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Committee Secretary

Joint Standing Committee on Migration

PO Box 6021

Parliament House

Canberra ACT 2600

Australia

Via email: [<jscm@aph.gov.au](mailto:jscm@aph.gov.au)

Dear Secretary

**Submission into inquiry into Multiculturalism in Australia**

We welcome the opportunity to make this brief submission in relation to Multiculturalism in Australia. We are happy to provide further elaboration on any of the matters raised herein if requested. Our contact details are above.

Yours sincerely

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### **Introduction**

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We make this submission from the Australian National University College of Law Legal Workshop Migration Law Program which specialises in developing and providing courses which enable people to obtain the necessary knowledge, skills and qualifications to register as Migration Agents. The Legal Workshop also provides Continual Professional Development opportunities for Registered Migration Agents and professional short courses in migration law and New Zealand Immigration law. The Legal Workshop has also been engaged in developing research in the practical operation of migration law and administration in Australia, and has previously provided submissions and presented evidence to a number of Parliamentary Committee inquiries, conferences and seminars.

### **Summary**

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Because of the work and research of the Legal Workshop, this submission focuses on immigration law and policy and discusses the impact this has on multiculturalism and the lives of those who work visit and migrate to Australia.

This submission will argue that legislation has a key role to play in promoting sound policy within Australia. In particular that the policy of multiculturalism will operate far more successfully and consistently if it is reflected in domestic legislation.

### **Submission**

#### **Multiculturalism, social inclusion and globalisation**

##### **The role of multiculturalism in the Federal Government's social inclusion agenda**

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The micro and macro impacts, effectiveness, efficiency and fairness of our migration laws are often treated as functioning in isolation from, or separate to social policy and issues. Whilst sound multicultural policies and practices are crucial for new and recent arrivals, it needs to be emphasised that such practices are relevant to all Australians. Policy failures in this area may impact initially on those of migrant or refugee background, however collectively our entire society can suffer through missed social and economic opportunities.

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Whilst traditionally tied to citizenship; multiculturalism is a concept that embraces definitions of nationhood and society that go beyond a country's citizens.

In terms of public and political debate, discussion about multiculturalism tends to revolve around perceptions of social cohesion, religious intolerance, the operation of our migration laws, racial or religious composition of the migration intake, refugees or matters such as English language proficiency and workers.

Australian society has retained the view of the 'other' as anyone who does not look a certain way. Appearance can still serve to exclude residents from been seen as a 'real' Australian which can compromise their ability to contribute to the community.

As a nation, we tend engage in a debate about multiculturalism and social inclusion with little differentiation between generations of migrants, let alone the hundreds of thousands of people living here on temporary visas or moving through a process of temporary migration to permanent residence.

Political discussion that does not promote migrants and potential migrants (whatever visa they apply for) as positive contributors to society will only serve to prevent Australian society recognising, respecting and including those who appear to be different.

Too often the debate can detract from the real issues that should be integral to such a policy. Social inclusion is a worthwhile policy goal but in the context of multiculturalism policy, it needs to be made very clear that it does not merely represent a more pleasant sounding version of assimilation – there is nothing genuinely 'inclusive' about telling people that we are keen to include them in our society in every way possible if they are required to do so solely according to the expectations and mores of the dominant culture or class.

Genuine inclusion is a two way process, which involves an effort to consider the experiences of the new migrants, citizens and their families. It involves an understanding of the diversity amongst new migrants and the constantly changing migration patterns facing Australia and the world. In addition it involves an ability to fully welcome and accommodate visitors and temporary residents to Australia.

This consideration must take into account not only the waves of migration documented historically as pre-war, post-war or refugee intakes; but the impact legislation has on promoting demographics of migrants and the unintended consequences of the legislation.

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Migrants currently settling in Australia include not only students who have been encouraged under past skilled migration legislation and policy to study and remain in Australia permanently; but those who have come on temporary work visas and people who have settled under the refugee and humanitarian programs.

### **Issues that arise from legislation**

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Cultural and social migration is a key performance indicator for the Department of Immigration and Citizenship. We would argue that this indicator should fit the Federal government social inclusion agenda.

#### **Humanitarian and Refugee visa holders**

Current approaches to the offshore processing of asylum seekers which occurs outside of the legislative framework; along with policy discussions and public comment by parliamentarians continues to ensure that asylum seekers and refugees remain as outsiders within the Australian psyche.

Government policies since 1996 have systematically changed the perception of multiculturalism. The policy was renamed Australian Multiculturalism by the former Prime Minister John Howard, and strategic reductions in funding for migrant resource centres, ethnic radio, ethnic community groups, translating services, and settlement services ensured that the ability of the multicultural sector to lobby and promote the policy was reduced.

Policies and rhetoric aimed at asylum have encouraged a negative perception of refugees and reduced understanding of the needs and issues surrounding asylum, grant and settlement of refugees.

These policy changes were reinforced through legislative change. This has included legislation which in the past restricted work rights to refugees who applied onshore outside of specified time frames, restricted access to settlement services and English language classes and deliberately prevented family reunion and permanent residency.

Changes to legislation since 2007 have improved the lives of some refugees and asylum seekers but continue to inflict unnecessary hardship on others and have done little to impact on the broader perception of this cohort of migrants in the Australian community.

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### **Students**

The publicity surrounding violence against international students, false qualifications from substandard providers and subsequent legislative reaction has perpetuated negative attitudes towards those studying in Australia. International students make up a significant population in Australia and whilst they are not permanent residents their stay in Australia can often extend beyond three years. In 2010, 382,710 people in Australia held a student visa. The contributions they make as residents and the impact that a sound multicultural policy would play in their lives is therefore significant.

The enormous delay in processing caused by the changes and the retrospective abandonment of applications has affected not only potential applicants but those who had worked through the education system and applied and were waiting with legitimate expectation for a positive outcome. Many in this situation had formed relationships, established homes and were working in temporary jobs and paying taxes whilst waiting for their visa. The waiting time prior to the changes had extended into years. This lack of certainty in the operation of our migration rules create a strong perception that there can be a 'shifting of the goalposts' after people have made their visa applications, despite them having invested very large amounts of money and time on the basis of the existing laws and procedures.

There can be no doubt that these policy practices and debate continue to impact negatively on the wider policy of multiculturalism and social inclusion. Language used by the Immigration Department is repeated by the general public and can become part of folklore. Yet this group provides a significant net revenue gain to the Australian taxpayer and are directly responsible for the creation and provision of significant numbers of jobs.

Recent dramatic changes to skilled migration and pathways for international students to permanent residency and the accompanying government rhetoric that has promoted these changes have impacted not only on Australia's image abroad but on the attitudes of Australians to students as potential migrants.

The DIAC Annual Report 2009 – 2010 and the Australian Government 2011 Strategic Review of the Student visa Program Discussion Paper now include the term "genuine student". This joins the ever popular term 'genuine refugee' used



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by the Department, Politicians and the wider public which flies in the face of both domestic and International legislative definitions of a refugee<sup>1</sup>.

### Families

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We note *The People of Australia* document mentions the word family just three times. Each time this is in the Foreword by the Prime Minister Julia Gillard. Yet multiculturalism cannot operate without families and the role they play in a greater society. This includes acknowledging and respecting different interpretations of family.

Whilst the Migration Act does not define a family it does refer to the family unit. A member of the family unit is defined in Regulation 1.12 as a spouse or de facto partner, a dependant child, a relative (grandparent, grandchild, aunt, uncle, niece, nephew or step-grandparent, step-grandchild, step-aunt, step-uncle, step-niece, step-nephew), close relative( spouse, de facto partner or child parent brother sister of the person or step-child , step-brother or step-sister.) The regulations also define concepts such as last remaining relative, adopted child etc. The legislation and its definitions impact significantly on family, migration and the retention of cultural practices.

An element of multiculturalism is the ability to retain and celebrate diverse identities. Acculturation of migrants occurs differently at different stages in the migration process and at different ages. Patterns of migration can affect the way communities and individuals settle and perceive their new home. People migrating today are facing a radically different experience to migrants from previous generations.

### Parents

The role of older parents and grandparents in maintaining cultural traditions supporting community and educating young family members has been recognised<sup>2</sup>. Older migrants in Australia play an important role in bridging the gap between cultures and ensuring that cultural traditions are passed on down generations. This is due to partly to the time they have lived in their country of

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<sup>1</sup> See Press Conference Minister Bowen 17 January 2011 <http://www.minister.immi.gov.au/media/cb/2011/cb157319.htm> and DIAC Annual Report 2009- 2010-

<sup>2</sup> Warburton, J (2006) *Passing on Our Culture: How Older Australians from Diverse Cultural Backgrounds Contribute to Civil Society* <http://www.springerlink.com/content/r756052k3308758x/>

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origin and due to the role they play upon migration. The extended family allows grandparents to play a constant and active role in their grandchildren's life along with reduced pressure in areas such as employment, English language ability and education.

The contribution of parents and grandparents to Australia and diversity was significant in traditional migrant communities but has been reduced significantly in the past ten years through changes to immigration law that reduced family migration and targeted visas that reunited parents with their children. The 2003 change to Parent visas introduced the highest visa application fee and assurance of support costs under the Migration Regulations. These fees along with restrictions relating to number of children in Australia, and Health requirements have reduced the ability of grandparents and parents to migrate permanently to Australia.

In addition to the loss of cultural memory, migrants are facing increasing pressure to abandon Australia due to the lack of recognition of the need for unification of the family.

Overwhelmingly people are seeking to bring their parents to Australia for two purposes.

1. There is a significant cohort of people who have arrived as skilled migrants who now face the prospect of having to leave Australia to care for aging parents.
2. Younger migrants who find they cannot cope with raising children and working without the contribution and assistance of their parents. (Whilst their plight reflects the majority of young parents in Australia their ability to live near their parents is severely restricted.)

### **Anchor babies**

The term anchor babies refers to children born to one Australian citizen parent and a temporary migrant be they on a student, work or visitor visa. Unless able to migrate independently or supported by one parent on a spouse visa the temporary resident cannot remain with the child. Aside from the prohibitive costs, contributory parent visas are not available for onshore applicants unless the applicant is aged, and parent visas can have a processing time of up to forty years. These parents are left with no option but to remove their children from Australia (often the remaining parent will take legal action to prevent this occurring) or to seek ministerial intervention for the grant of a visa (a lengthy



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and unsound practice that can leave a young parent with no access to health care, work rights or social security.)

### **Spouse and Partner**

The present inquiry by Law Reform Commission (ALRC) on the treatment of family violence in Commonwealth law has revealed several areas of Migration Law that are significant. The legislation allows for sponsorship of prospective partners (who must marry within 9 months) and partner visas which are granted. Partners in this temporary twilight zone are not assigned the same legal rights as citizens or permanent residents and can be left unprotected by domestic law.

### **Transnational migrants**

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The concept of a 1.5 generation is used to describe child migrants who arrive with their parents as 'first generation' migrants but straddle the gap between children born in Australia of migrant parents. Like second generation Australians these children are forced to adapt quickly to an educational environment that immerses them into the culture of the host society<sup>3</sup>. Whilst this phenomenon was common during all periods of migration, the current 1.5 generation become transnationals, retaining an identity with both the sending society and the receiving society. This can be a result of technology which allows family to maintain contact in 'real time' through web-based communication, increased travel opportunities to return or the retention of family homes and businesses overseas. Importantly, transnational migrants will not retain a sense of cultural identity that is in frozen in time<sup>4</sup> but will continue to grow with both communities.

Recognising these new phenomena of migrant is an important challenge for multiculturalism into the future.

It is of particular importance to Diaspora communities who have been forced to leave their homeland. Building a relationship with their country of asylum can be particularly difficult for refugees who did not choose to come to Australia for

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<sup>3</sup> Bartley, Allen (2010) *1.5 generation Asian migrants and intergenerational transnationalism: Thoughts and Challenges from New Zealand* National Identities, 12:4,381-395

<sup>4</sup> Armstrong, H. 'Mapping Migrant Memories: crossing cultural borders', *Journal of the Oral History Association of Australia*, No. 19, 1997



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family or economic reasons<sup>5</sup>. Today refugees can remain connected to their homelands and the accompanying political situation they have fled in ways that were previously unthinkable. A policy which refuses to acknowledge both the conflict they have fled and the new challenges they face will serve to further alienate vulnerable people from the broader community.

It is important that a concept such as transnational migrants and diaspora communities does not result in the view that migrants are not accepting of their new countries or communities. Instead it is an acknowledgement of the framework that policy and legislation need to be developed within. Societal structures and broader community views (in particular xenophobic opinions) will have significant impact on successful settlement and long term prosperity of all migrants.

### **Migration Agents**

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As noted above the ANU College of Law provide training for a significant number of people to obtain and retain the necessary qualifications to practice as a Registered Migration Agent. The qualification requirements for Migration Agents to register in Australia have become more and more rigorous since the establishment of the Migration Agents Registration Authority in 1997. This has been in response to a range of concerns expressed about the competence of some Agents and the potential effectiveness of the advice they provide, as well as the impacts poor advice can have on the prospects and lives of prospective migrations.

There will always be room to further improve the competence of Migration Agents and the quality of advice they provide, it is important to emphasise that the complexity of Australia's Migration Act and its extensive Regulations and operational guidelines can make this a very difficult area of law to provide advice on. Whilst the practices surrounding applications for some visa sub-classes can be relatively straightforward, there is an enormous degree of departmental and ministerial discretion in the practices surrounding other visa sub-classes. A change in Ministerial Directive can have a massive impact on the way certain migration cases are handled – even though this requires no change to the law.

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<sup>5</sup> It is the reluctance to uproot oneself, and the absence of positive original motivations to settle elsewhere, which characterises all refugee decisions and distinguishes the refugee from all other migrants' Kunz 1973:130



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It is next to impossible to reliably advise a client with certainty on their visa options if the rules or even just the Minister's view in relation to any particular visa can change dramatically sometimes years after an original visa application or pathway has been initiated.

The focus on the competence of Migration Agents, whilst important, should not distract from the need to also ensure the Act, policies and practices which govern the operation of our migration system works as efficiently, effectively and fairly as possible.

Apart from the potential individual injustice that can occur, a smoothly operating, easy to understand and fairly implemented migration system provides an essential foundation for an effective multicultural policy. The experiences of the migrant in the efforts to arrive, reside, study, work and contribute to Australia are directly influenced by our migration laws and system, and unnecessary complexities, hurdles and expense can itself provide a significant barrier to the effectiveness of multicultural policies.

## **Recommendations**

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The issues that are promoted and enhanced by legislation and policy have been barely touched in this submission yet they raise significant problems that affect the ability of a policy to be implemented in a holistic framework.

Responsibility for Multiculturalism policy currently rests within the Department of Immigration portfolio under Parliamentary Secretary for Immigration and Multicultural Affairs Senator Kate Lundy. Yet the Act that governs Immigration has serious defects and the policy and official rhetoric that surround Immigration continue to actively detract from multiculturalism.

South Australia, Victoria and New South Wales have legislation surrounding multiculturalism. This is recognition of the role that legislation has in demonstrating a commitment to a policy aim. In addition legislation can extend a policy across multiple areas of life and across a broader range of people. Whilst Victoria already has legislation the government is currently seeking the passage of a new Act.

The principles of the Multicultural Victoria Bill 2011 include;

*"The concept of citizenship in the bill is not limited to formal Australian citizenship, but refers instead to the rights and responsibilities of all people in a multicultural society."*



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*The notion of citizenship unifies our diverse society in a shared commitment to our nation and its democratic institutions, laws, values and the notion of a 'fair go'.*

The Queensland government undertook a multicultural policy review in 2009-10. As the Ethnic Communities Council of Queensland (ECCQ) stated in their submission to the Review:

*".....any new multicultural policy should be sufficiently substantive to merit being encapsulated in law. This not only sends a signal about the intrinsic importance of multiculturalism, but assists in ensuring that policy is implemented in an accountable way."*

### **Recommendation 1**

That the Committee recommend the federal government adopt a formal Multicultural Society Act along the lines of those states who have incorporated the principles, rights and responsibilities attached to effective multiculturalism into law.

### **Recommendation 2**

That the Committee recommend a review of the content and implementation of the Migration Act and related Regulations and Directives with an aim to significantly increased the simplicity, consistency and fairness of its operations, recognising that confidential in the operations and fairness of these laws can play a significant role in the effectiveness of multiculturalism policies and principles.

### **Recommendation 3**

That the Parliament re-examine matters explored in the report on the Australian by the Senate Legal and Constitutional Affairs References Committee, "They Still Call Australia Home: Inquiry into Australian Expatriates"<sup>i</sup> with particular reference to how retaining and strengthening ties with former residents of Australia can maximise the economic, social and cultural benefits

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<sup>i</sup> Tabled in the Australian Senate, 8 March 2005