

17 November 2021

Senator Kimberley Kitching
Chair
Foreign Affairs, Defence and Trade References Committee
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

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

Dear Senator Kitching

Response to questions on notice – hearing of the Foreign Affairs, Defence and Trade References Committee on 8 November 2021

The Law Council of Australia (**Law Council**) thanks the Foreign Affairs, Defence and Trade References Committee (**Committee**) for the opportunity to appear at the Committee's hearing, on Monday 8 November 2021, regarding its inquiry into Australia's engagement in Afghanistan.

I write to provide a response to the questions which the Law Council took on notice at the hearing. I have also taken the opportunity to expand on some evidence provided on behalf of the Law Council during the hearing.

Questions on notice

1. During the hearing, the Law Council took the following questions on notice:
 1. *How much support and how many visa applicants have your members been processing for Afghan related cases? Within these, how many assisted Australian agencies?*¹
 2. *How many Afghans who have been granted a Subclass 449 visa remain in Afghanistan?*²
 3. *In terms of doing the security checks, what's the view of the Law Council? Is that something that the Australian population should be supporting—that the government still applies a security vetting on people who are applying for visas?*³

¹ Commonwealth, *Hansard*, Senate (Foreign Affairs, Defence and Trade References Committee), 8 November 2021, 15-16 (Senator Kitching).

² *Ibid*, 17 (Senator Rice).

³ *Ibid*, 20 (Senator Fawcett).

Any documentation you could provide to the committee [in relation to determining identity] would be helpful.⁴

Question 1

1. *How much support and how many visa applicants have your members been processing for Afghan related cases? Within these, how many assisted Australian agencies?*
2. The Law Council's members include the 17 law societies and bar associations across Australia and Law Firms Australia (**Constituent Bodies**). Australian legal practitioners may be members of Constituent Bodies. In addition, Australian legal practitioners can be members of one of the Law Council's specialist Sections.
3. In the time available, the Law Council is not able to provide a reliable, comprehensive figure about the number of additional people who have sought legal assistance from Australian practitioners arising from the situation in Afghanistan from its membership. The Law Council's response below is based on anecdotal information it has received from the Law Institute of Victoria, the Queensland Law Society and the Migration Law Committee of the Law Council's Federal Litigation and Dispute Resolution Section. Those entities provided input based on the experience of their members, some of whom work in private law firms or with community legal centres.
4. As suggested in the hearing, the Law Council suggests that the Committee may wish to seek more detailed information from community legal centres which specialise in providing assistance to asylum seekers.
5. The Law Council has received reports of an increase in requests for legal advice relating to the situation in Afghanistan since August 2021.
6. One practitioner in a private law firm noted that of the 60 such files opened in this time, only six were able to pay and they will be unable to assist with the pro bono cases until they obtain more resources.
7. Another private law firm indicated that they had lodged over 100 applications on behalf of Afghans and were continuing to field calls and enquiries and had held forums for Afghans in Australia including forums for persons in Swan Hill / Mildura and Melbourne.
8. Another specialist commercial immigration law firm advised that they are working with a not-for-profit organisation to prepare humanitarian visa applications for the organisation's Afghan employees on a pro bono basis. Due to the firm's resourcing and capacity restraints and the limited number of staff with humanitarian visa experience, a maximum of ten cases are being managed at any given time with the view to taking on more cases where capacity allows. The not-for-profit organisation has approximately 170 employees that need assistance, with this number exceeding 900 when including dependent family members. It is noted that the organisation had originally approached local legal community centres for assistance. However, these legal community centres were at capacity and one centre could only offer to assist with final review of humanitarian applications. A number of practitioners are also

⁴ Ibid, (Senator Kitching).

assisting on a pro bono basis in clinics run by not-for-profit legal services after hours and on weekends.

9. These practitioners reported that these new matters related to people in Afghanistan and in neighbouring countries, and people in Australia.
10. The following kinds of advice were sought:
 - humanitarian visas for Afghans physically in Afghanistan or surrounding countries without any extended relatives in Australia;
 - family reunion (eg, partner, child and parent visas) for families who are offshore (in Afghanistan or neighbouring countries), including with regard to permanent visa holders who came by boat and are wanting to get priority for their spouses' pending partner (Subclass 309/100) visas;
 - Afghans in Australia who:
 - have been subject to visa cancellation/citizenship refusals due to identity issues relating to taskeras (Afghan identity cards - see discussion below);
 - have judicial review matters on foot in Australia, seeking advice on their case, or if they have other options;
 - advice about progressing Australian citizenship applications;
 - Afghan Subclass 790 (Safe Haven Enterprise) visa (**SHEV**) and Subclass 785 (Temporary Protection) visa (**TPV**) holders about whether there are alternate pathways for permanent residency and options for family members
 - have had their protection visa refused and have exhausted all merits review and judicial review options available and are seeking advice on how to request the Minister exercise the power in subsection 48B of the *Migration Act 1958* (Cth) (**Migration Act**) to enable them to lodge a new visa application. One practitioner noted that an email address set up by a pro bono clearing house to address these kinds of requests has received an 'overwhelming' amount of traffic. That practitioner noted that they had not received a response indicating how any such requests may be dealt with. A community legal centre which provided a response suggested 'significant number of requests' had fallen within this cohort;
 - Offshore subclass 117 Orphan Relative visas;
 - Subclass 449 (Humanitarian Stay (Temporary)) visa holders in Australia wanting advice; and
 - skilled pathways that may be open for (doctors and other professionals etc).
11. One community legal centre which specialises in refugee and asylum seeker matters provided the following information:

For the first three weeks after the Taliban took control of Afghanistan, [the centre] received about 650 requests for legal assistance. Demand stabilised after this initial period. [the centre] has continued to receive between 10 and 20 new requests for assistance in relation to Afghanistan since. In total, [the centre] has received approximately 830 requests for assistance.

Please note that this number only includes requests from people who are eligible for our services, that is, people who are in [their State]. ...

Please note, as way of a comparison, that for the same period (between 15 August 2021 and today), [the centre] has received approximately 300 requests for assistance for all of our other programs combined.

12. Most practitioners who provided information about their experiences had dealt with matters involving people who had claimed to work for Australian agencies in Afghanistan, included for sub-contracted firms, including from family members of such persons. One noted that 'they do seem to be obtaining assistance to get to Australia however the process has been extremely uncertain and the lack of information provided from [the Department of Home Affairs] to us makes it very difficult'.
13. The Law Council considers that these accounts reinforce two points made in its submission and in the opening statement made at the hearing:
 - increased, sustainable financial support should be provided to legal assistance services in Australia to provide legal advice to persons relating to the situation in Afghanistan, in addition to the assistance already announced for Subclass 449 visa holders;
 - the Minister should urgently review the cases of Afghans in Australia who have been refused a protection visa and consider exercising powers under sections 46A and section 48B of the Migration Act to lift the bar to permit another protection application to be lodged. The country information has changed and Australia's protection obligations may now be engaged. This is critically important as in the vast majority of case with the onshore cohorts the Department and/or the Immigration Assessment Authority accepted that the applicants would face a real chance of persecution if they returned to their home areas in Afghanistan but they would be able to live safely in Kabul or Mazar-e-Sharif – which is obviously a situation no longer possible.
14. It appears that a large number of Afghans in Australia are concerned about their status and possible return to Afghanistan and their family members who remain in Afghanistan and surrounding countries.

Question 2

2. *How many Afghans who have been granted a Subclass 449 visa remain in Afghanistan?*
15. The Law Council understands that this issue may have been discussed with the Department of Home Affairs (**Department**) during its appearance before the Committee on 15 November, but at the time of writing no transcript of that hearing is available. In any event, going forward, the Law Council suggests the Committee seek current figures in response to this question from the Department.

16. Based on publicly available information at the time of writing, the Law Council notes that evidence given by the Department to a hearing of Senate Estimates on 25 October 2021 is that 5,337 Subclass 449 visas were granted to Afghans between the fall of the former Afghan government and 12 October 2021.⁵ At that time, 2,844 of those people were in Australia.⁶ That leaves 2,493 Afghans holding subclass 449 visas who were outside of Australia as of 25 October 2021.
17. The Department noted during that hearing that it is plausible that some of the Afghans holding Subclass 449 visas have departed Afghanistan, but they do not know.⁷

Question 3

3. *Is it reasonable for the Department, when processing visa applications, to consider security matters? What information can be provided about an approach which should be taken to ascertain the identity of applicants?*

It is reasonable to assess security risks

18. It is reasonable for the Minister and departmental delegates to consider security-related matters in deciding whether to grant a visa to a person. Subsection 4(1) of the Migration Act provides that the **object of the Act is to regulate, in the national interest, the coming into, and presence in, Australia of non-citizens**. The Law Council considers there is a national interest in the regulatory scheme requiring reasonable steps be taken to ensure that a such a person does not pose a security risk to the Australian public.
19. This object is given effect, as it applies to security matters, by several visa criteria which require consideration of whether or not a person poses a risk to the Australian public. An overview of those criteria is set out in the **Appendix**. As the Law Council suggested in its submission, any decisions to grant a protection visa should be subject to the satisfaction of those criteria.⁸
20. Relevance of identity to security
21. As noted in its submission, the Law Council understands that identity checks are an important component of the visa application process and that confirming a person's identity is an important part of managing possible security risks.⁹
22. The importance of identity to the operation of the Act is reflected in subsection 4(3) of the Migration Act, which provides that to advance the general object referred to above, the Act provides for non-citizens and citizens to be required to provide personal identifiers for the purposes of this Act or the regulations.
23. The Department notes on its website, in relation to an application for a protection visa, that information about 'identity, nationality or citizenship is essential for

⁵ Commonwealth, *Hansard*, Senate (Legal and Constitutional Affairs Legislation Committee), 25 October 2021, 95 (Ms Sally Pfeiffer, Assistant Secretary, Humanitarian Program Operations).

⁶ Ibid, (Mr David Wilden, First Assistant Secretary, Refugee, Humanitarian and Settlement).

⁷ Ibid, (Mr Michael Pezzullo, Secretary, Department of Home Affairs).

⁸ Law Council of Australia, submission no 46 to the Senate Foreign Affairs, Defence and Trade References Committee, *Australia's engagement in Afghanistan* (13 October 2021), <[link](#)>, [118] and [124].

⁹ Ibid, [88].

assessing [a person's] claims for protection and completing character and security checks'.¹⁰

24. The position of the Department on the nexus between identity and security matters is captured in an article published by the Lowy Institute by a Departmental Protection Visa Case Officer, 'Comparative International Approaches to Establishing Identity in Undocumented Asylum Seekers', published in April 2018 (**Lowy Institute article**):¹¹

Given the current international environment and the threat of terrorism, asylum seekers have assumed a national security profile. Chaotic and unmanaged border crossings offer opportunities for all transnational threats to spread. A lack of verifiable identity documents increases exposure to such risk and raises suspicion in the receiving community.

25. That article also describes a separate difficulty arising from determining the identity of Afghan asylum seekers, arising from the unreliable nature of the documentation produced by Afghan authorities:¹²

In Afghanistan the most prevalent identity document is a taskera certificate, one page outlining basic narrative details such as name, date of birth and birthplace alongside a photograph. The format is non-standard and lacks any modern security features. A signature and stamp are often affixed by a local elder as an endorsement. Further, a taskera certificate is often accepted for preparing official documents, including Afghan passports.

The ease with which bogus Afghan documentation can be obtained — in either Afghanistan or Pakistan — makes it difficult to either verify or refute a claimed identity. A 2011 report by the US Embassy in Kabul noted that "Most, if not all, Afghan documents are ripe for fraud ... they remain handwritten, usually unsealed and quite commonly do not contain true information".

Perhaps unsurprisingly, applicants who list Afghanistan as their country of origin demonstrate high rates of fraudulent behaviours compared to other cohorts. However, this is not necessarily representative of active attempts to deceive Australian authorities, but rather an indicator of how easily fraudulent documents can be obtained in Afghanistan as well the prevalence and normality of fraudulent documents. It highlights the difficulty for asylum seekers in understanding what a bogus, non-genuine, or fraudulent document is, and what is required by Australian authorities and why.

26. Historically, the experience of legal practitioners is that establishing the identity of Afghans has been a difficult task and has contributed to it generally taking longer to process such applications than ordinarily applies.
27. Information provided by the Department under *Freedom of Information Act 1982* (Cth) (**attached**) records that the time taken to process Prospective Marriage (Subclass 300) and Partner (Subclass 309) visas in each financial year since 2012-13 has been significantly longer than to process claims for the same visas lodged by

¹⁰ Department of Home Affairs, 'Identity requirements for protection visa applicants' (website), <[link](#)>, accessed on 10 November 2021.

¹¹ Kristian Hollins, 'Comparative International Approaches to Establishing Identity in Undocumented Asylum Seekers' (April 2018), *Lowy Institute*, <[link](#)>.

¹² Ibid – footnotes removed.

citizens of India, Pakistan, United Kingdom and the United States. For example, in the 2020-21 financial year:

- 90 per cent of applications from United States' nationals were decided in 17 months (the shortest of the five);
 - 90 per cent of applications from Indian nationals were decided in 23 months (the second longest of the five); and
 - 90 per cent of application from Afghan nationals were decided in 60 months.
28. The experience of practitioners is that the difficulties in resolving matters of identity is one of the factors that has contributed to longer processing times. This includes in cases where a waiver of Ministerial Direction 80 (which ordinarily places applications lodged on behalf of family members of Afghan permanent Protection visa holders who originally arrived by boat on the last priority for processing) provided.
29. As noted in the Law Council's submission, this has been exacerbated by the present circumstances.¹³

There are now clear difficulties with conducting such checks for Afghans, given a lack of embassy and government staff on the ground to facilitate them, and difficulties producing documents. Practitioners have reported that due to the ongoing crisis, some clients from Afghanistan are no longer able to obtain passports or birth certificates for their children in parts of Afghanistan. Additionally, many clients who did not have passports prior to the Taliban resuming power are fearful of presenting at a passport office for fear of alerting the Taliban to their whereabouts.

30. This experience is supported by United Nations High Commissioner for Refugees (UNHCR) data, which suggests that:
- between 17 August 2021 and 6 November 2021, 27% of Afghan asylum seekers who registered with the UNHCR in Iran do not have any identity documentation;¹⁴
 - between 1 January 2021 and 1 November 2021, 20% of Afghan asylum seekers who registered with the UNHCR in Pakistan do not have any identity documentation.¹⁵

The use of other evidence to determine identity

31. In these circumstances, it is likely that some Afghans seeking asylum as a result of recent events will present without identification documentation.
32. The Law Council cannot speak with authority on the adequacy of the Department's processes for establishing identity – this is a matter which could be taken up with it – but submits that it should at least ensure it is consistent with the UN guidance. That guidance suggests that in circumstances where an asylum seeker presents without identity documentation, authorities seeking to confirm the person's identity should

¹³ Law Council of Australia, n 16, [89].

¹⁴ UNHCR, 'UNHCR Iran: New Arrivals from Afghanistan - 6 November 2021', <[link](#)>.

¹⁵ UNHCR, 'UNHCR Pakistan: New Arrivals from Afghanistan (1 November 2021)', <[link](#)>.

use interviews, specialist knowledge of local customs, and a broader range of documentary evidence to do so.

33. The International Civil Aviation Organisation (ICAO), the United Nations Specialized Agency with the responsibility for establishing Standards and Recommended Practices related to the travel documents and border control processes has published a document, Guide on Evidence of Identity (ICAO Guide). The ICAO has a section which focuses on establishing the identity of refugees, including when they present without identification.¹⁶ It states:

Refugees may not be able to provide a valid passport and/or other identity documents, as they often arrive at the border or asylum states with only the barest necessities Refugees also may not be able to obtain such documents from their country of origin, embassy and/or consulate at their time of arrival or later, as this may put them at risk of serious harm.

...

Refugee and border control authorities will therefore need to rely to a greater extent on of the evidence collected during inperson applications and interviews, as well as staff knowledge of the applicant's country of origin, local culture and other local information.

The starting point may be an interview, a biographic search to ensure that a similar identity is not registered elsewhere, biometric verification for uniqueness, and possibly verification through trusted referees and through possible social footprint evidence obtained from other groups and relatives. In challenging contexts, it may be useful to be able to analyse data and information that may form links between individuals in the system (where appropriate) – as mobilised and vulnerable populations will still have commonalities amongst them that will enable a degree of risk management, and in turn build confidence in some claimed identities over others.

34. The UNHCR Guidance of Registration and Identity Management,¹⁷ which applies to refugees and asylum seekers, also provides guidance on how to determine identity, including where the person lacks formal identity documentation. The material suggests that where individuals do not present valid documentation more time may need to be spent interviewing them to ascertain identity, including conducting separate interviews with family members. Further, it suggests that other available personal documents should be reviewed such as a civil registry extract for the individual or family, family booklet, birth notification, travel documents, identity or entitlement documents issued in the country of asylum, other documents that support the existence of dependency relationships or community (including digital community) involvement.
35. The Lowy Institute article makes a longer term suggestion that the legislative scheme under the Migration Act could be more effective by establishing an 'identity anchor', which hinges on an 'internationally accepted standard of identity document — such as a Multipass — which commences at the point of first interaction with officials and contains as much verifiable data as possible'. The article suggests the adaptation of something akin to the UNHCR's new Biometric Identity Management System which links biometric data to refugee registration data 'in order to anchor an individual refugee's claimed identity with a verifiable and easily checked source of

¹⁶ ICAO, 'ICAO TRIP Guide on Evidence of Identity' <https://www.icao.int/Security/FAL/TRIP/Documents/ICAO%20Guidance%20on%20Evidence%20of%20Identity.pdf>.

¹⁷ UNHCR, 'Guidance on Registration and Identity Management' – '5.2 Registration as an Identity Management Process' (website), <[link](#)>, accessed on 11 November 2021..

biometric identity data'. Australia should make use of these kinds of datasets wherever possible, with the consent of an applicant.

The bogus documentation regime

36. Section 91W of the Migration Act presently places an onus on applicants for a protection visa to provide documentary evidence of identity. Notably, this does not apply to the Subclass 200, 201 and 202 offshore humanitarian visas and for present circumstances would likely only apply to persons in Australia who are applying for a Subclass 866 (Protection) visa.
37. In summary, section 91W provides that the Minister or an officer may request a protection visa applicant to produce documentation evidence of identity, nationality or citizenship. The Minister is obliged to refuse the visa if, relevantly:
 - the applicant refuses or fails to comply with the request, or produces a bogus document in response and does not have a reasonable excuse; *unless*
 - the person provides a reasonable excuse and either produces documentary evidence of his or her identity, nationality or citizenship or takes reasonable steps to produce it.
38. If a person is refused a visa on the basis that they have not satisfied the Minister of their identity they will not satisfy PIC 4020, a criterion for most visas (although, notably, not the Subclass 200, 201 and 202 offshore humanitarian visas), for at least ten years.¹⁸
39. This section could have an onerous application to a person who does not hold documentary evidence of their identity, through no fault of their own, and is unable to retrieve such evidence given the circumstances in Afghanistan under Taliban rule. Much would turn on what the Minister or delegate considers to amount to 'reasonable steps to provide such evidence'. The Law Council suggests a flexible approach should be taken.
40. In the longer term, the Law Council suggests consideration be given to whether this scheme is properly mindful of the possibility that an asylum seeker may not have been able to retain documentary evidence on their identity when fleeing their home country and not be able to reasonably obtain such evidence from their home country.

Expansion

41. During the hearing, Law Council representatives were asked by Senator Lambie whether Australia has legal obligations to Afghan nationals who worked alongside our troops.¹⁹
42. The answer provided indicated that this was the case.²⁰ In particular, this answer was directed towards the operation of IMMI 12/127, which prescribes a class of persons who, by virtue their employment with certain listed Australian agencies

¹⁸ Subclause 4020(2B) of Schedule 4 to the Migration Regulations 1994 (Cth).

¹⁹ Commonwealth, n 1, 16 (Senator Lambie).

²⁰ Ibid, 17 (Ms Carina Ford).

operating in Afghanistan, may meet the criteria for a Subclass 200 (Refugee) or Subclass 201 (In-country Special Humanitarian) visa.²¹

43. Specifically, paragraphs 200.211(1A)(b) and 201.211(1A)(b) of Schedule 2 to the Migration Regulations 1994 (Cth) provide that a person will satisfy a criterion for a Subclass 200 (Refugee) or Subclass 201 (In-country Special Humanitarian) visa if the Minister certifies the person comes within that class and is 'at risk of harm for a reason, or reasons, that relate to the applicant being in that class of persons'.
44. Relevantly, clause 3 of IMMI 12/127 provides, in part:
- ...[A] class of persons are all non-citizens employed with the Department of Foreign Affairs and Trade (DFAT), the Australian Defence Force (ADF), the Australian Agency for International Development (AusAID) or the Australian Federal Police (AFP):*
- (a) *who have been assessed as being at significant individual risk of harm as a result of their support to Australia's whole of Government mission in Afghanistan due to their role, location, employment period and currency of employment; including:*
- (i) *interpreters in Uruzgan Province in positions funded by DFAT; or*
- (ii) *interpreters or instructors employed with the ADF or AFP; or*
- (iii) *project, facilities management and advisory staff in the Provincial Reconstruction Team in Uruzgan on behalf of AusAID and/or DFAT; or*
- (iv) *a person who is able to satisfy the relevant agency Minister that exceptional circumstances exist for that Minister to certify that the non-citizen is in that class of persons; and*
- (b) *are not, or were not, an Afghan government or military official or employed in a private security capacity*
- ...
45. As discussed with Senator Fawcett later in the hearing,²² not all Afghan nationals who worked alongside our troops, will necessarily come within that class of persons for the purposes of those visa criteria. It is a matter for the Minister to certify on a case-by-case basis, considering the circumstances of the applicant, whether an applicant comes within that class.
46. Following a review of the transcript, the Law Council notes that it may be possible to read Senator Lambie's question as also encompassing any inherent legal obligations (arising by virtue of international law or otherwise) towards Afghan nationals who may have worked with Australian troops *by virtue of that activity alone*. Put another way: whether any legal obligations arise, regardless of the operation of a statutory visa criteria, because working with Australian troops has generated a risk of harm.
47. In the time available for response, the Law Council has not had the opportunity to comprehensively consider this potentially complex aspect that may depend on a number of factors. The Law Council would be pleased to consider and advise further on this question should Committee find this useful and time permitting.

²¹ Clause 3 of IMMI 12/127.

²² Commonwealth, n 1, 20 (Senator Fawcett).

Yours sincerely

Dr Jacoba Brasch QC
President

APPENDIX

Security-related visa criteria

1. The Minister may refuse to grant any visa to a person if the person does not satisfy the Minister that the person passes the character test,¹ or if the Minister reasonably suspects that the person does not pass the character test is satisfied that the refusal or cancellation is in the national interest.²
2. Subsection 501A(6) of the *Migration Act 1958* (Cth) provides the circumstances in which a person will be taken not to pass the character test, which relevantly include matters going to:
 - the person's criminal record or involvement in past criminal conduct;
 - a reasonable suspicion as to the person's involvement in people smuggling, people trafficking or certain kinds of international crimes;
 - the risk the person would engage in criminal conduct, harassment, or vilification, would incite discord, or otherwise represent a danger to the Australian community or to a segment of that community;
 - the person being assessed by the Australian Security Intelligence Organisation (ASIO) to be directly or indirectly a risk to security.
3. Additionally, any applicant for a Subclass 866 (Protection) visa must satisfy the following security-related criteria:
 - an ASIO assessment that they pose a direct or indirect risk to security;³
 - the Minister considers them, on reasonable grounds, to be a danger to Australia's security or the Australian community;⁴
 - the Minister has serious reasons for considering the person has: committed a crime against peace, a war crime or a crime against humanity; has committed a serious non-political crime; or been guilty of acts contrary to the purposes and principles of the United Nations.⁵
4. To the extent that the criteria apply to a person who may engage Australia's obligations under the Refugee Convention⁶ (as opposed to complementary protection), the matters in the last dot point of the previous paragraph reflect an

¹ Subsection 501A(1) of the *Migration Act 1958* (Cth).

² Ibid, subsection 501A(3).

³ Ibid, subsection 36(1B).

⁴ Ibid, subsection 36(1C) and paragraph 36(2C)(b).

⁵ Ibid, subsection 5H(2) and paragraph 36(2C)(b).

⁶ Convention relating to the Status of Refugees, opened for signature 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954); Protocol relating to the Status of Refugees, opened for signature 31 January 1967, 606 UNTS 267 (entered into force 4 October 1967).

exemption to Australia's obligations which is contained within the text of the Convention itself.⁷

5. It is noted that a Subclass 866 (Protection) visa must be lodged onshore and thus these criteria would apply to Afghans who recently arrived in Australia on a Subclass 449 (Humanitarian Stay) Temporary visa who are permitted to lodge such a visa.
6. An offshore applicant, lodging an application for a permanent Subclass 200 (Refugee), Subclass 201 (In-Country Special Humanitarian) and Subclass 202 (Global Special Humanitarian) visa will not need to satisfy the criteria in paragraph 16 (but would be subject to the character test).

⁷ Specifically, Article 1F of the Refugee Convention. This relates to subsection 5F(2). See Explanatory Memorandum, Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014 (Cth), [1172].



Freedom of Information Request FA 21/08/01035

Request:

Please confirm the average processing time by programme year since 2012 for Offshore Partner Visa applications lodged by the citizens of the following countries:

Afghanistan
India
Pakistan
United Kingdom
United States

Response:

Offshore - Prospective Marriage (Subclass 300) and Partner (Subclass 309) visa applications - Processing times since 1 July 2012 to 30 June 2021 – Afghanistan, India, Pakistan, United Kingdom and the United States

Financial Year	2012-13		2013-14	
Citizenship Country	75th Percentile	90th Percentile	75th Percentile	90th Percentile
Afghanistan	16 Months	23 Months	21 Months	32 Months
India	7 Months	9 Months	8 Months	10 Months
Pakistan	12 Months	17 Months	10 Months	17 Months
United Kingdom	7 Months	8 Months	9 Months	10 Months
United States of America	7 Months	9 Months	9 Months	12 Months

Financial Year	2014-15		2015-16	
Citizenship Country	75th Percentile	90th Percentile	75th Percentile	90th Percentile
Afghanistan	20 Months	26 Months	17 Months	31 Months
India	11 Months	13 Months	12 Months	14 Months
Pakistan	11 Months	15 Months	11 Months	15 Months
United Kingdom	9 Months	10 Months	10 Months	12 Months
United States of America	9 Months	11 Months	9 Months	12 Months

Financial Year	2016-17		2017-18	
Citizenship Country	75th Percentile	90th Percentile	75th Percentile	90th Percentile
Afghanistan	15 Months	30 Months	17 Months	53 Months
India	11 Months	14 Months	9 Months	14 Months
Pakistan	14 Months	21 Months	13 Months	16 Months
United Kingdom	7 Months	10 Months	7 Months	9 Months
United States of America	10 Months	16 Months	14 Months	16 Months

Financial Year	2018-19		2019-20	
Citizenship Country	75th Percentile	90th Percentile	75th Percentile	90th Percentile
Afghanistan	21 Months	42 Months	20 Months	31 Months
India	11 Months	17 Months	15 Months	18 Months
Pakistan	13 Months	17 Months	14 Months	18 Months
United Kingdom	9 Months	11 Months	11 Months	12 Months
United States of America	17 Months	19 Months	14 Months	18 Months

Financial Year	2020-21	
Citizenship Country	75th Percentile	90th Percentile
Afghanistan	36 Months	60 Months
India	20 Months	23 Months
Pakistan	14 Months	19 Months
United Kingdom	13 Months	18 Months
United States of America	12 Months	17 Months

Caveats:

1. A percentile is a measure used in statistics indicating the value below which a given percentage of observations in a group of observations falls.
2. Partner visa applications involve a two stage process, and the two applications must be lodged together. That is, the offshore Partner (Provisional) (subclass 309) visa is lodged with the Partner (Migrant) (subclass 100) visa; and the onshore Partner (Temporary) (subclass 820) visa is lodged with the Partner (Residence) (subclass 801) visa. The two applications are counted separately, and in the majority of cases decided at different times.
3. A Prospective Marriage (Subclass 300) visa holder is permitted to enter Australia with their spouse and apply for a Partner (Subclass 820/810) visa.
4. Processing times are calculated where the **Client location is offshore for first stage partner only** (Subclass 300, 309) by the **nationalities requested**.