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

Dear Senate Legal and Constitutional Affairs Committee,

Inquiry into the efficacy, fairness, timeliness and costs of visa classes which provide for or allow for family and partner reunions

The Vietnamese Australian Lawyers' Association (VALA) is a not-for-profit and non-government organisation. Our primary objectives are to provide legal education, awareness, and assistance to the disadvantaged members of the community, including vulnerable people, refugees and victims of discrimination and other forms of human rights abuses, and networking among the legal practitioners and law students.

VALA welcomes the opportunity to provide a submission to the Senate Legal and Constitutional Affairs Committee on the efficacy, fairness, timeliness and costs of visa classes that provide for or allow for family and partner reunions.

This submission considers - Terms of reference:

a. limitations on eligibility to apply for relevant visas;

Member of the family unit

Member of the family unit is defined under Regulation 1.12(2) as:

> *"**(2)** A person is a member of the family unit of another person (the **family head**) if the person:*
> *(a) is a spouse or de facto partner of the family head; or*
> *(b) is a child or step-child of the family head or of a spouse or de facto partner of the family head (other than a child or step-child who is engaged to be married or has a spouse or de facto partner) and:*
> *(i) has not turned 18; or*
> *(ii) has turned 18, but has not turned 23, and is dependent on the family head or on the spouse or de facto partner of the family head; or*
> *(iii) has turned 23 and is under paragraph 1.05A(1)(b) dependent on the family head or on the spouse or de facto partner of the family head; or*
> *(c) is a dependent child of a person who meets the conditions in paragraph (b)."*

There is a limitation for the inclusion of children in the Applicant's visa application. That sets the age of a member of a family unit to 23 years of age. The dependent child might be excluded from the visa grant if the child turned 23 years of age at the time of decision. It is disheartening for parents to exclude them from their visa application if they are their only child and still dependent on them at the time of the visa grant. It separates family rather than uniting families.

Suppose the dependent child is over 23 years of age but is physically or mentally disabled. In that case, their physical or mental health issues may fail the health test, and they may be excluded from the Applicant whether they are dependent on the primary visa applicant or the sponsor.

The processing time for all visa applications is taking longer. Therefore, the age of a family unit member should not be set at 23 years of age at the time of the visa grant. So long as that member of the family unit was 23 years of age or under at the time of visa application and remains dependent on the primary visa applicant, that member of the family unit should still be eligible for a visa grant. Alternatively, align the dependent child's eligibility to that of a child visa subclass 101 or subclass 802 where the child is under 18 years old, or over 18 and under 25 years and studying full time, or over 18 years with a disability.

Balance of family test

To be eligible to apply for any parent visas including Parent, Contributory Parent (Temporary & Permanent), Aged Parent, Contributory Aged Parent (Temporary & Permanent), parents must meet the balance of family test to measure the parents' family links to Australia. Suppose any parents have more children in their home country or any other country is more than their total children in Australia (Australian citizen or permanent resident). In that case, the parents will not be eligible and cannot apply for any parent visa to migrate to Australia to live with their children.

Having a child or children in Australia should be sufficient enough to show the links as the Australian citizen or permanent resident should have the right to sponsor their parents to live with them in Australia regardless of the number of children the parents have anywhere in the world. It creates a limitation on children wishing to sponsor their parents to Australia, and there is no waiver for compelling and compassionate circumstances.

It leads to people asking the questions: why do we need to the balance of family test? What is the purpose of the test? Is the test in place to limit the number of families migrating to Australia?

There should be a waiver of the balance of family test in compelling and compassionate circumstances.

b. waiting times for processing and integrity checking of applications for relevant visas; and c. waiting times for the granting of relevant visa;

Waiting times for processing is an atrocious process and leads to problems within the family rather than assisting the reunion of Australians or permanent residents and their families and relatives overseas. There are instances where the relationship has broken down during the long

and agonising process, young children separating from their sponsor parent and family member in Australia needing care died before a visa is granted to their carer. Many of VALA's members are solicitors practising in the area of Immigration law. Through the years, they have seen cases of sponsors for Carer visa who have passed away before the visa application has been processed.

The current processing time for a parent visa under subclass 103 is over 20 years, contributory parent visa is over 5 years, and aged parent visa is over 8 years[1]. The estimated waiting time for Carer visa applications to be released for final processing is up to 5 years.

It is horrendous for last remaining relative visas where the waiting time is around 50 years[2] . There is a requirement that the visa applicant must not have other family members in their home country, meaning that they cannot marry or have children because doing so may disqualify them from obtaining the visa. To be eligible, the visa applicant and their partner must not have near relative outside of Australia, which means that their partner cannot have parents outside Australia. If the visa applicant has children, they must be under 18 years of age.[3] One would question the purpose of having the last remaining relative visa category with such strict criteria and ridiculously long waiting time.

d. cost of applying for relevant visas;

The Government has moved from a flat cost per application to also costing all secondary applicants. Families with children are penalised. Partner visa costs should align with other visas. There are instances in partner visas where children have been left behind because the new partner considers the overseas partner's children too expensive in the application fee. In such circumstances, the Government has inadvertently separating the children from their parent by charging secondary visa applicant additional costs. The application fee should be a flat rate, and secondary visa applicants should not pay the additional application fee.

e. commitments required for the granting of relevant visas;

The grant of visas overseas should allow overseas visa applicant to extend first entry into Australia in visa grants or can be extended. For example, the visa 300 subclass can be extended if the Applicant cannot enter Australia before the due date. Due to the long processing time, overseas visa applicants need to continue with their daily lives, including working, operating their business and other commitment, and cannot halt or drop everything to travel to Australia in a limited time given. It could be said that the visa applicant can enter Australia first to activate their visa and return to their home country at a later date to finalise their financial and other affairs. That is possible but cause unnecessary costs to the visa applicant and the sponsor.

[1] https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-processing-times/family-visa-processing-priorities/parent-visas-queue-release-dates
[2] https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-processing-times/family-visa-processing-priorities/other-family-visas-queue-release-dates
[3] https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/remaining-relative-115#Eligibility

f. government policy settings regarding relevant visas and the role of family reunion in the Migration Program;

Family reunion provides for greater support and stability of family members in Australia. For many women having parents in Australia to provide support and child care is important.

The Government has de facto caps on partner visa applications by delaying applications. The processing time can take up to over 24 months in some cases and not beneficial to family reunion.

COVID-19 has indicated that the Migration Act and Regulations are rigid in their requirements. For example, for the subclass 309 and parent 143 visa the Applicant have to be offshore to be granted the visa. It should be more flexible. The Government should allow for a waiver in compassionate and compelling circumstances where the visa applicant is unable to leave Australia in order for the grant of their visa. This is particularly important during a pandemic or civil unrest in the applicant's home countries where it is dangerous for them to depart Australia.

The Government has restricted the prospective spouse visa subclass 300, where the visa applicant received their visa grant. However, they cannot enter Australia, and there is no exemption. There are travel exemptions for immediate family members, partner, de facto partner, children, and legal guardian of Australian citizens and permanent resident; however, it excludes prospective spouse. It seems that the Government is punishing prospective spouse and their sponsor because they are not married or living together for at least 12 months.

Granting a visa, however, not allowing entry causes hardship to the visa applicant and their sponsor. The travel time is extended to 12 months for prospective spouse visa applicants; however, due to the unpredictability of the pandemic, there is no certainty that Australia's borders will be open for international travellers within the timeframe. If the visa grant expires before the visa applicant's first entry, the visa applicant will need to re-apply for their prospective spouse visa. Although the visa application fees will be refunded to the visa applicant, they will need to go through the process of applying for their visa and waiting for their application to be processed again. This is an unfair and cruel requirement to the visa applicant and their sponsor. The Government should be more flexible in its travel requirements for visa grant.

g. eligibility for and access to family reunion for people who have sought protection in Australia;

People who have sought protection in Australia should have priority for family reunion and no application fees to be paid. The current processing priority for sponsor holding permanent protection visa in sponsoring their family is the lowest on the priority list. The current processing time for partner visa applications with higher priority could take up to 24 months. With the lowest priority, holders of permanent protection visa may never be able to sponsor their family to Australia. It is degrading and cruel treatment of people on protection visas and preventing them from truly settling in Australia. They have already suffered from their home country, hence the need for protection from the Australian Government. By denying or limiting their access to family reunion is further punishment for what they have already suffered. It

causes mental and emotional hardship for those already suffered so much. The Government is discriminating against people seeking protection in Australia. We should and must treat them equally to all permanent resident who obtained their permanent visa through other means.

The women at risk program apply the same rule as other visas where the dependent child have to be under 23 years of age. The Government should be more flexible and allow dependent child at any age to be included in the primary applicant's application and limit breaking the family unit. The women at risk program should have a higher priority in the protection visa programs.

h. the suitability and consistency of government policy settings for relevant visas with Australia's international obligations;

Children born to an Australian citizen or permanent resident

Through the experiences of many of VALA's members, there seems to be a gap affecting children who are children of a person entering Australia on a visitor visa or student visa and an Australian citizen or permanent resident and left without their legal status or entitlement as an Australian citizen. The children's biological father refused to take responsibility for the child born from their extramarital relationship. The children are left without legal rights or status, which they are entitled to. There were instances when the biological father was ordered by the Family Court to obtain DNA testing to confirm parentage; however, the biological father contravened the Court Order. The child's mother cannot do anything due to the time limit on their visa and costs to litigate the matter in Court further. The children have the right to a legally registered name and nationality. Children also have the right to know their parents and, as far as possible, to be cared for by them.[4] The Australian Government has failed the children in this circumstance and must have a policy in place to assist the children born to an Australian citizen or permanent resident to have their Australian status and entitlements granted.

Australian citizen children sponsoring parents on parent visa

The particular concerns of children sponsoring parents are lengthy and costly. There should be priority processing for children under 18 years old sponsoring their parents as five years processing time is too long for children to be separated from their parent. It should be a speedy and flexible process, for example allowing the parent/s to remain in Australia on a bridging visa while the application is being processed. Alternatively, allowing the parent/s to apply for a guardian visa or extension of their visitor visa until the child is 18 years of age.

Illegal entry who have spent their informative years in Australia

A small number of persons came to Australia as young children and spent their informative years in Australia illegal. They considered Australia as their home and should be granted a visa to allow them to stay in Australia as they have spent their informative years in Australia.

[4] Article 7 of the Convention on the Rights of the Child

i. the budgetary and governmental impacts of relevant visas, including on state, territory and local governments; and

As part of the 2020-21 Federal Budget, the Government announced that it would implement reforms to strengthen the integration outcomes of the Partner program by the end of 2021, which includes introducing an English language requirement for permanent resident sponsors and Partner visa applicants.[5] The Department of Home Affairs (the Department) used one source of data over 5 years old to conclude that 13 per cent of those with no English skills are employed. No data shows the link between unemployment and English proficiency in the Labour – Characteristics of Recent Migrants 2019 statistics[6]. Therefore, it is improbable for the Department to use data from 2016 to establish such links.

The English language requirement for permanent resident sponsors and Partner visa applicants will further delay the application processing time if the sponsor must be assessed for eligibility before being permitted to sponsor their partner from overseas. The sponsor's assessment is another method to reduce the backlog of partner visa applications and a new gateway created to lengthen the processing time without affecting the partner visa application.

The purpose of a partner visa is to assist with family unity between an Australian permanent resident and their partner from overseas and nothing to do with the partner's English proficiency. The visa applicant and sponsor have to prove their relationship by meeting the requirements of the social aspect, nature of their household, the share of finances, and commitment to their relationship. That has been the requirements since the existence of sponsor of partners. English language requirement is only required in certain visas such as skilled and investment visas (with a waiver by payment of fees). The only country requiring English language requirement is the UK and other countries such as the US[7], Canada[8] and New Zealand[9] , which the Department referred to do not have such requirements. Evidence of attending the Adult Migrant English Program (AMEP) classes to learn English should be sufficient to prove that the visa applicant worked to integrate into Australian society.

The English language requirement is discriminative. The message the Government is sending to the permanent resident is that if they do not have proficient English, they have no right to marry someone from overseas, and the visa applicants are not welcomed into Australia if they do not have proficient English. The Australian Government clearly discriminates against persons from all countries that do not have English as their first language. The proposal is going against Australian values of equality of opportunity for all people, regardless of their gender, sexual orientation, age, disability, race, or national or ethnic origin and a 'fair go' for all that embraces equality of opportunity for all and a backward step from multiculturalism.

The Government can further assist the visa applicant by providing unlimited English lessons for those who can attend further English classes if they have not already committed to working or caring for their children.

[5] https://www.homeaffairs.gov.au/how-to-engage-us-subsite/files/consultation-paper.pdf
[6] https://www.abs.gov.au/statistics/people/people-and-communities/characteristics-recent-migrants/nov-2019/62500do001_201911.xls
[7] https://travel.state.gov/content/travel/en/us-visas/immigrate/family-immigration.html
[8] https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/family-sponsorship/spouse-partner-children/eligibility.html
[9] https://www.immigration.govt.nz/new-zealand-visas/apply-for-a-visa/tools-and-information/english-language/english-language

j. any other matters deemed relevant by the committee.

Refugee and humanitarian sponsorship program

Australia's current refugee and humanitarian program allows Australian businesses, communities and individuals to assist people in humanitarian need to settle in Australia through the Community Support Program (CSP)[10]. The CSP will enable businesses, communities and individuals to sponsor applicants with a job offer or provide financial support to cover visas and other costs. The people in humanitarian need must go through the Approved Proposing Organisations (APOs) appointed by the Department of Home Affairs and manage the visa application process. There are currently twelve APOs nationwide assisting and managing the application process for eligible applicants.

The CSP is a complicated and expensive process. The sponsor must cover the application charges, airfares, medical screening costs, accommodation, assurance of support, APO fees[11] and living expenses for the first year. The application fee is over $19,000[12] for the primary applicant, plus additional fees for each secondary applicant. The estimated costs for a family of five people are up to $100,000[13].

The CSP forms part of the overall quota in Australia's refugee and humanitarian intake of 10,000 per year. For every person sponsored under the CSP, a place is taken away from the Government's resettlement program. The CSP should be additional to the Refugee, and Humanitarian Program that the Government has committed to resettling rather than included in the program as the sponsor bears all responsibilities for the applicants.

Canada has a private sponsorship of refugees that allows for religious, ethnic, community or service organisations or Groups of Five to provide emotional and financial support to the refugee for the sponsorship period. The funds raised are to be kept in a trust account to meet their settlement expenses. The required cash amount can be reduced if the sponsors can provide housing, clothing, food and other commitments to support the refugees. Australia could implement the Canadian's sponsorship process and allow diaspora communities to offer such support for refugees. It would lower the costs to sponsor refugees and would not burden Australian taxpayers. Several civil and human rights organisations have proposed a new model for Community Refugee Sponsorship in Australia[14]. VALA Australia recommends that the Australian Government adopts the proposed model into the current resettlement program.

The impact of COVID-19 pandemic on Australian migration programs

The COVID-19 pandemic has resulted in:

a) the shutdown of Australian borders with limited opportunity for Australians to return to Australia. This is not yet resolved, and the number of return Australians have been reduced due to the delay in vaccine rollout and defective hotel quarantine processes.

[10] https://immi.homeaffairs.gov.au/what-we-do/refugee-and-humanitarian-program/community-support-program/how-can-you-help
[11] https://www.aph.gov.au/api/qon/downloadestimatesquestions/EstimatesQuestion-CommitteeId6-EstimatesRoundId3-PortfolioId20-QuestionNumber120
[12] https://immi.homeaffairs.gov.au/visas/getting-a-visa/fees-and-charges/current-visa-pricing/other
[13] https://www.refugeecouncil.org.au/community-support-program-brief/ - Estimate of calculation is based on 2017 figures.
[14] http://www.ausrefugeesponsorship.com.au/wp-content/uploads/2019/05/CRSIPositionPaper.pdf

b) Stranded visitors in Australia who have had to pay further fees for applications, health checks, police check to remain in Australia plus additional costs to stay in Australia without work rights.
c) Student visa holders are losing their casual jobs and having limited supports in Australia for food and accommodations. Our response to vulnerable students has been very negative.
d) Workers on 457/482 visas being unable to maintain permanent full-time work when their sponsor's business is in lockdown or has been shut down due to an economic downturn.

The migration programs and regulations are very rigid in requirements and do not allow for changes that occur almost overnight, such as the COVID-19 pandemic.

Recommendations:

1. Review and assess the current visa application processes to clear backlogs and reduce the processing and waiting time for all visa applications. Set target processing times such as 6 months processing for all temporary partner visas, prospective spouse visas and child visas.

2. Oppose to English language requirement for permanent resident sponsors and Partner visa applicants and assist the visa applicant by providing unlimited English lessons.

3. Set up a task force to assess how best to respond to Australian minor children in a) establishing paternity and b) in sponsorship requirement for sponsoring parents for speedy processing and flexibility, for example allowing the parent/s to remain in Australia on a bridging visa while the application is being processed. Alternatively, allowing the parent/s to apply for a guardian visa or extension of their visitor visa until the child is 18 years of age.

4. Allow for greater flexibility in assisting family reunion for prospective spouse to allow the applicant to travel to Australia, faster processing during a pandemic and include prospective spouse in the same category as partner and de facto partners in travel exemptions.

5. Reconsider the issue of a dependent child so that the child's age stays constant as the date of application given the long processing period. Alternatively, align the dependent child's eligibility to that of child visa subclass 101 or subclass 802.

6. The Australian Government should adopt the new model for Community Refugee Sponsor in Australia proposed by several civil and human rights organisations in their CRSI Position Paper into the current resettlement program.

7. Set up a task force for women at risk programs for greater flexibility in family composition to allow older children or older siblings to join the woman at risk and prioritise processing time.

VALA, thank you for the opportunity to provide our submission and are optimistic that the Committee will consider our recommendations when providing the Committee's report to the Government.

Yours faithfully,

Dinh Tran
President, VALA