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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

Senate Inquiry: The efficacy, fairness, timeliness and costs of the processing and granting of visa classes which provide for or allow for family and partner reunions.

Dear Sir/ Madam

Please find attached submission to the above Senate Inquiry. The contents are as follows:

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Yours Sincerely

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SENATE INQUIRY

THE EFFICACY, FAIRNESS, TIMELINESS AND COSTS OF THE PROCESSING AND GRANTING OF VISA CLASSES WHICH PROVIDE FOR OR ALLOW FOR FAMILY AND PARTNER REUNIONS.

Submission from: Libby Hogarth, Director of Australia Migration Options Pty Ltd;
Registered Migration Agent #9364758, AFMIA #445

1. INTRODUCTION

I wish to make a submission to the Senate Inquiry above. I am a registered migration agent and have been practising as a migration agent since 1991 and assisted with partner visas since 1996. I initially started my work with a community refugee organisation then set up my own business in 1996 which was re-named to Australian Migration Options (AMO) Pty Ltd in 2009.

AMO had Government contracts under the IAAAS community program and detention services as well as their private client case load. Whilst at the peak of the detention centre work, I employed or subcontracted 32 migration agents and 15 administration staff and since the IAAAS program ceased we have downsized to a boutique family business with three agents (me and my two daughters) and three admin staff. We deal with a large complex case load at both primary and review stages mainly focusing on family visas.

I am a member of the Migration Advice Industry Advisory Group which provides advice to the Australian Government on matters relating to the migration advice industry including potential reforms to the legislative framework governing the industry.

My submission will focus on the partner visa processing of some of the most vulnerable permanent Australian residents/ Australian citizens and the ongoing punishment and delays faced by the cohort of clients who arrived by boat, were granted permanent protection visas but who have then faced indeterminable delays and hurdles in the processing of their partner visas and other family related visas.

When I first started assisting with partner visas in 1996, I could prepare a complete application, make an appointment with Immigration, go with the applicant and sponsor to the interview and walk out with the visa. In 2021 despite paying extremely large application fees, the quickest processing of an application we have assisted with is around 4 months and the longest is an application lodged in May 2013 and still pending a decision.

Just today we had an Afghan gentleman in our office who broke down in tears. This is his story:

The man sat in our office and sobbed "What can I do. I have lost everything. I came here to seek safety and find a safe place for my wife and children, but the process took so long and my wife did not believe me. I lodged the application in 2013 and she did not believe me when I said Immigration were not processing the case. Now she has found another man and taken the children. I have lost everything. What can I do? Sometimes I feel my mind is gone. I cannot remember anything. I cannot concentrate. If I can work it helps a bit to make me forget the bad things but then I make mistakes at work. I have nothing. I try to ring my children and say hello but now they live in another country. I cannot travel because I have not got my citizenship. Life is not worth living"

The delays in processing have caused long separation of family members and many relationships have broken down. The sponsors in Australia are angry and frustrated and because they cannot make contact with the Department of Immigration they come to the migration agent office and abuse the staff or just sit and sob. Many migration agents have stopped working with this cohort of clients as they are burnt out. Mental health workers and community workers are completely stressed with the needs of this cohort of people – mainly males.

The Senate Inquiry is welcomed and we trust it will bring changes to the processing times and procedures.

2. TERMS OF REFERENCE:

2.1 RELEVANT VISAS

It is interesting that the Inquiry is about visa classes that provide for family and partner reunions. There is really no such visa as a “family reunion” visa and visa applicants are given very clear notice when granted visas that their visa grant does not mean they have automatic right to sponsor any family members.

Visas that are family related are listed in the table at Section 2.2.3 and include:

Partner visas - fiancé visas, married, defacto, registered and same sex relationships.

Child Visas Dependent children, adopted children and orphans.

Parent visas

Other family Remaining relative visas, Aged dependent relatives and carers.

2.2 LIMITATIONS ON ELIGIBILITY TO APPLY FOR RELEVANT VISAS.

Limitation on eligibility to apply for relevant visas are set out in the Migration Act 1958 and the Migration Regulations 1994.

The limitations are not always easy to find even for lawyers and Registered Migration Agents. Many clients have been caught out when applying for visas on their own, as they simply follow the guidance on the Home Affairs Website which does not set out all the regulations or limitations set out in the Migration Act and Regulations.

It can result in applicants losing thousands of dollars as the Immigration visa application fee is not always refundable (for example if a person applies for a partner visa but is caught by schedule 3 requirements). Migration agents’ fees, medicals, costs, police clearance fees, interpreter and translation fees etc are rarely refundable in cases where visa applications are refused or found to be invalid.

2.2.1 OVERVIEW OF LIMITATIONS

Whilst it is not possible in this submission to the Senate Inquiry to provide details of all the Limitations set out in the Act and the regulations, it may be helpful to provide an overview.

A. Limitations to visa applications are set out in Division 3, Subdivision AA of the Migration Act

B. **S 48** of this subdivision allows persons who have been refused a visa onshore, or have overstayed their visa, to apply for certain *prescribed* visas and various family visas are included in the *prescribed* list -i.e., onshore partner visas, and onshore child visa.

C. Limitations for Irregular Maritime Arrivals:

All people who arrived in Australia as Irregular Maritime Arrivals and who are currently holders of Bridging visas, Temporary Protection visas (TPV) or Safe Haven Enterprise Visas (SHEV) are BARRED from sponsoring any family member.

However, if a **person holding a SHEV visa** marries an Australian permanent resident or Australian citizen AND meets the SHEV pathway requirements,¹ they can lodge an onshore partner visa application.

The SHEV pathway validity used to be assessed PRIOR to the visa application being made but policy changes were made and now required evidence for meeting the SHEV pathway has to be lodged with the visa application. IF the SHEV pathway is NOT met the visa application will be found to be invalid. The applicant can apply for a refund of the Immigration application fee (can take months to receive) but they will NOT be refunded for migration agent fees, interpreter fees, police clearance fees etc (This can vary between \$2000 to over \$12,000)

2.2.2 OTHER LIMITATIONS FOUND IN THE MIGRATION REGULATIONS

Sponsorship Limitations are set out in the Regulations under Division 1.4B regulation 1.20; Division 2.13A reg 2.60;

Schedule 1 and Schedule 2 of the Regulations set out the criteria for each visa subclass and again there can be limits to eligibility within these regulations.

Schedule 3 sets out limitations to certain bridging visa holders and people who have become unlawful.

Schedule 4 sets out limitations to eligibility where there are health and character concerns.

Schedule 5 sets out limitation on certain people who were deported or removed from Australia, holders of Foreign Affairs student visas.

Schedule 8 sets out visa conditions such as 8503 which prevents the holder of the visa being entitled to be granted a further substantive visa, other than a protection visa, whilst remaining in Australia.

2.2.3 The following table sets out some of the limitations to eligibility for the various family related visas and current processing times.

TYPE OF VISA	OFFSHORE	ONSHORE	LIMITATIONS TO ELIGIBILITY ²	PROCESSING TIMES
PARTNER RELATED VISAS				
Prospective Marriage ³	Sc300		Reg 300.212⁴ Reg 300.214 Must have met in person since turning 18 yrs of age. Reg 1.20J⁵ Reg 1.20KA⁶ Reg 1.20KB⁷ Reg 1.20KC⁸	6 months – 2/3 years

¹ SHEV pathway requirements – must have held a SHEV visa for at least 42 months and worked or studied in a regional area of Australia during that period.

² TPV and SHEV visa holders are prevented from sponsoring any family members

People who arrived on sc 204 women at risk visa are prohibited from sponsoring former partners, or partners who had not been declared to Immigration prior to grant of visa, for 5 years from grant of their visa.

³ Prospective marriage partners (Fiancé) are NOT currently permitted to enter Australia

⁴ Reg 300.212 limitation on a sponsor who holds women at risk visa sc 204

⁵ **Reg 1.20J** limits sponsorship to 2 partners (with minimum 5 years between applications).

⁶ **Reg 1.20KA** – prevents persons from sponsoring fiancé or partner for 5 years from date of grant of a permanent contributory parent visa

⁷ **Reg 1.20KB** – Limitation on approval of sponsorship where sponsor has been charged with a *registrable* offence.

⁸ **Reg 1.20KC** Limitation on sponsorship where sponsor has significant criminal record in relation to a *relevant* offence.

Partner Provisional	Sc 309	Sc 820	Reg 1.20 J - <i>see footnote 2</i> Reg 1.20KA - <i>see footnote 3</i> Reg 1.20KB – <i>see footnote 4</i> Reg 1.20KC - <i>see footnote 5</i> Reg 309.212 (2) ⁹ Reg 2.03A ¹⁰	6 months – 3 years For applications related to IMA – over 8 years. Onshore applications currently over 12 months to 2 years
Partner permanent	Sc100	Sc 801	Reg 1.20 J - <i>see footnote 2</i> Reg 1.20KA - <i>see footnote 3</i> Reg 1.20KB – <i>see footnote 4</i> Reg 1.20KC - <i>see footnote 5</i>	As above
CHILD RELATED VISAS				
Dependent Child	Sc 101	Sc 802	Reg 1.20KB – <i>see footnote 4</i>	1-2 years
Adoption	Sc 102		Reg 1.20KB – <i>see footnote 4</i>	
Orphan	Sc 117	Sc 837	Reg 1.20KB – <i>see footnote 4</i>	2-4 years
Dependent child	Sc 445		Reg 1.20KB – <i>see footnote 4</i>	12 -18 months
There are some waiver provisions for each of the above limitations under regulation 1.20				
PARENT RELATED VISAS - Reg 1.05¹¹				
Parent Visa	Sc 103		Reg 1.20LAA ¹²	Over 30 years
Aged parent		Sc 804	Reg 1.20LAA - <i>see footnote 6</i>	Over 30 years
Contributory Parent (temporary)	Sc 173	Sc 884	Reg 1.20LAA - <i>see footnote 6</i>	3-4 years
Contributory Parent (perm)	Sc 143	Sc 864	Reg 1.20LAA - <i>see footnote 6</i>	3-4 years
Temporary Sponsored parent	Sc 870		Div 2.13A - Reg 2.60 ¹³	6 months
OTHER FAMILY MEMBER RELATED VISAS				
Aged Dependent Relative	Sc 114	Sc 838	Reg 1.20LAA - <i>see footnote 11</i>	Over 30 years
Remaining Relative	Sc 115	Sc 835	Reg 1.20K ¹⁴	Over 30 years
Carer Visa	Sc 116	Sc 836		3-5 years
			Queue dates ¹⁵	

⁹ Reg 309.212 (2)⁹ – limitation on a sponsor who holds women at risk visa sc 204

¹⁰ Reg 2.03A – applicant and sponsor must be over 18 years of age; for defacto relationships they must have been in relationship for at least 12 months prior to lodging the application.

¹¹ Reg 1.05 – Balance of Family Test – all parent visa related applications must meet the balance of family tests which requires the number of eligible children to be greater than or equal to the number of ineligible children.

¹² Reg 1.20LAA – limitation on sponsorship where sponsor was a former holder of an 802 child visa supported by a letter of support from a state or Territory Government welfare authority. Also limits sponsorship where to the partner or guardian or community organization of that former holder of the 802 child visa

¹³ Reg 2.60 Criteria for approval of family sponsor and limitations on family sponsorship

¹⁴ Reg 1.20K – prevents applications where another family member has been previously granted a remaining rel visa

¹⁵ Annual quota for Remaining relative and Aged Dependent has been reached for 2020/21,

2.3 WAITING TIMES FOR PROCESSING AND INTEGRITY CHECKING OF APPLICATIONS FOR RELEVANT VISAS

As indicated in the above table, waiting times vary greatly and are not consistent. There does not appear to be any consistency in how applications are processed. The Home Affairs website sets out processing priorities (anyone granted a permanent protection visa sc 866 who is not yet an Australian citizen, is afforded the lowest priority in processing) and provides average global processing times.

If one questions the Department about why two visa applications with the same information have been processed so differently (e.g., one approved in 4 months and another still waiting after 12 months) the agent will receive a “talking point” generic response stating “*all applications are assessed individually.....*”

It also appears that as Immigration fees have increased so the waiting times have also increased.

Processing times are also directed by the Ministerial Directions – the latest one affecting processing times being Ministerial Direction 80.

Even with applications where the sponsor is not an IMA, there appears to be no consistency with processing times. Migration Agents are often complaining that some cases can be processed within 4 months whilst others are taking well over 12 months even when the cases are very similar and there are no character or medical issues that would cause delays.

Such inconsistency causes huge problems for migration agents and lawyers as the visa applicants and sponsors talk amongst themselves and then blame the agents for delays and become excessively demanding and aggressive with office staff which has led to a number of migration agents leaving their work or deciding not to work with the family visa sector.

“**Integrity checks**” also appear to be used as an excuse for delays in processing. If a sponsor has been in Australia for over ten years and an application was lodged in 2013 for his/her family members – how can there still be outstanding integrity processing? Is it just an excuse for delays or is integrity processing really taking so long? Such long delays based on integrity processing make the Government’s strong stance on border protection appear very weak.

EXAMPLE: The longest waiting case we have currently have which to date has not had any adverse information, refusals etc, was a partner visa application lodged on **29th May 2013**¹⁶.

The sponsor is an IMA who arrived in 2011. All documents had been provided by 2018 and medicals requested and completed.

We were advised in **December 2018** that the case was lined up for ‘assessment’. In **November 2019** we were advised “that checks were still being carried out”.

On **19th January 2021** we received the following response:

Dear Sir/ Madam, Thank you for making contact with Dubai Family Team at the Australian Consulate-General, Dubai, United Arab Emirates. Please be advised that the application is pending on the outcome

As at February 2021, Immigration have released for final processing:

- Remaining Relative visa applications with a queue date of up to 2 August 2011
- Aged Dependent Relative visa applications with a queue date up to 2 August 2011
- Carer visa applications with a queue date up to 11 October 2017.

¹⁶ Details can be provided if required

*of verification checks. It is **not** possible to provide a date or timeframe for the completion of a visa application. The length of time taken to complete the relevant checks for individual cases varies.*

Timeframes depend on many things, such as the nature of the visa applied for and the period of stay sought, the individual circumstances of a visa applicant, the complexity of individual cases, and the processing priority given to different application types.

Our office recognises that the time taken to process your application may be causing you and your family concern however please note that further assessment and/or finalisation consideration of your application cannot proceed until all legislative requirements have been met.

Should our office require any further information regarding this application, an officer will be in contact with the applicant/authorised contact person.

A further follow up sent in early April 2021 simply received the generic response which includes:

Status-related enquiries for Illegal Maritime Arrivals (IMA) sponsored applications.

A response will not be provided to these enquiries. IMA sponsored applications are processed by this office in date of lodgement order.

*It is noted that the Dubai Family Team has a substantial number of on-hand cases **dating back to 2012** (our emphasis), many of which involve individuals living in separate countries, uncertain circumstances, volatile environments as well as having physical and mental health challenges.*

In accordance with Direction 80, IMA sponsored applications are afforded the lowest processing priority unless the application involves special circumstances of a compassionate nature and there are compelling reasons to depart from the order of priority.

2.3.1 PROCESSING TIMES FOR PARTNER VISAS

The waiting times for partner visa processing, especially where a sponsor was an irregular maritime arrival (IMA) are outrageous. Processing times for the cohort who hold sc 866 visas (and especially those who were irregular maritime arrivals) was further delayed when the requirement was introduced in December 2013 that sponsors who hold s866 visas must become Australian citizens before their partner visas are processed.

That change to policy was followed by changes to the Citizenship application process which normally took only a few months but suddenly changed with the IMA cohort and processing of citizenship applications just ground to a halt. No citizenship – no family visa. There is still a very large number of IMA who lodged citizenship applications in 2015 who are still waiting for outcomes.

Anyone granted a permanent protection visa sc 866 who is not yet an Australian citizen, is afforded the lowest priority in processing. There are many people in this cohort or lodged partner visa applications in 2012/2013 and are still waiting decisions on the applications.

The Home Affairs website Global Processing times states partner visas will be processed in 17-24 months with fiancé visas 22-30 months, yet we still hear of newly lodged applications being processed in 4 or 5 months whilst others lodged 3 years ago are still waiting.

How are relationships expected to survive such long periods of separation? The separation is so often compounded by the fact that so many of these families are extremely vulnerable and living in very dangerous and unstable situations.

Direction 72 was introduced in 2016 and enabled the embassy to process IMA sponsored applications where there were compelling and compassionate grounds, without the need to wait for the sponsor to obtain Australian citizenship. We saw the embassies start processing quite a few of the partner visa applications. But then **Direction 80** (2018) changed the policy and once again the processing stopped unless there were extenuating circumstances of compassionate or compelling nature (much stricter than those under Direction 72). Even cases where there are the most severe mental health issues, suicide attempts etc are NOT meeting the Department's "compassionate and compelling" standards.

We have managed to have one IMA case prioritised since D80 was introduced, and that was a case where one of the secondary visa applicants was diagnosed with cancer. To the embassy's credit the health waiver request was sent and processed in record time and the visas were granted 3 months after we lodged the priority processing request.

2.3.2 WAITING TIMES FOR OTHER VISAS

Apart from the huge delays in processing times for partner visas all other family visas are facing similar long delays and increasing backlogs.

Waiting times for dependent children and orphan children are of great concern with most **orphan visas** taking well over 3-4 years to be finalised. Often these children are very young and living in very unstable and unsafe environments. We are rarely given reasons for the delays.

We are aware some delays are caused by such issues as child trafficking and ensuring children are not being trafficked or removed without permission of the parents, but there needs to be a better process implemented to close these long delays and more transparency about the issues facing some embassy caseloads.

***Example:** Orphan visa application for a 14-year-old girl who was raped and became pregnant and we tried to have the matter prioritised so she could have the baby in Australia. Her claims were supported by a church pastor and his wife who were trying to keep some sort of protective eye on the girl and her siblings.*

The embassy did not agree to prioritising the case (requests made in 2018 and 2019).

During the process, AFTER the baby was born, we were asked to provide permission of the father (the unknown rapist) for the child to migrate. Why? The person was unknown. We had given that information to the embassy.

The case is still not finalised and now the Australian Embassy in that country is closed because of Covid and very little processing is occurring for applications lodged at that post.

By the time this case is finalised most of the children will be over 18 years of age. Orphan visas are supposed to be visas that gives protection to a child without parents and yet these delays are meaning that for most of their formative years these young children are not cared for by family members and sometimes struggling to just care for themselves without any adult support.

Immigration has applications from other posts processed onshore or in other embassies and there has been no reason given as to why the caseload of this Embassy cannot be processed elsewhere.

Example: Family of 3 children; 2 orphan visas lodged in 2016 and a humanitarian visa lodged for older sister who had turned 18. The child had disabilities and was in severe danger. She went missing – presumed kidnapped in approx. 2017 and has never been found. The second child went missing and then returned but had been raped; sponsor travelled to Africa and child had abortion; Further documents requested in 2018 and all sent to the embassy;

August 2019 embassy advised application was being actively processed.

October 2019 the third child went missing – later found

DNA requested and completed in January 2020.

Covid pandemic and no further news

Aged parent, remaining relative visas are a lost cause with estimated processing times being around 50 years. These long processing times came about after the Government failed to remove these visa classes so simply capped the visa grants at such a level the processing times went from 4 years to 40 years.

AMO refuses to assist clients with such applications but unfortunately many people are not advised of the long waiting periods until after they have spent their money and lodged the applications.

Carer visas are another visa where I fail to understand why the Government does not process applications more quickly and why the Government is against these visas when there are such big problems with our aged care and disability care in Australia.

It would be helpful to know why the Government does not believe that such visas would save Australia a lot of money in disability and aged care by allowing family members to come in and be the carers. If there has been widespread abuse of the carer visa can the Migration Agent industry be made aware of this?

The amount of evidence required by Immigration for the carer visa is often extremely difficult to obtain and Aged care homes, nursing homes, private carers etc are often not willing to provide written information stating they are unable to assist. Their resources are limited and they feel it is a waste of time writing such letters.

Evidence why the assistance required cannot reasonably be obtained from welfare, hospital, nursing or community services in Australia.

The Department must be satisfied that the assistance required to care for the person with the medical condition cannot reasonably be obtained from welfare, hospital, nursing or community services in Australia.

All options for assistance should be investigated in order for the Department to determine whether the assistance required can be sourced from services in Australia.

Provide documentary evidence of efforts to investigate the full extent and suitability of care available from the following: - Welfare services;- Community services - Nursing services;- Hospital services

The need for care must be for two years or more but the visa processing is more than 4 years, and it is devastating for families where a family member needs immediate care and is unable to access it.

The carer visa does not take into any consideration the values of other cultures who do not want to put family members into care and there is no prioritisation when a person is in urgent need of care such as someone with a terminal illness.

2.4 COST OF APPLYING FOR RELEVANT VISAS.

The costs of partner visa applications have skyrocketed in the past 8 years whilst at the same time the processing times have also increased.

PARTNER VISAS

DATE	OFFSHORE	ONSHORE
JAN 2012	\$1995 - whole family	\$2960 - whole family
1st July 2013	Main applicant \$2680 Secondary app <18 yrs \$1340 Secondary app >18 yrs \$ 670	Main applicant \$3960 Secondary app <18 yrs \$1990 Secondary app >18 yrs \$ 995
1st Sept 2013	Main applicant \$3085 Secondary app <18 yrs \$1545 Secondary app >18 yrs \$ 770	Main applicant \$4575 Secondary app <18 yrs \$2290 Secondary app >18 yrs \$ 1145
1st July 2015	Main applicant \$6865 Secondary app <18 yrs \$3435 Secondary app >18 yrs \$1720	Main applicant \$4575 Secondary app <18 yrs \$2290 Secondary app >18 yrs \$ 1145
2021 April	Main applicant \$7715 Secondary app <18 yrs \$3860 Secondary app >18 yrs \$1935	Main applicant \$4575 Secondary app <18 yrs \$2290 Secondary app >18 yrs \$ 1145

PARENT VISAS

date	Visa sc	Offshore 1 st installment	2 nd installment	Onshore 1 st installment	2 nd installment
2012 Jan	103/ 804	\$1995	\$1735	\$2960	\$1735
2013 July	103/ 804	Main app \$2060 <18yrs \$1030 >18yrs \$515	\$1795	\$3060 \$1530 \$765	\$1795
2021 April	103/ 804	Main app \$4350 <18yrs \$2175 >18yrs \$1090	\$2065	Main app \$4350 <18yrs \$2175 >18yrs \$1090	\$2065
2012 Jan	143/ 864	\$1995	\$40,015	\$2960	\$40,015
2013 July	143/ 864	Main app \$2060 <18yrs \$1030 >18yrs \$515	\$42,220 each applicant over 18 \$1825 app under 18	\$3060 \$1530 \$765	\$42,220 each applicant over 18 \$1825 app under 18
1 st July 2015	143/ 864	Main app \$3695 <18yrs \$1245 >18yrs \$625	\$43,600 each applicant over 18 \$2095 app under 18	\$3695 \$1845 \$925	\$43,600 each applicant over 18 \$2095 app under 18
2021 April	143/ 864	Main app \$4155 <18yrs \$1400 >18yrs \$705	\$43,600 each applicant over 18 \$2095 app under 18	\$4155 \$2075 \$1040	\$43,600 each applicant over 18 \$2095 app under 18

CHILD VISAS

date	Visa sc	Offshore fee	Onshore fee
2012 jan	101/102/117; 802/837	\$1995	\$2960
2013 July	101/102/117; 802/837	\$2060	\$3060
2013 Sep	101/102/117; 802/837	\$2370	\$3520
2015 July	101/102/117; 802/837	\$2370	\$2370
2021 April	101/102/117; 802/837	\$2665	\$2665

OTHER FAMILY VISAS

date	Visa sc	First installment	2 nd installment	Onshore fee	Onshore 2 nd installment
2012 jan	114, 115, 116; 835, 836, 838	\$1995	1735	\$2960	1735
2013 July	114, 115, 116; 835, 836, 838	Main app \$1260 <18yrs \$ 630 >18yrs \$ 315	Main app – nil Other applicants \$1795	\$3060 \$1530 \$765	Main app – nil Other applicants \$1795
2013 Sep	114, 115, 116; 835, 836, 838	Main app \$1260 <18yrs \$ 630 >18yrs \$ 315	Nil \$2065		
2015 July	114, 115, 116; 835, 836, 838	Main app \$3870 <18yrs \$1935 >18yrs \$ 970	Nil \$2065	\$3870 \$1935 \$970	Nil \$2065
2021 April	114, 115, 116; 835, 836, 838	Main app \$4350 <18yrs \$2175 >18yrs \$ 1090	Nil \$2065	\$4350 \$2175 \$1090	Nil \$2065

2.4.1 The costs above are only the Department of Immigration application fees. The majority of these clients need migration agent assistance and are paying between \$2000 to over \$12,000 for migration agent fees.

Applicants also need to pay for their medicals (around AUD \$250 each applicant); police checks, interpreting and translation costs, DNA costs if requested, air fares to Australia; quarantine fees on arrival in Australia.

Medical and biometric tests often require extensive and expensive travel for clients, some having to cross international borders to reach the embassy for biometric testing or DNA testing etc.

With the 2013 legacy case load some of these clients have done medicals over three times having been requested to do them and then processing has stopped and medicals have expired.

People who have been recognised as refugees and granted protection visas have had to pay the same fees but then the applications are not processed until the sponsor is granted Australian citizenship.

The costs for partner visas are sometimes prohibitive. The worst case we have seen was with an Afghan man who was in his sixties, unwell and on a disability pension. He had not been told that the split family visa application lodged in 2009, would be refused and that he should apply under the family migration program. We came across him on one of our regional visits in 2015 and worked out he was going to need just over \$23,000 Aud just for the Immigration visa application fees for his wife and six children. He was already sending half of his fortnightly pension to support his family in Pakistan. We referred him to a community worker but have no information about what happened with him or his family.

2.5 ELIGIBILITY FOR AND ACCESS TO FAMILY REUNION FOR PEOPLE WHO HAVE SOUGHT PROTECTION IN AUSTRALIA.

AMO have had assisted hundreds of families of people who sought protection in Australia. AMO assisted around 140 families of the IMA legacy group who lodged partner visas in 2013/2014 and from this cohort we have approximately 38 families still waiting for decisions.

This cohort have faced ongoing changes to migration regulations and policy which have caused horrendous delays to processing times, increasing costs for applications fees and excessive costs because of the need to travel large distances to do medicals, biometrics, obtain identity documents and then having to redo medicals or apply for new passports because Immigration have taken so long to process the application and the medicals and documents have expired.

Any application sponsored by a person who has been granted permanent protection in Australia, is given the lowest processing priority until they become an Australian citizen but then obstacles have been placed in the way of them gaining citizenship.

From 2012 on we have witnessed what can only be described as calculated punishment, cruelty and injustice towards those who arrived by boat and their families, which has resulted in families being separated for 8-12 years, family breakdowns caused by the delays; suicides and attempted suicides of sponsors and visa applicants, increasing serious mental health issues amongst sponsors, deaths of sponsors with subsequent refusals of the partner visas and denial of any family member to visit seriously ill family members in Australia or attend funerals etc.; deaths of family members overseas etc

Those who arrived by air and were then subsequently recognised as refugees and granted permanent protection visas sc 866 also face long delays with their sponsorship of applications for partner/ child visa applications.

The delays of years in processing have led to children reaching the age of 18 years and then Immigration deeming they are no longer dependent on their parents despite the fact they may be living illegally, virtually staying at home all day and unable to work. Families are torn apart by the refusal decisions and for these cultures it is a further tragedy in their lives.

Another issue which needs to be addressed is that after these huge delays the family arrive in Australia and are not eligible for Centrelink payments apart from the family benefit. The Social Security Act provides exemptions for families who come under the split family program where the sponsor is a refugee visa holder, but the same exemptions are NOT provided for the protection visa client families even when these families have been asylum seekers or refugees in countries outside their home country.

*Mr A arrived in Australia by boat in 2011 and was granted protection. He lodged an application for his wife and 5 children in **October 2013**. (Application fee \$6935).*

Processing stopped because of changes to the regulations and policies.

May 2017 Doctors letters, Psychologist reports re the sponsors deteriorating mental health, were submitted.

11.09/2017 – application re-prioritised for processing under Direction 72

2019 – further medical reports sent in regard to sponsors health

2020 February - Medicals were completed.

2020 – COVID pandemic and processing stopped again

April 2020 secondary application diagnosed with severe illness ; embassy notified, and health waiver letter requested. Health waiver submission provided in June.

August 2020 visas granted – permanent visas sc 100.

Family received Centrelink payments because of Covid until beginning of April. **The Family of 6 now have to survive on the father's new start allowance.** There is no other income. Hotel quarantine fees were not waived. The family have other debts from loans for medicals for their daughter, loans for airfares etc.

Families who come under the split family program are exempt from the waiting period. We strongly believe an IMA family should also be exempt from Social security waiting periods when they have faced 7–10-year visa processing times and given the sponsor is a recognised refugee under the UNHCR convention and given the fact the family were living as asylum seekers in a country outside their home country and have come to Australia on permanent partner visas. An individual cannot survive on the Centrelink income let alone a family of 6 living off the one individual Centrelink payment.

2.5.1 REGULATION, POLICY & FEE CHANGES THAT AFFECTED PARTNER VISA PROCESSING FOR BOAT ARRIVALS

I provide below a brief timeline overview of the changes to policy/ regulations etc that have affected the partner visa processing for boat arrivals and protection visa holders.

- a. **2012** : Change from grant of permanent visa to Temporary Protection Visa (TPV) or Safe Haven Enterprise visas (SHEV) for any person who arrived by boat and was subsequently recognised as a refugee.
This change dramatically affected the ability of recognised refugees to reunite with their families as neither TPV nor SHEV visa holders are permitted to sponsor their partners or any other family member. Many families have now been separated for over 9 years.
- b. **2012** - Also saw changes to the “split family” processing (protection visa holders had been able to propose their partners and dependent children under the Sc 202 humanitarian visa until this time).
Sponsors were advised to withdraw the split family applications and lodge a partner visa application under the partner migration process – no concession was given to applications that had already been in process for many months.
- c. **July 1st 2013**: First large fee increase announced for partner visas with every secondary applicant being charged a fee instead of the one fee regardless of how many applicants. As people were fortunate to be forewarned by these fee increases there was a sudden rise in partner visa applications being lodged prior to July 1st 2013.
- d. **September 1st 2013** – Further fee increase
- e. **19th December 2013**: Ministerial Direction 62 - put applications made by people who came by boat at the end of the queue for family visas. As there were not enough places, in practice it meant these people could not reunite with their family until they became Australian citizens. The decision was challenged at the High Court¹⁷.

¹⁷ [*Plaintiff S61/2016 v Minister for Immigration and Border Protection.*](#)

- f. **2014 -2015** saw a huge increase in applications for Australian citizenship by IMA as it became apparent that the family visa applications would not be processed until the sponsor had Australian citizenship. By 2020 very few of these citizenship cases had been finalised.
- g. **July 2015** – further fee increase for partner visa applications.
- h. **13 September 2016:** Ministerial Direction 72 was introduced in response to the High Court Decision. This Direction allowed delegates to depart from policy if there were special circumstances of a compassionate nature and compelling reasons. Finally, some applications lodged in 2012 and 2013 were processed.
- i. **2018** – further fee increases
- j. **21/12/2018 - Direction 80** – this Direction kept family visas, sponsored by people who came by boat, at the end of the queue; made compassionate and compelling concessions harder to achieve; removed the requirement that an application be “disposed of within a reasonable time”. Processing once again was seriously delayed.
- k. **2020 – Migration agents reported an increase of Natural Justice letters Adverse Information letters, Notices of Intent to Consider Cancellation and Notices of Intent to Cancel Visas;** AMO has assisted many clients with these letters and witnessed the extra delays in family visa processing caused by the process to respond to these letters and wait for decisions. The majority of these letters were related to Citizenship applications lodged by IMA in 2015. Serious adverse information often led to refusal of the citizenship application and then to a notice of intent to cancel their visa under s109 or S116 of the Migration Act.

2.5.2 OTHER PROCESSING CHANGES THAT AFFECTED APPLICATION WAITING TIMES

- a. **DNA tests:** From 2013 we found that nearly all partner visa applications were being routinely required to undergo DNA tests even when there were no suspicions around the family members. This requirement has not been so apparent in the past 2-3 years. Organising DNA test and waiting for responses causes months of delays with processing.
- b. **IDENTITY DOCUMENTS**
Afghan refugees in Iran and Pakistan more often than not, held no identity documents such as taskeras, birth certificates or passports. They started to provide taskeras issued by the Afghan Consulate in Quetta but later it was found the Consulate had no such authority to produce taskeras.

The Australian embassies then insisted that clients had to return to Afghanistan to obtain taskeras and passports. There was a lot of advocacy done at the time as migration agents and advocates believed the Australian Government was breaching international law forcing refugees and asylum seekers to return to their country of origin to obtain such documents especially as the trip was incredibly dangerous because of Taliban roadblocks and the fact that it was vulnerable women and children being forced to return.

The Australian Government ignored the advocacy and continues to insist on Afghans providing genuine taskeras and passports.

We were also advised that the Australian Government has worked with the Afghan Government to produce documents that could not easily be forged – initially there was an attestation for taskeras with a foil seal attached and more recently the ID documents being produced are cards and the passports are digitally produced documents. Afghan asylum seekers in Pakistan are still required to return to their home Governate to obtain taskeras and then to travel to Kabul to have the taskeras attested and their passports issued. The process continues to be fraught with difficulties as the Officials are constantly wanting bribes, will often enter names or dates or birth incorrectly (sometimes still guessing the age of the applicant by the appearance of the person) etc and then refuse to change the documents when requested.

- c. **PIC 4020 WAS INTRODUCED IN 2011 purportedly to strengthen the integrity of Australia's immigration programme by detecting and preventing visa fraud.** It has caused further delays for this cohort of IMA sponsors as virtually all the Afghan clients living in Pakistan, had provided documents from the Afghan consulate in Quetta which were now deemed to be false. There are delays and further expense for clients as they seek migration agent assistance to respond to natural justice letters or AAT assistance when applications were refused under PIC 4020. There has been a very high set aside rate at the AAT with such decisions, but it causes long delays, high costs and extreme frustration and depression for the clients and their families.

d. **REQUIREMENT FOR CITIZENSHIP – DELAYS IN PROCESSING.**

As stated above there was a spike in citizenship applications in 2015 when rules were introduced that applications sponsored by boat arrivals could not be finalised until they had been granted Australian citizenship.

I submit that there should be a further Senate inquiry into the citizenship delays and chaos. We have heard rumours that the Minister arranged a forensic team to go through every citizenship application and any associated applications related to the applicant until they could find something on which they could refuse citizenship. Whether or not the rumour is true, it certainly appeared to be what was /is happening.

We received no information at all for around 4 years in regard to these applications and then Immigration started to send "Natural Justice " and "Adverse information" letters to clients. Many of these letters related to lack of identity documents, questions about discrepancies in declared places of birth and birth dates, why applicants had no identity documents when living illegally in Pakistan or Iran etc.

Example 1

Throughout our engagement with the Department, including in your visa applications and in your current citizenship application, you have consistently claimed that your place of birth is xxxx, Sharistan, Daikundi. However, the place of birth on your taskera is xxxxx Please confirm your place of birth and explain why your place of birth on your Taskera differs to what you have previously declare to the Department".

Example 2

You have declared that you have resided in Pakistan for x years but have not provided any documents issued in Pakistan to support this claim.... You also indicated you were employed in Pakistan....

....I find it concerning that you have no documentations particularly as this absence of documentation is inconsistent with country information.

For instance, Proof of Registration cards were issued in 2006 and 2007 to Afghan citizens temporarily living in Pakistan. This suggests you would have had the opportunity to register in Pakistan and obtain evidence of this registration. I would expect that you would also be able to provide evidence of the birth of children issued by a Pakistani organisation or authority. This would be consistent with country information.....

On the face of it comments such as the above appear reasonable however it is well known to the Department that a person's actual place of birth may not be written on the Taskeras traditionally the father's place of birth was written. It is also well known to the Department that large numbers of Afghans (especially the Hazara) continue to live undocumented in Pakistan and Iran .

Such requests for responses mean yet again more money to a migration agent for assistance and 4 months to 2 years plus delays in processing.

AMO is still waiting for decisions to be made on submissions to Citizenship lodged in 2019 whereas we lodged other submissions in February 2020 and the clients have already been requested to continue with their citizenship tests.

It is important to also highlight that when an agent advises the Citizenship section that we are instructed to represent the client with their citizenship application, we are sent the Adverse information letters and IF there is a refusal of citizenship, we are sent that decision to give to the client. If the submissions lead to a good result and processing of citizenship continues, the representative is never advised. The applicant is simply contacted direct to go ahead with their citizenship test etc. It is extremely frustrating.

I submit the senate should inquire as to:

- How many clients responded to these adverse information letters themselves and of that group how many were refused citizenship and how many applications continued to be processed.
- How many clients used migration agents to respond and what were the corresponding decisions.

e. NOTICES OF INTENT TO CANCEL VISAS

There have been a large number of IMA who have received refusals of their citizenship and then followed a "Notice of intent to cancel visa" (NOIC).

I understand the set aside rate of such cancellations at the AAT is very high, although I do not have overall statistics. Most of the cancellation appeals (under S109 or s116 of The Act) that AMO has assisted with have been set aside at the AAT.

f. DECISION MAKING

Another factor causing delays and grief to the IMA cohort of clients is the sometimes appalling decision making with decision makers often not following the Migration Regulations or making decisions based on evidence that would never stand in a court of law.

I provide some examples:

- A delegate did not consider a 28 year single Hazara could still be dependent on his/her parent because culturally Hazara are known to be married at a young age and thus the delegate alleged the applicant was in fact married and had not declared it. The delegate had absolutely no evidence to support this conclusion. Dependent applicant refused – set aside at the AAT.
- Delegate did not believe Hazara son was not working (despite the fact the country information is VERY clear about the insecurity/ lack of employment/ covid situation etc in Quetta) and so decided he was not dependent on his father. Dependent refused – decision set aside at the AAT.

- Delegates refusing adult children as dependents stating the migration regulations are that a child over 23 cannot be deemed as dependent. This is not correct for applications lodged in 2013-2015 as the age limit of dependency was not changed until 2016 and delegates are required to make decisions based on the regulations at the time of lodgement of the application. Because of these errors clients face large expenses and further delays appealing the decisions at the AAT. AMO has had a number of these cases and all but one have been set aside at the AAT.
- Delegate refused a partner and 2 dependents on the basis that the couple had not provided enough evidence of their genuine relationship.....**the couple had been married for 36 years and had 6 children.** The only other evidence they had was communication records from viber and what's app and money transfers. There were also misunderstandings between the applicant and the delegate during the phone interview which led to the delegate believing inconsistent evidence had been provided. The case was appealed and set aside at the AAT. The family are still waiting for the Embassy to finalise the application. It is over 10 years since the sponsor came to Australia.
- Delegates in the embassies and citizenship section asserting that clients have given false or misleading information as they have stated their places of birth in one place but taskeras (identity documents) have a different place of birth. This is because traditionally the taskeras always stated the father's place of birth regardless of whether or not the child was born in the same village or born elsewhere. So we see many clients born in Pakistan or Iran but whose Identity document state they were born in Afghanistan. Any decision maker should know this information but they continue to send adverse information letters or PIC 4020 letters despite the fact we provide the same submissions in response every time and the processing continues. In the meantime the family has faced further long delays in processing.

LANDINFO -Country of Origin Information Centre – Report Afghanistan: Taskera, passports and other ID documents – published 22 May 2019

Place of birth is not necessarily the place where the holder was born, but where their spouse or ancestors were born. The Norwegian embassy in Islamabad (e-mail January 2016) states that this information is transferred to a prospective passport and refers to experience from specific cases where children, who are born abroad and have never been to Afghanistan, have Afghan passports where the father's place of birth is given as the place of origin in Afghanistan. It may also be that the place where the tazkera was issued, has been given as place of birth (diplomat source, e-mail March 2017).

- Delegates, especially in the citizenship section, stating it is “not plausible” that an Afghan does not hold Identity documents from Iran or Pakistan if they have lived and worked there for 5 years/ 7 years etc. There is ample information providing evidence that many ,many Afghans remain illegal in both Iran and Pakistan and live and work there with no form of identity documents. Again a decision maker should have such basic information on hand without the need to waste time sending adverse information letters to clients.

2.6 GOVERNMENT POLICY SETTINGS REGARDING RELEVANT VISAS AND THE ROLE OF FAMILY REUNION IN THE MIGRATION PROGRAM;

Government policy settings are driven by various factors including quotas, labour market needs, existing community structures, the economy etc.

I have no expertise in this area but have often felt in my thirty years as a migration agent, that Immigration Policy decision makers forget that people migrating under the family and refugee streams make enormous contributions to our country and are often highly skilled people.

Two immediate examples are the Governor General of South Australia – The Honourable Hieu Van Le AC, and Dr Munjed Al Muderri an internationally acclaimed orthopaedic specialist pioneering work on prosthetics. Both men came to Australia as Irregular Maritime arrivals.

I strongly believe there should be a much stronger focus on the role of family reunion within the migration program. Whether a person has come on a skilled visa, student visa, refugee visa or family visa – they all have family and more often than not will at some stage endeavour to find a visa suitable to bring a family member.

Separation of family – especially separation of partners and children – comes at an economic cost, emotional cost and often leads to significant problems of mental health issues, loss of employment, workplace accidents etc . With the IMA case load we are tragically seeing men whose mental health has now been destroyed beyond repair and left them unable to work and left them ostracised from their own communities. Not only do they grieve the separation from their loved ones, but they live in fear every day that their family members will be killed or not able to survive financially. The stress, delays, financial barriers, barriers to travel and visit family etc have all compounded and left these men desperate and overwhelmed.

The majority of our politicians including our Prime Minister and the Former Minister for Home Affairs and Border Protection (Mr Dutton) regularly stress the importance of their families. Why is this same importance and compassion not reflected in our migration program?

We obviously need boundaries but to deny family reunion to a husband and wife and their children for over 9 years is simply cruel and unjust.

Once family members are here money being sent overseas is spent in Australia, families settle, children seek education, healing takes place and the burden on our mental health care, medical care and social welfare is, in time, alleviated.

Our largest cohort of clients are the Hazara Afghans and it has been incredibly rewarding to see children from these families thrive in Australia, excel in their education and sport, integrate into the community, etc. Many of the Afghan youth have become lawyers, engineers, medical professionals etc and many have opened their own businesses in a variety of industries.

2.7 THE SUITABILITY AND CONSISTENCY OF GOVERNMENT POLICY SETTINGS FOR RELEVANT VISAS WITH AUSTRALIA'S INTERNATIONAL OBLIGATIONS.

The Universal declaration of Human Rights (Article 16) provides for the right to respect for family life as a fundamental right for everyone. And that the family is entitled to protection by society and the State.¹⁸

Whilst the Australian Government is signatory to these various International instruments, and whilst politicians repeatedly stress the importance of their families in speeches to parliament and to the public, why do they at the same time make objectives to prevent family reunion to Australia?

The current Government has consistently tried to claim that if they allow family reunion it will open the flood gates of boat arrivals again. We cannot continue to punish the vulnerable victims of persecution in this way. We have developed significant border control that detects and prevents arrival of more boats and cannot justify keeping on using this excuse to deny family reunion.

Australia is signatory to the Convention Relating to the Status of Refugees and Protocol relating to the Status of refugees, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights etc.

Most of these conventions promote family unity and indeed **the Refugee Convention** recommends that Governments *take the necessary measures for the protection of the refugee's family with a view to : Ensuring that the unity of the refugee's family is maintained particularly in cases where the head of the family has fulfilled the necessary conditions for admission to a particular country*¹⁹

Article 9(1) of the Convention on the Rights of the Child (CRC) provides:

States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

¹⁸ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: <https://www.refworld.org/docid/3ae6b3712c.html> [accessed 26 April 2021]

¹⁹ UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, *Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons*, 25 July 1951, A/CONF.2/108/Rev.1, available at: <https://www.refworld.org/docid/40a8a7394.html> [accessed 26 April 2021]

Article 10 of the Convention on the Rights of the Child (CRC) provides:

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

Refugees who come to Australia on visa subclasses 200,201, 202, 203 and 204 hold rights to propose members of their immediate family under the same refugee visa on which they arrived. But should a person dare to come to Australia on a different visa (or by boat) and seek protection onshore, they are not afforded this right.²⁰

Despite the fact that the holders of permanent protection visas have to pay the same exorbitant partner visa immigration fees as other people, their applications are in large part put on hold until they become Australian citizens.

For the most vulnerable – those who were only granted temporary protection on TPV or SHEV visas, they are completely denied the right to ever reunite with their families in Australia. Ironically, they can marry an Australian permanent resident or Citizen and start a new family and be eligible for a permanent visa by doing so.

Thank you for the opportunity to provide this submission to the Senate Inquiry. I trust the inquiry will fully understand and appreciate the injustice, and the serious consequences on families, due to the long delays to visa processing.

²⁰ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <https://www.refworld.org/docid/3ae6b38f0.html> [accessed 26 April 2021]