Migration Institute of Australia

SUBMISSION

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

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Migration Institute of Australia

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Statement of Recognition

The Migration Institute of Australia acknowledges the Traditional Custodians of the lands and waters throughout Australia. We pay our respect to Elders, past, present and emerging, acknowledging their continuing relationship to this land and the ongoing living cultures of Aboriginal and Torres Strait Islander peoples across Australia

John Hourigan FMIA
National President
Migration Institute of Australia

30 April 2021

Contents

Legal and Constitutional Affairs Reference Committee

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

Terms of reference

a. limitations on eligibility to apply for relevant visas;
b. waiting times for processing and integrity checking of applications for relevant visas;
c. waiting times for the granting of relevant visa;
d. cost of applying for relevant visas;
e. commitments required for the granting of relevant visas;
f. government policy settings regarding relevant visas and the role of family reunion in the Migration Program;
g. eligibility for and access to family reunion for people who have sought protection in Australia;
h. the suitability and consistency of government policy settings for relevant visas with Australia's international obligations;
i. the budgetary and governmental impacts of relevant visas, including on state, territory and local governments; and
j. any other matters deemed relevant by the committee.

Recommendations

Recommendation 1

The MIA recommends that the number of places available in the family migration stream be increased to allow higher levels of family reunification in Australia.

Recommendation 2

The MIA recommends that both provisional and permanent partner visa applications be finalised concurrently, where the application have been lodged for more that twenty four months.

Recommendation 3

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Recommendation 6

The MIA recommends that in view of the large second visa application fee paid by Contributory Parent visa applicants that period they are restricted from accessing welfare services be reduced from ten to two years.

Recommendation 7

The MIA recommends that English language testing not be imposed on partner visa sponsors and visa applicants.

Recommendation 8

The MIA recommends that a parliamentary inquiry into the ability for protection visa holders to bring their families to join them in Australia be conducted.

Recommendation 9

The MIA recommends that the Ministerial Directions pertaining to the processing priorities for family stream visa applications for protection visa holders be urgently reviewed to remove the discriminatory requirements imposed on this cohort.

Recommendation 10

The MIA recommends that children included and eligible at time of lodgement should remain as part of the family unit application regardless of their age at the time the visa is finalised.

Recommendation 11

The MIA recommends that all cases where children of protection visa holders are living in areas of major conflict be reviewed and prioritised for urgent allocation and finalisation.

Recommendation 12

The MIA recommends that the government reviews current family stream application processing procedures and priorities for compatibility with Australia's international obligations.

Introduction

The Migration Institute of Australia welcomes the opportunity to provide this response to the Legal and Constitutional Affairs Committee Inquiry into *The efficacy, fairness, timeliness and costs of the processing and granting of visa classes which provide for or allow for family and partner reunions.*

The Department of Home Affairs (the Department) states that the … 'permanent Migration Program has been designed to meet Australia's economic, demographic and labour market needs, with a strong focus on skilled migration and to support social cohesion, particularly through family reunion.[1]The current environment surrounding the COVID-19 pandemic and subsequent border restrictions has created extreme pressure and stress on families wanting to reunite.

The Family stream is one of the three streams of the permanent program facilitating reunification of Australian citizens, permanent residents or eligible New Zealand citizens with immediate family members in the following categories:

- Partner (including same-sex partner) - spouses, de facto partners and fiancés
- Children - dependent children or step-children of the sponsor, children adopted from overseas, and orphaned relatives
- Parent – parents and aged parents
- Other Family - aged dependent relative, last remaining relative and carer categories.

With thirty percent of Australia's population born overseas,[2] the increasing normalcy of transnational working and widespread opportunities for travel and to live overseas, (COVID restrictions aside), an increasing proportion of Australian citizens and permanent residents have partners and family members they wish to bring to Australia to join them. The family unit provides financial, emotional and physical support for migrants, the context for culture and traditions, and families of migrants are often driven to succeed.[3]

The economic contribution of migrants including both skilled and family entrants is becoming more widely recognised. The Migration Council of Australia predicts that by 2050 migration will be contributing $1.6 trillion to Australia's GDP and individual migrants 10% more than existing residents to Australia's economy. [4]

In the past family stream migrants were often perceived to be a drain on scarce resources and a burden on Australian society. There is also the presumption that the vast majority of parents arrive in Australia elderly, infirm and seeking to be supported by the Australian public purse.[5] While newly arrived family migrants may have higher than average unemployment levels soon after arrival, this has found to normalise at around 18-24 months after their arrival.[6] Family stream migrants are generally restricted from accessing welfare during their first two years in Australia and first ten years for contributory parents.

It is within the partner cohort that the strongest evidence to refute these views of welfare dependent migrants is found. Partners bring skills to Australia and are likely to join the Australian workforce. The Department of Home Affairs' own latest Continuous Survey of Australian Migrants (CSAM)[7] reports that:

- over 50% of partner migrants arrive holding bachelor degrees or higher qualifications, with 86% overall holding some form of post school educational qualification, higher levels of education than the general Australian population[8]
- labour force participation of partner migrants was 78%, 12.4 points above that of the general Australian population[9]
- employment to population ratios for partner migrants were 3.5 points above that of the general population at 65.3%[10]
- 84% of partner migrants reported their 'best or only language' as English.[11]

The contribution to the Australian economy of parent and other family migrants is contribution is more difficult to capture quantitatively and not fully captured by the above traditional indicators of economic. While the Productivity Commission maintained that the benefits of parent migration accrue to the individuals and their family, this gives little consideration to the offset to these costs of the tangible and intangible benefits they also bring.[12] These may include:

- purchasing housing in Australia
- investing retirement funds in Australia
- providing financial assistance to their permanent resident or Australian citizen children
- assisting working age family members to participate in the workforce, generating taxation revenue and greater discretionary income
- providing childcare that reduces the cost of government subsidised assistance
- providing cultural linkages
- providing international business linkages

Parent visa holders are significantly more likely to provide unpaid work, such as childcare, than skilled or humanitarian immigrants. Almost 45% of parent visa holders were found to provide childcare to children who were not their own, while 57% of parent visa holders provided 15 or more hours per week of unpaid domestic work to their families.[13]

Moreover, parents of migrants are not necessarily 'elderly', given that many skilled migrants are young adults. Similarly, individuals are living longer, healthier lives and in Australia the retirement age is being increased. There is the potential for parent visa holders to contribute to Australia's coffers through taxation from employment and investment income for a significant number of years before they become possible heavier users of health resources or require aged care.

Families are fundamental to developing social cohesion, they play a crucial part in preparing children for life in society, assume some burden of care for the elderly and help in times of need. It is within the family that this cohesion is first experienced and learnt, and families assist in counteracting harmful social and market pressures.[14] In a world of increasingly internationalised business and global economy, families may contribute to the human capital of younger generations providing understanding of business practices and attitudes in other cultures and imparting second language skills.

While the MIA contends that many of the family stream visas immigration program settings are reasonable and consistent with those of other similar countries, it does have major concerns related to:

- the number of migration places allocated to the family stream in each migration program year
- the timeliness and delays of family stream application processing
- the cost of applying for partner visas
- the limitations placed on protection visa holders' ability to bring their families to be reunited with them in Australia
- the introduction of English language testing for partner sponsors and permanent residency for visa holders.

Term of reference – 'A'

Limitations on eligibility to apply for relevant visas.

Partner cohort

In the context of this Inquiry the MIA has taken the definition of 'limitations' on applying for visas, to mean the basic criteria determining the eligibility of applicants to apply for relevant visas. The MIA regards the criteria and regulations imposed on

partner visas for applicants to be generally reasonable and consistent with similar countries, except in the case of those imposed on protection visa holders.

The two stage process of provisional partner followed by permanent visas, the two year 'wait out period' between the two stages and the 'four pillars' of evidence required of the nature of the relationship, all serve to test the genuineness of the relationship. The Departmental policy that the wait out period commences at lodgement rather than at grant of the initial provisional partner visa, seeks to ameliorate some of the processing delays, although this has become less effective over time as further serious delays are beginning to re-emerge.

The MIA does support the Government's introduction of the partner sponsorship framework to reduce family violence and to protect vulnerable visa applicants and sponsors. This framework is expected to be introduced in November 2021 and will require disclosure of relevant, registerable offences and significant criminal records in relation to these offences to partner applicants.[15]

The MIA does not support the limitation to be imposed on partner visa applicants through English language testing of partner sponsors before they can sponsor their partners or the limitation that this will impose on provisional temporary partner visa holders progressing to permanent residency.

Parents and Other Family cohort

The MIA regards the limitations on eligibility to apply for parent and other family visas to be generally reasonable at this time. The age, the balance of family and the health requirement limitations for partner and other family applicants are realistic and practical given the profile of these applicants.

The largest limitation for this cohort is the very small number of places allocated in the migration program each year to parent and other family member places. This limitation creates huge queues which in some cases are expected to produce 30-50 year waits for visas.[16]

Term of references – 'B' and 'C'

Waiting times for processing, integrity checking of applications for relevant visas; Waiting times for the granting of relevant visa

The total number of family stream visas applications in the pipeline, ie waiting for processing, was 213,805 at 30 June 2020.[17] This pipeline is comprised of provisional partner visas, provisional contributory parent visas and all other single stage visas. Second or permanent stage partner and contributory parent applications are ***not*** included in this number. The processing times for family stream visa applicants are unconscionable and for specific protection visa holder sponsors nothing short of reprehensible.

There are quite simply, not enough family stream places allocated in the migration program to meet demand as demonstrated in Table 1. Unless more places are allocated to the family stream program each year, there seems little that can be done to reduce these waiting periods.

Table 1. Comparison number of lodged applications and allocated visa places and allocated places - 2019-20 Migration Program

Family visa classes	Number of application on hand/in queue to 30 June 2020	Number of places allocated in 2019-20 Migration Program year
Partner visas	96,000	72,275[i]
Parent and all other family visas	117,400	5,025

Source: the Administration of the Immigration and Citizenship Programs, March 2021[18]

Recommendation 1

The MIA recommends that the number of places available in the family migration stream be increased to allow higher levels of family reunification in Australia.

[i] Almost double the usual annual allocation for the 2020-21 migration program year

Partner visas - Waiting and assessment times

The partner cohort receives the vast majority of the family stream allocation in each migration planning year, usually around 80% of the family allocation but at 93.5% in this current migration program. The Department's decision to effectively double the number of partner places available in the 2020-21 migration program year to 72,300, in an attempt to address the significant backlog of partner applications was welcomed. [19]

However, as at 31 March 2021 figures obtained under Freedom of Information show that only around 40,500 of these visas have been granted (37,204 primary applicants and 3,205 associated dependents), a utilisation of only 52% of the allocated places, with less than three months till the end of the 2020-21 program year.[20]

The Department reports that it has recently allocated an increased number of visa processing staff to the partner sections to attempt to fill these places.[21] Yet even with this additional allocation, the partner pipeline is only reported to have been reduced from 96,000 to 94,000 applications in this program year. Alternatively, some of this decrease may also be as easily attributed to the general decrease in visa lodgement numbers as a result of the COVID pandemic.[22]

The Department publishes 'global processing standards' to give partner applicants some idea of how long they may wait for their applications to be assessed and finalised. These processing times have blown out over recent years and are now more than double the actual two year 'wait out' period between the provisional visa grant and permanent partner visas assessment (Table 2).

Table 2. Visa processing times to permanent residency

Visa class	75% of visas processed	90% of visas processed	Total processing times to permanent residency grant
Prospective marriage visas			
Subclass 300 (offshore)	22 months	30 months	N/A
Offshore lodged partner visas			
Subclass 309 (provisional)	22 months	24 months	39 – 43 months
Subclass 100 (permanent)	17 months	21 months	
Onshore lodged partner visas			
Subclass 820 (provisional)	24 months	27 months	37 – 48 months
Subclass 801 (permanent)	13 months	21 months	

Source: Department of Home Affairs website, Visa Processing Times, 28 April 2021.

In these case while departmental delegates have the discretion to grant both the provisional followed immediately by the permanent partner visa, this discretion is applied inconsistently with some visa holders waiting many months for the provisional visa to be approved and then again many months for the permanent visa grant. The consequences of these delays include provisional visa holders being unable to be included in normal partner activities such as being included in mortgages and joint ownership of property or other assets in conjunction with their partner. In the cases of family violence, provisional visa holders may be trapped in relationships where they are dependent on their partner for their continued settlement in Australia.

Recommendation 2

The MIA recommends that both provisional and permanent partner visa applications be finalised concurrently, where the application have been lodged for more that twenty four months.

Parent and Other family – Waiting and assessment times

The number of parent and other family applications in the pipeline at 30 June 2020 were around 117,400.[23] The number of places allocated to non contributory parent visa applications was on average just 1,350 per annum between the 2015 – 2019[ii] program years and 6,250 contributory parent visas (80% of the parent visa allocation).[24] Other family visa allocations amounted to 400-500 places.

On 29 April 2021, the maximum number of contributory parent visas to be granted for the 2020-2021 program year was announced at 3,600, parent visas 900 places and other family visas 500 places, lower than the average and without explanation.

The Department reports the processing timeframe for the parent and other family cohort differently to other visa classes. The reason behind this is unknown. Rather than the estimated 'global processing standards' published for other visa classes, the Department releases the date of lodgement of the applications that have made it to the head of the queue and have commenced assessment.

For parent, aged parent and other family applicants the Department's website currently warns that new parent and aged parent applications lodged now will take ***30 years*** and remaining relative and aged dependent relative applications ***50 years*** before they are finally processed.[25] Contributory parent applicants also face long waits in queues of around five years, even though they pay a significantly more in visa application fees, approximately $45,000 - $52,000, ostensibly for priority processing and to contribute to the cost of utilising Australian health and other resources. The current application dates for parents and other family visas published on the Department's website are provided below in Table 3.

[ii] The 2019-20 program year was not included due to the impact of the COVID travel restrictions on theses statistics.

Table 3: Parent and Other family application release dates

Family Visa category	Applications released for final processing as at February 2021	Time since lodgement
Parent	September 2010	10 years 7 months
Aged parent	December 2012	8 years 4 months
Contributory parent	May 2016	4 years 11 months
Remaining relative	August 2011	9 years 8 months
Aged dependent relative	August 2011	9 years 8 months
Carer visas	October 2017	3 years 6 months

Source: Department of Home Affairs website, Visa Processing Times, 28 April 2021.

It is not uncommon for parent and other aged family applicants to quite literally die waiting in the queue, or to become so aged and frail they cannot join their family in Australia or for their family to find that they cannot afford the costs of gerontological care for their parents if they bring them to Australia. The carer visa, designed to allow related family members to move to Australia to care for Australian relatives with long term medical conditions, provides the similarly nonsensical situation that the Australian relative's medical condition must be serious enough to warrant a carer but they then need to survive the four or more years wait for the carer's visa to be approved.

The long queues for parent visa places have to some extent ameliorated with the introduction of the Subclass 870, Temporary Sponsored Parent Visa, which permits parents to spend 3-5 years in Australia with their families and to renew this visa once for the same period. However, this visa is also expensive at $6,000 – $10,000 plus living and health insurance costs to be met by the child sponsor for this temporary arrangement.

Recommendation 3

The MIA recommends that the allocation of parent and other family visa places be increased to assist in the family reunification for Australian citizens, permanent residents and eligible New Zealand citizens.

Term of reference 'D'

The cost of applying for relevant visas

There is a general commonality in the costs associated with applying for permanent visas across the skilled and family streams of the migration program, being on average $4,000 - $4,400. Extra per person charges are levied for secondary dependents migrating with the primary applicant. Certain visas, such as the contributory parent visa that provide extra benefits or concessions require a subsequent very large second application charge of between $43,000 and $48,000 depending on how the fee is paid, on top of the original visa application fee. Those who cannot afford this second application charge are disadvantaged by only being eligible to apply for the non contributory parent visa classes that are only allocated around 20% of parent visa places in migration program.

There is a common misconception amongst applicants that the fees paid for their visa applications are used to directly fund the processing of their application. Revenue from visa applications can and is used in surprisingly unrelated manners by Governments. The 2014 Budget imposed a major increase of 50% on partner visa applications fees to assist in repairing the economic deficit at that time.[26] At that same time business visa application fees were increased by only 1%. Partner visa application fees have continued to increase at higher rates than those for other visa classes since that time.

Partner visa application fees are now $7,715 for the primary applicant and additional $1,935/$3860 per dependent child depending on whether they are under or over 18 years of age. This is out of alignment with other similar permanent visa application fees. Partner applicants question why they pay higher fees than other applicants, especially given the extend delays in the processing of their visas even though the two are only loosely related. Yet similarly as discussed on page 8 partner applicants

settling in Australia have higher levels of education and employment participation than Australian and make a productive contribution to the Australian economy, an important consideration as Australia attempts to repair its economy post COVID.

Recommendation 4

The MIA recommends that the visa application fees associated with partner visa applications be reviewed and reassessed for comparison with other similar visa application charges.

Term of reference – 'E'

Commitments required for the granting of relevant visas

Various family stream visas require an Assurance of Support (AoS) to be lodged by an Australian based 'assurer'. The AoS is a legal commitment to repay any social security allowances paid by Centrelink to the visa applicant that the AoS relates to during their first two years in Australian or ten years for Contributory Parent cases. The amounts range between $10,000 for parents, aged parents, aged dependent relatives and remaining relative applicants, to $20,000 for the contributory parent subclasses.

It is unclear why the contributory parent visa subclasses are required to pay a higher AoS and for this to be held for a longer period of time, given that they already contribute a large second VAC to ameliorate their future costs.

Recommendation 5

The MIA recommends that the assurance of support for Contributory Parent visa applicants be reduced to $10,000 in line with other family visa Assurances of support.

Recommendation 6

The MIA recommends that in view of the large second visa application fee paid by Contributory Parent visa applicants that the period they are restricted from accessing welfare services be reduced from ten to two years.

Term of reference – 'F'

Government policy settings regarding relevant visas and the role of family reunion in the Migration Program

The major Government policy setting that most impacts all visa applicants are the migration program places allocated each year. Australia's population is aging and the birth rate is low. The economy would be stagnant or worse but for positive Net Overseas Migration (NOM) and the additions this brings to Australia's skilled labour force. However, for the first time since 1916 - 17 Australia will experience a negative NOM of -72,000 in the 2021-22 migration program year. The COVID-19 pandemic and the closure of Australian borders for over twelve months has exposed Australia's reliance on migrants to support the labour market and grow the economy.

This drop in NOM will have a cumulative negative impact on the Australian economy through loss of labour force and skills and also on consumption and demand for services and products in Australia. The move towards post pandemic economic recovery is inexorably interrelated to immigration. The government settings for the migration program in general, and in the short term, needs to address this deficit. However, there is a danger that the Government will not recognise the contribution made to the Australian economy by skilled and family migrants and concentrate on skilled and business migration instead, although as discussed earlier in this paper, family stream migrants provide tangible and intangible benefits to the economy that are not as easily measured and as such should not be ignored.

The Australian Government is also actively attempting to attract the 'best and brightest' skilled migrants to settle in Australia from within a highly competitive global market and through the Global Talent Taskforce. These migrants are increasingly discerning and the great 'Aussie lifestyle' is no longer a sufficient drawcard. When considering migration options, the ability to have one's partner and family settle in the same destination country is becoming a significant deciding factor, in the same way as considerations such as cost and the time taken to attain permanent residency.[27]

The long waiting periods for family members to join migrants permanently in Australia could provide a strong disincentive for choosing Australia as their ultimate permanent destination. Alternatively, settled Australian migrants who cannot bring their parents to Australia, may be forced to return to their country of origin to care for aged parents, liquidating their Australia assets and taking them with them.

The impact on the Australian international education market should also be considered. Sending ones' children to Australia for education is often the initiation of a long term plan that involves the Australian educated child gaining permanent residency, with their parents also eventually joining them permanently in Australia. These parents may choose to direct their financial resources to education in countries other than Australia that have more flexible parent migration policies. Australia's international education export market has been already severely damaged as a result of the COVID pandemic.

These scenarios all have potential flow-on effects that will reduce the numbers and quality of migrants, ultimately affecting the Australian labour market and its economy.

English testing – partner sponsors and temporary partner visa holders

The MIA has grave concerns about the announcement of the introduction of an English language testing regime in the 2020 Federal Budget for partner sponsors and provisional partner visa holders. This places severe and unfair limitations on a

cohort of partner sponsors and particularly on the protection visa cohort, who wish to have their families join them in Australia. This is at odds with the family reunification intent of the family migration program.

Australian Permanent resident sponsors are to have their English tested before they can apply to sponsor their partners. Those with low English language proficiency could be precluded from exercising their rights to sponsor their partners when compared to other permanent residents and Australian citizen sponsors. This will create a cohort of sponsors who will be prevented from bringing their partner and dependent children to join them in Australia, because they are unable to meet the specified level of English, now and possibly ever.

Provisional partner visa applicants could also be prevented from obtaining permanent residency unless they can meet a specific standard of English language ability or attend a large number of mandatory hours of English language tuition (potentially 510 hours). Some temporary partner visa holders will be trapped in a limbo of 'permanent' temporary residency because they do not have the ability, for whatever reason, to meet a specified standard. Not only will primary partner applicants be affected, so too will be some dependent children of these permanent temporary residents, who may be unable to achieve permanent residency in their own right. What will become of them when they are no longer dependents on their parent's temporary visa?

The introduction of the English test is purported by the Government to encourage better social outcomes for this cohort and to enhance social cohesion. Yet it is counter intuitive to expect social cohesion to be built by preventing family reunion or relegating specific subsets of the migrant cohort to long term temporary residency based on their English proficiency. Family reunion builds the stability and capacity that allows more willing and comfortable engagement with Australian society. The MIA believes that this policy is discriminatory and racist. Education and employment statistics do not support the case for imposing an English proficiency standard on sponsors and partner applicants.

Recommendation 7

The MIA recommends that English language testing not be imposed on partner visa sponsors and visa applicants.

Term of reference – 'G'

Eligibility for and access to family reunion for people who have sought protection in Australia

Those permanent protection visa holders who arrived in Australia by boat seeking asylum (Unauthorised Maritime Arrivals or UMA) face enormous and inhumane barriers in bringing their families to Australia. Those who arrive by plane and are granted protection visas onshore are not subjected to these same family reunion barriers.

Family reunion applications for permanent resident protection visa holders' families are given the lowest processing priority through various Ministerial Directions.[28] It is not uncommon to hear that these now permanent Australian residents have been waiting well over ten years just for their families visas to be processed, at a cost of not only tens of thousands of visa application and other fees, but also the cost of the physical and mental health of all involved and the physical safety of these families offshore.

MIA members report that processing officers impose incredibly difficult requirements on these visa applicants that literally put their lives in danger. For example, Hazara family member applicants have been required to travel to dangerous locations in attempts to obtain documents such as original taskira (Afghani national identity document) and passports for visa processing and have been killed while doing so. While it is acknowledged that the Australian government must ensure the identity of migrants to Australia, this should not be at the cost of

the lives of the predominantly female partners and children of these Australian permanent residents.

Constant and changing impediments are imposed on this cohorts with little transparency in the processing of their family reunion applications. These impediments include: poor cultural understanding by decision makers that lead to poor visa decisions; constantly changing eligibility requirements; the need to repeatedly re-lodge application forms; applicants being required to provide unobtainable documentation, eg original documents from countries where warfare have destroyed public records; and requests to undertake costly visa health checks multiple times without applications being finalised.

Unauthorised maritime arrival (UMA) permanent resident protection visa holders are now also required to obtain Australian citizenship to be able to sponsor their families to Australia, a process that requires four years residency in Australia with the last 12 months as a permanent resident and applications that normally take 1-2 yeas to be processed. [29] For these UMA protection visa holders the processing of their citizenship application are further delayed because their whole immigration history, identity and protection claims are again reassessed and again often having to prove their identity and claims for asylum.

Heartbreakingly, many of these children grow up without the physical presence of one parent and in some cases fathers and children may have never because they were born after their father left their families to seek asylum and a safer life for the whole family. Due to these extended processing delays, many of the children included in original family applications become of an age where they are no longer considered dependent on their family and lose the eligibility to be included in their family's application. These applications should be urgently reviewed and finalised or children included and eligible at time of lodgement should remain as part of the family unit application regardless of their age at the time the visa is finalised.

The Australian Human Rights Commission in 2015 found that law changes related to this cohort arbitrarily interfered with the family, which resulted in an amendment to

the priority processing directions to allow any special compelling and compassionate circumstances to be taken into account in Ministerial Direction 72, an incongruous inclusion for a cohort that most likely all fit within those circumstances. Although compelling and compassionate circumstances were accepted in a number of cases, this did not translated to any apparent practical benefit to those cases and with many still under assessment. These special circumstances clauses were later removed in the current priority processing Ministerial Direction 80.

Recommendation 8

The MIA recommends that a parliamentary inquiry into the ability for Unauthorised Maritime Arrival protection visa holders to bring their families to join them in Australia be conducted.

Recommendation 9

The MIA recommends that the Ministerial Directions pertaining to the processing priorities for family stream visa applications for Unauthorised Maritime Arrival protection visa holders be urgently reviewed to remove the discriminatory requirements imposed on this cohort.

Recommendation 10

The MIA recommends that children included and eligible at time of lodgement of the family visa applicaiton should remain as part of the family unit application regardless of their age at the time the visa is finalised.

Term of reference – 'H'

The suitability and consistency of government policy settings for relevant visas with Australia's international obligations

Australia is a signatory to a broad range of international conventions and covenants as well as national legislation, that could be deemed to apply to family stream migration and policy setting. However, the Australian government's commitment to

these international obligations is somewhat specious, particularly in regard to protection visa holders ability to have their families join them in Australia. Inconsistencies exist between the legislation and international obligations in the broader context of the migration program and internally within the migration program, when considering the partner, parent and other family case load. These include:

Racial Discrimination Act[30]

The application of the English testing policy to sponsors may constitute indirect discrimination and contravene the Racial Discrimination Act. Permanent resident sponsors with low English language proficiency could be precluded from exercising their rights to sponsor their partners when compared to other permanent residents and Australian citizen sponsors. Provisional partner visa holders and dependent children could be prevented from achieving permanent residency and the future benefit of Australian citizenship.

Convention on the Rights of the Child[31]

Under this United Nations convention Australia's legislative bodies are expected to protect the best interests of children and recognise that a child should be able to grow up within a stable and safe family environment.

Children and other child family members of Australian citizens and permanent residents often come from countries where they are living in exceptionally difficult circumstances and require swift intervention for their protection. The lengthy waits for the processing of offshore partner applications that include children and most especially those of protection visa holders, can leave these children in very vulnerable and dangerous situations. These children can also be denied the opportunity for education, health care and the other benefits of Australian society.

Recommendation 11

The MIA recommends that all cases where children of protection visa holders are living in areas of major conflict be reviewed and prioritised for urgent allocation and finalisation.

Convention of the Refugee[32]

This convention recognises that the family is the natural and fundamental group unit of society. It recommends that Governments take the necessary measures to protect refugees families especially with a view to ensuring that the unity of the refugee's family is maintained. The extraordinary lengths the government has gone to delay recognised refugee protection visa holders from sponsoring their families to Australia is immoral and incompatible with Australia's projected commitment to this Convention.

International Covenant on Economic, Social and Cultural Rights[33]

This convention recommends that families should be accorded the widest possible legislative protection and assistance, particularly while responsible for the care and education of dependent children. The potential for partner sponsors and visa holders to be discriminated against both by the imposition of English testing and the waiting times that families of refugees, non contributory parents and other family members are subjected to, are at odds with Australia's commitment to this Covenant.

Recommendation 12

The MIA recommends that the government reviews current family stream application processing procedures and priorities for compatibility with Australia's international obligations.

Term of reference – 'l'

The budgetary and governmental impacts of relevant visas, including on state, territory and local governments

The MIA has discussed at length in earlier sections of this paper the economic advantages of family migration at a national level. The impacts on state, territory and local government levels are a subset of these national impacts.

While considerations of the pressure on infrastructure, housing and employment may be raised at these levels of government, these are most usually not often at risk from family stream migrants. These migrants are more likely to be of other economic benefit, for example, at the most micro level, a partner and children joining an Australian citizen, permanent resident or eligible Australian citizen in a small country town may be the difference between the local school remaining open or being closed down.

Indeed, the parliamentary series paper, *Family Migration to Australia*, while identifying there are net budget costs that may attributed to family migration, argues that overall family migration presents a net gain both economically and socially to Australia, and that family structures are also particularly important in attracting or keeping skilled migrants particularly in regional areas.[34]

Endnotes

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