, for example, people who were in detention having been refused a visa on the grounds of mistaken identity that was then overturned on appeal?

Examples like that have occurred and I have spoken about them in this place before. I really want to get to examples of people who have lost time—quite long periods of time in some cases; a number of years—being kept as unlawful noncitizens due to decisions that were later overturned by government rather than anything they did wrong. In those circumstances, it is only fair and just for those people to be able to count their time. Again, in Australia's interests, it is better not to have those sorts of reasons in the way of potentially valuable citizens being able to become citizens as soon as practicable.

Senator LUDWIG (Queensland) (7.39 pm)—I will not delay the debate on this longer than I need to. The position outlined by Senator Bartlett does draw the support of the opposition. It is the case that the government has failed in this area. The way the TPV regime currently works is unhelpful. Senator Bartlett's proposition does allow that period to be treated as a period in which the person was present in Australia as a permanent resident. That is a sensible way of progressing the temporary protection visa holders. The ultimate aim is to ensure that the temporary protection visa holders can satisfy the residence requirements to better allow them to integrate into the community as soon as possible. That seems to be the objective; therefore, it does draw our support.

Senator SCULLION (Northern Territory—Minister for Community Services) (7.40 pm)—With regard to the question from Senator Bartlett, this provision was, I understand, actually carried over. For clarity, I will read into the *Hansard* section 13, part 4(b)(v) of the Australian Citizenship Act 1948:

... if the Minister considers that an applicant who is a permanent resident was, by reason of an administrative error, not a permanent resident during a period during which the person was present in Australia—treat the period as a period during which the applicant was present in Australia as a permanent resident.

That provision, of course, is as it applies to lawfulness. The notion that an unlawful noncitizen was at any time—in fact, I will sit down before I get myself into more strife. I hope that answers your question.

Question negatived.

Senator BARTLETT (Queensland) (7.41 pm)—I move amendment (10) on sheet 4868:

(10) Clause 54, page 66 (after line 20), at the end of the clause, add;

(2) The regulations must include policy guidelines providing that the application of the ministerial discretions in section 22 in relation to significant hardship or disadvantage and activities beneficial to Australia are to be applied broadly to include:

- (a) social and cultural factors; and
- (b) economic considerations.

I will be brief. This amendment is to a part at the end of the legislation that deals with regulations. It provides a requirement that the regulations must include policy guidelines providing that the application of the ministerial discretions in section 22, which is the section we have just been talking about, in relation to significant hardship or disadvantage and activities beneficial to Australia are to be applied broadly to include social and cultural factors and economic considerations. It is really just to try to provide a bit more flesh around the exercise of ministerial discretion in this area.

I have spoken at great length about, and indeed we have had Senate inquiries into, the exercise of ministerial discretion in the Migration Act and some of the problems with regard to the opaque nature of that. This amendment would go part of the way to ensuring that there was just a little more flesh around how ministerial discretion is exercised. It creates clearer guidance for ministers—and I appreciate that sometimes ministers do not like being constrained by regulated guidance; they like to be able to have total freedom to decide—and it is to the benefit of the minister and government of the day in relation to the uncertainty that surrounds the reasons ministerial discretion is used in a range of areas in the Migration Act, and in the Citizenship Act where it applies. That can be problematic in that it is easy for people to draw unhelpful or very negative conclusions about the way the law operates when there is no real clear reason why discretion is exercised in one case and not in another case.

Obviously, some migrant communities come from countries where it is very clear what sorts of factors might help create a more favourable decision—they are

not actions that are encouraged in Australia, such as money changing hands and various other inducements to get a better decision. I am not suggesting that happens here; I am suggesting that to reduce the prospects of people suspecting that that is the reason discretions get exercised in particular ways it can be quite helpful to have clearer and to some extent more enforceable guidelines. That is what this amendment goes to.

Senator LUDWIG (Queensland) (7.44 pm)—Labor supports this amendment for the reasons very effectively outlined by Senator Bartlett. It is one of those areas where—I would refer to it as more than opaque, Senator Bartlett—it is impenetrable sometimes how those ministerial decisions are made, particularly in the exercise of section 417 of the Migration Act. Any amendment such that policy guidelines through regulation might help to make that process more transparent will always garner Labor's support. Exercising ministerial discretion is one area where that particular Senate committee did find that there was a need for greater transparency, as I recollect it. If I am wrong about that then I am sure I will be corrected, but my recollection is that there is a need for greater certainty and transparency in circumstances when the minister exercises a discretion of that nature. Senator Bartlett has sought to put some transparency in that process. I doubt very much that the government will concede to this amendment but it will be interesting to hear their argument as to why they will not.

Senator SCULLION (Northern Territory—Minister for Community Services) (7.46 pm)—There is a very clear reason why we will not be supporting this amendment—that is, that it is unnecessary. Senator Vanstone advised this chamber on 30 November 2006 that the government had accepted the recommendation of the Senate committee report and that policy guidelines would interpret the concept of 'significant hardship' broadly, to include social and cultural factors as well as economic considerations.

Senator LUDWIG (Queensland) (7.46 pm)—If that were the case, you would not see any objection to putting it in the legislation so that it is there for all to see.

Senator SCULLION (Northern Territory—Minister for Community Services) (7.46 pm)—I should not be drawn, but there are obviously matters of policy and there are matters that should be put in the legislation. I think it is broadly within the convention in this place to place this within the policy guidelines.

Question negatived.

Senator BARTLETT (Queensland) (7.47 pm)—I move Democrat amendment (11) on sheet 4868:

(11) Page 66 (after line 20), at the end of Part 3, add:

55 Review

- (1) The Minister must cause an independent review of:

- (a) the extent to which Australia discharges its obligations to stateless persons; and
 - (b) the extent to which the Department of Immigration and Citizenship has conferred with the United Nations High Commissioner for Refugees and the Human Rights and Equal Opportunity Commission on Australia's obligations to stateless persons.
- (2) The person who undertakes the review under subsection (1) must give the Minister a written report of the review.
 - (3) The Minister must cause a copy of the report of the review to be tabled in each House of Parliament within 12 months after the second anniversary of the commencement of this Act.

This amendment is fairly self-evident. It seeks to cause an independent review to be performed regarding the extent to which Australia discharges its obligations to stateless persons and the extent to which the Department of Immigration and Citizenship has conferred with the UNHCR and the Human Rights and Equal Opportunity Commission on Australia's obligations to stateless persons. From my recollection of the genesis of this amendment, I think the drafting instructions on this went in about 10 or 11 months ago when the Senate committee reported. It was really generated from some of the discussions and submissions around statelessness and our obligations to stateless persons, which I accept is a murky area. Indeed that is part of the reason to suggest this review to make clear the extent of exactly how adequately we are discharging our obligations in that area and whether there are ways we can improve that performance.

Senator LUDWIG (Queensland) (7.48 pm)—Labor supports the Democrat amendment. As Senator Bartlett has correctly pointed out, this is a matter that was recommended by the committee. On that basis, it would be helpful for the Senate to understand the effect on stateless people and to assist the parliament in reviewing the effectiveness of our laws. Therefore, it does gain Labor's support.

Senator SCULLION (Northern Territory—Minister for Community Services) (7.49 pm)—I understand that this amendment relates to recommendation 11 of the Senate committee's report, which was partly accepted by the government. This bill has been thoroughly reviewed in the light of the committee recommendations. Submissions have been made to the committee, and the government is completely satisfied that the bill as amended is consistent with Australia's international obligations regarding statelessness. I understand neither HREOC nor UNHCR have the legislative authority to determine compliance of Australian law with the convention.

Senator BARTLETT (Queensland) (7.49 pm)—My final comment is that it is true that HREOC and UNHCR do not have that power. But HREOC, the

Human Rights and Equal Opportunity Commission, established by an act of this parliament, clearly has a role to provide advice on how Australia meets or otherwise its obligations under international conventions, including ones that touch on stateless people. It deals with this stuff every day in much greater detail than the parliament and, I would suggest, on a day-to-day basis, almost anybody in the department or government as well. The UNHCR, on an international scale, does the same.

One of the reasons these sorts of reviews are valuable is that we are not forced to rely on bland assertions from government that they meet all our obligations. I have heard that repeatedly from representatives for the minister for immigration in this chamber—or indeed from the minister for immigration herself when that was the case—for a number of years now. They blandly assert that Australia meets our international obligations in every way, even in the face of overwhelming, comprehensive, undoubted, incontestable evidence such that anybody with even the remotest comprehension of the English language would know that we are flagrantly breaching our obligations. Nations have a right to do that but the least we should do is admit it.

The government should not be defensive about this; I am not accusing them of doing it. I am suggesting it is an area to look at. My belief is that the intent of the Senate committee's recommendation was not in any way to suggest the government were failing in this area—unlike Senate committee recommendations in other areas where they quite clearly believe the government have failed to meet their international obligations on refugees and other matters. The intent was to enable a more thorough examination because it is not really clear whether or not we adequately meet our obligations.

The obligations to stateless people and how you best meet those obligations is not an easy area. None of this is easy, as I said earlier, but this is a particularly difficult area. It is not even always clear as to how stateless people are defined, frankly. Reaching agreement as to whether or not someone is stateless is not always easy. It is an area that could do with further work. For once it is an area where not even I am saying that the government is failing to meet its international obligations. As the minister would know, I am quite often alleging that, as I did earlier on today. The benefit of it is that it would enable that to be done.

It can be done in other ways. It is not the end of the world if it does not happen. I am sure HREOC will continue to provide advice anyway. But it was an opportunity, because the issue arose during the course of the inquiry, to reinforce that by and large the Senate committee across the board found it a positive piece of legislation which could be improved upon and it was

an opportunity to do so further. Perhaps in wrapping up all of that and the amendments themselves, it is appropriate to acknowledge that, despite the government's nonacceptance of this particular amendment flowing from the committee inquiry, which I assume will stay the same despite my last contribution, there has been acceptance of a reasonable number of the recommendations from the committee inquiry. That should be acknowledged.

Question negatived.

Bill, as amended, agreed to.

Australian Citizenship (Transitionals and Consequentials) Bill 2006

Bill—by leave—taken as a whole.

Bill agreed to.

Australian Citizenship Bill 2006 reported with amendments; Australian Citizenship (Transitionals and Consequentials) Bill 2006 reported without amendments; report adopted.

Third Reading

Senator SCULLION (Northern Territory—Minister for Community Services) (7.55 pm)—I move:

That these bills be now read a third time.

Senator BARTLETT (Queensland) (7.55 pm)—I appreciate I have spoken a lot in this debate already—

Senator Ludwig—Is that an understatement?

Senator BARTLETT—I am sure you have enjoyed all my contributions, Senator Ludwig.

Senator Ludwig—I have. I have supported much of it.

Senator BARTLETT—I will not delay the Senate unduly, but it is not every day that the parliament passes a brand-new citizenship act, and I think it is worthy of specific note. I urge the community at large as well as all of us here in the parliament to continue to promote debate about the nature of citizenship. It is a continually evolving concept. I do not think it helps terribly much to have debate about the nature of citizenship reduced to facile discussions about whether or not people know when Melbourne Cup day is and those sorts of things. There is still continuing evolution in the nature of the law surrounding citizenship, which this act demonstrates. We have a burgeoning number of people who are dual citizens or more. We still have, as was covered during the debate in this committee stage, quite different pathways for people to become citizens. That is completely understandable and natural. You will have different pathways that people's lives lead them along to get to a point where they can become a citizen. But we need to make sure that there are not incongruities between those pathways. One of the concerns I have with the government's proposed citizenship test is not so much that there is a test but that we may have different classes of citizens—those who are

required to pass a test and those who not only are not required to but may well not even be able to pass those tests in many cases. We need to make sure that the different ways people become Australian citizens do not lead to different rights, different obligations or different impressions and understandings in the Australian community about whether or not some people are more Australian than others.

We also need to make sure that we do not have an excessively jingoistic approach to citizenship such that anyone who is not a citizen but who may have been a resident of Australia for decades is seen as somehow not a real member of the Australian community. There are many different ways people make up and contribute to the fabric of the Australian community and we need to make sure, in debating and refining our concept of citizenship, that they do not, even inadvertently, end up being used as ways to develop prejudice or to discriminate against or push people down into marginalised members of our society. The nature of migration is changing enormously. The nature of the nation state is continuing to change enormously and we must try to ensure that our public debates, and particularly statements made by leaders in the community, both political and otherwise, reflect that rather than exploit the potential for division.

I would use just one other example to demonstrate this, because I was contacted and had this raised with me by people in the veteran community. I am sure some senators would be aware of examples of dissatisfaction amongst some of the veteran community about people who have served in the armed forces for Australia. I use the example of Mr James Riddle, who I think got some coverage about his circumstance. He was recruited in the UK to serve for the Australian armed forces in Vietnam. He did three tours of duty in Vietnam but did not take out citizenship for various reasons, has not lived in the country for a while and is now not able to regain residence, let alone citizenship. Most people would think that if you had done three tours of duty serving in the Australian armed forces in Vietnam you would probably have a pretty good right to call yourself Australian.

That is just one example, and always there are going to be anomalies in any law. I am not suggesting that we can come up with the perfect act but, when we have these debates about what it means to be Australian, when we are looking at different ways to define that, it is very easy, if you get too jingoistic about it, to end up demonstrating yourself to be a bit of a hypocrite. And, whilst we all wonder about what are and are not Australian values, I would like to think that avoiding hypocrisy is one Australian value that we try to aspire to.

It is those sorts of issues and circumstances we need to debate. We have a variance in the pathways to citizenship, and now there is a larger gap between the

people coming in through the defence services and the people coming through in general residency. We have people who have done significant amounts of defence service in active combat who end up being denied. As I said, I am not suggesting that we can always fix every single case, but we always need to be cognisant of the perceptions of who is and is not Australian and how those perceptions are used in political and public debate and with regard to who does and does not have certain entitlements. The more we can alleviate inconsistency in that area, the more the concept of citizenship will evolve in a constructive way. I think it is about making Australia reach its full potential, and the more we can enmesh the concept of citizenship looking to Australia's future, seeing ourselves move forward as a nation, the more we can fulfil that potential.

That is what a new citizenship act is about, and I hope that is where the debate leads. In conclusion, I hope that in passing this new act the government fully explains and promotes our new act not just with a nice, jingoistic flag-waving pre-election advertising jingle—I am sure there are plenty of thoughts about that—but more by letting people know about the changes and the opportunities now presented to people who might otherwise have been barred from becoming a citizen. I think that is also an important part of making this new act as effective as possible.

Question agreed to.

Bill read a third time.

COMMITTEES

Electoral Matters Committee

Membership

The ACTING DEPUTY PRESIDENT (Senator Marshall)—Order! The President has received a letter from a party leader seeking variations to the membership of a joint committee.

Senator IAN CAMPBELL (Western Australia—Minister for Human Services) (8.02 pm)—by leave—I move:

That Senators Brandis and Mason be discharged from and Senators Adams and Fierravanti-Wells be appointed to the Joint Standing Committee on Electoral Matters.

Question agreed to.

ELECTORAL AND REFERENDUM LEGISLATION AMENDMENT BILL 2006

Second Reading

Debate resumed from 7 December 2006, on motion by **Senator Ellison**:

That this bill be now read a second time.

Senator WONG (South Australia) (8.03 pm)—I rise to speak on the Electoral and Referendum Legislation Amendment Bill 2006. I indicate at the outset that Labor supports this bill, which contains measures arising from the recommendations of the Joint Standing
