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31 July 2009

Ms Sharon Bryant
Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs
PO Box 6100
Parliament House
CANBERRA ACT 2600

By facsimile transmission: 02 6277 5794

Dear Ms Bryant

Inquiry Into the Australian Citizenship Amendment (Citizenship Test Review and Other Measures) Bill 2009

I refer to the above matter, and thank the Committee for the opportunity to make a submission in relation to it.

Victoria Legal Aid (VLA) has, for a number of years, provided legal advice and assistance on migration law under the Department of Immigration and Citizenship's Immigration Advice and Application Assistance Scheme (IAAAS). The bulk of VLA's IAAAS work is assisting clients seeking protection visas, or spouse visas where the spousal relationship has broken down, but the applicant has suffered from family violence. In the course of this work, VLA receives enquiries and provides advice in relation to citizenship law.

The proposed amendment to s21(5) of the *Australian Citizenship Act 2007* (Cth) would limit a discretion which is of long standing in Australian citizenship law. This discretion allows the Minister to grant Australian citizenship to persons under 18 years of age. The amendment would allow the Minister to exercise this discretion only where the applicant for citizenship was, at the time of the grant of citizenship, a permanent resident, as opposed to the current regime giving discretion to grant citizenship to applicant's under 18 even if they are not permanent residents.

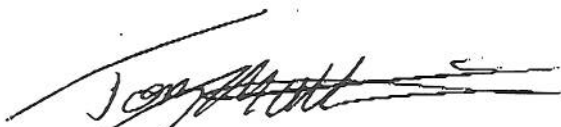
VLA notes that a broad discretion to grant citizenship to minors formed a part of the regime under the *Australian Citizenship Act 1948* (Cth), and was retained when the new legislation came into effect in 2007. This broad discretion, allowing the Minister to grant citizenship to persons under 18 years of age, recognises that children are a particularly vulnerable group. There can be extraordinary and compelling reasons for the grant of citizenship to children. The presence of this discretion in Australian citizenship law recognises that the unique vulnerabilities of children sometimes raise unusual circumstances, where a grant of

citizenship is warranted. The Minister should have the power to deal with those unusual and compelling circumstances appropriately.

VLA does not accept that the presence of a broad discretion under s21(5) threatens the "integrity of the citizenship and migration programs", to use the language of the explanatory memorandum to the Bill. VLA's experience is that the discretion under s21(5) is very rarely exercised to grant a visa to a child applicant for citizenship who is not a permanent resident. There is, as far as VLA is aware, no evidence that there has been a large increase in the number of applications for the grant of citizenship in such circumstances. VLA does not accept that the continued presence of a broad discretion in s21(5) will adversely impact on Australia's capacity to control migration, or citizenship. As demonstrated in the case of *SNMX v Minister for Immigration and Citizenship* [2009] AATA 539 discretion in s21(5) will be exercised only in the exceptional case. The exercise of the discretion, further, can be guided by appropriately drafted policy.

The proposed amendment to s21(5) would remove an important means of dealing with exceptional cases involving vulnerable children.

Yours faithfully



TONY MATTHEWS

Acting Managing Director
Victoria Legal Aid