



Law Society House, 179 Ann Street, Brisbane Qld 4000, Australia
GPO Box 1785, Brisbane Qld 4001 | ABN 33 423 389 441
P 07 3842 5943 | F 07 3221 9329 | president@qls.com.au | qls.com.au
Office of the President

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Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By email: legcon.sen@aph.gov.au

Dear Chair

Inquiry into processing visa classes which provide for family and partner reunions

Thank you for the opportunity to provide feedback on the inquiry into processing visa classes which provide for family and partner reunions. The Queensland Law Society (QLS) appreciates being consulted on this important inquiry.

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

QLS recommends a range of measures be implemented to improve processing visa classes which provide for family and partner unions. The delays and difficulties visa applicants encounter throughout the visa application process have significant impacts on individuals. These barriers impede the capacity of individuals to genuinely settle and meaningfully contribute to the community in Australia.

In our view, improvement could be made specifically in relation to:

- Prohibitive costs of pursuing certain family reunion visa applications
- Delays and difficulties associated with visa application processing and review processes
- Inadequate consideration of the realities under which applications are completed during the assessment process
- Limitation on the range of people who may be considered 'family members'.

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Family Reunion Pathways

There are two pathways to family unions for a person on a humanitarian visa. Permanent visas for family members are issued under two streams: the migration programme and the Special Humanitarian Programme (SHP).

1. Migration Programme

This pathway affords access to partner, child, parent and aged dependent relative visas. The costs associated with this application are likely to be prohibitive for many, with most visa application fees being many thousands of dollars per visa applicant. Again, this process is often lengthy with timeframes of between 12 months and 3 years. Reduced fee applications and priority processing should be available where the sponsor is on a humanitarian or protection visa.

2. Special Humanitarian Programme visa stream

Any Australian citizen or permanent resident can propose an overseas family member under the Special Humanitarian Programme (SHP). The drafting process for this application is relatively uncomplicated and there is no associated application fee. QLS supports these elements of the process. However, there is significant uncertainty about whether the family member will be granted a visa, even where all requirements are satisfied. QLS understands that only around one out of every 7 applications are granted and applications can be refused on the basis that Australia does not have places available to support these applicants.

These applications can take months or years to process. The personal impacts of visa processing are significant. A person who has been granted humanitarian visa offshore, usually in a UNHCR refugee camp or a city-based refugee who has been recognised by UNHCR, has generally spent many years waiting to be resettled. Once they have been resettled in Australia and granted permanent residency, they often spend many more years pursuing family and partner reunions. It can be difficult, for example, to focus on education or employment when engaged in drawn-out migration processes and while concerned about family overseas.

Immediate family members of SHP visa holders are most likely to be granted a SHP visa. 'Immediate family' includes the proposer's spouse and dependent children, or parents if the proposer is under 18. Immediate family applicants may be eligible for priority processing as long as:

- The proposer told the Department of Home Affairs or UNHCR of the relationship before their SHP visa grant; and
- The application is lodged within 5 years of the proposer's SHP visa grant; and
- The immediate family relationship is continuing.

Barriers to family reunion

There are a number of barriers to sponsorship or expedited processing under the SHP. These are outlined briefly below.

Limited definition of immediate family

The definition of immediate family is limited to spouse or de facto partner, dependent child, or a parent (if the proposer is under 18). This limited definition of immediate family may not be consistent with cultural concepts of family outside Australia, and may exclude a range of close

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family members with a clearly dependent relationship to the proposer (such as elderly parents or single female relatives). The definition of immediate family should be extended to include other dependent family members and relatives beyond the nuclear family, while still maintaining the integrity of the visa program.

Likelihood of incorrect or inconsistent information about family composition

Visa application discrepancies are common as a result of the nature of the application process, as well as the circumstances of this particular visa cohort. Applications are often drafted by junior embassy officials or a junior UNHRC official assisting a person with their settlement application. This process is often rushed and attention to detail may be lacking in the circumstances. When listing personal details, attention may not be given to providing complete family history, accurate dates of birth or correct spelling for names.

In addition, the circumstances of the visa applicants themselves are such that errors and inconsistencies in information provided are very likely. This group of visa applicants have typically experienced significant trauma and violence in fleeing their home countries, may have had limited education, literacy skills, and may have lost (or never had) relevant birth registration documents. They may be relatively young, and separated from their family members due to violence and war. The collective result of these circumstances is mistakes and incorrect information in relation to their family composition is very likely to occur.

Unfortunately, the impacts of this can be devastating for a person once in Australia and seeking to have family members join them. In assessing an application, the Department of Home Affairs will scrutinise a family member's application against what is already known about the sponsor in Australia and the applicant offshore. If family relationships are not captured, this can lead to applications being afforded lesser processing priority. Where inconsistencies exist, or details of family members are missed, the application process could be delayed by years in some cases.

In some circumstances, not only will the new application be refused but the person in Australia could be facing permanent residency visa cancellation, if the Department of Home Affairs considers that they have provided false or misleading information with their visa application.

Given the circumstances described above, discrepancies are inevitable as a result of the context within which visa applications are completed and should not, by themselves, lead a decision maker to conclude that the applicants have provided false or misleading information.

Barriers faced by boat arrivals

People who arrive in Australia by boat face additional barriers to family reunions. The SHP visa process specifically excludes those who have arrived in Australia by boat. Access to the migration programme is only available once the visa holder is recognised as an Australian citizen.

Access to legal assistance in Australia

Finally, adequate, ongoing funding for legal assistance providers including community legal centres and Legal Aid must be prioritised to ensure applicants are provided with the advice and support necessary. Access to legal assistance can prevent or reduce the escalation of legal problems and reduce cost to the justice system overall. Self-represented may be less familiar with proper evidence gathering and document drafting which, in itself, can contribute to a backlog of applications in the system. QLS strongly supports increased funding to these essential services.

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Yours faithfully

Elizabeth Shearer
President