Migration Institute of Australia

SUBMISSION

Migration Amendment (Family Violence and Other Measures) Bill 2016

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The Migration Institute of Australia (MIA) as the national professional organisation for Registered Migration Agents welcomes the opportunity to make this submission to the Legal and Constitutional Affairs Legislation Committee Inquiry into the Migration Amendment (Family Violence and Other Measures) Bill 2016.

The MIA has a number of concerns regarding the proposed legislation and as such makes the following recommendations:

Recommendation 1:
The MIA recommends that the extra sponsor application and approval process not be introduced.

Recommendation2:
The MIA recommends that if this extra sponsor application is introduced, extra financial resources and staff be allocated to the partner visa processing sections, to reduce the impact on current partner processing service standards.

Recommendation 3:
The MIA recommends that if family sponsor obligations are introduced, adequate and thorough consultation on the content of such obligations be undertaken, prior to their introduction.

Recommendation 4:
The MIA recommends that if family sponsor obligations are introduced, these are not so punitive as to prevent the successful grant for genuine partner cases.

If I can be of further assistance, please do not hesitate to contact me.

Yours faithfully

Kevin Lane FMIA
Chief Operating Officer
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BACKGROUND

Australian citizens and permanent residents wishing to have their overseas partners join them in Australia permanently have been subjected to major immigration changes in the last few years. These changes have imposed significant burdens of cost and waiting time on partner applicants, far in excess of the thresholds required of those seeking permanent migration to Australia via other migration streams.

The Australian Bureau of Statistics reports that the number of marriages between two Australian born people have been decreasing since 1994, to only 54.5% of Australian marriages in 2014[1]. The Australian citizens or permanent resident sponsors often do not have the choice to migrate to their partner's country for language, employment or cultural reasons.

Until August 2013 the visa application fees for all permanent residency applications, regardless of the visa stream, were relatively similar. In the 16 months between September 2013 and January 2015 partner application fees were increased twice by a total of 72%. By comparison, skilled visa application fees only increased 18% between August 2013 and July 2015. When the partner visa application fees were greatly increased in January 2015, the then Assistant Minister for Immigration, Michaelia Cash, stated the revenue from the increases was to be used to repair the budget and fund whole-of-government policy priorities. No explanation was given as to why partner visa fees were targeted at a rate far in excess of those of other visa classes.

Table 1: Visa application fee comparison

Partner visa application fees		Skilled visa application fees
Primary applicant	**$**	**$**
July 2013	3975	3060
Sept 2013	4575	3520
Jan/July 2015	6865*	3600
Dependent over 18		
July 2013	1990	1530
Sept 2013	2290	1760
Jan/July 2015	3435*	1800
Dependent under 18		
July 2013	995	765
Sept 2013	1145	880
Jan/July 2015	1720*	900

*Partner visa fees increased January, Skilled visa fees in July 2015.

At the same time as these substantial and unjustifiable fee increases, processing times for partner visas increased dramatically. First stage partner visa applications are now at a minimum of 12-15 month and many take in excess of 24 months to be decided. Where an offshore application is made, ie, the partner is overseas at the time of lodgement, the sponsor and applicant may be forced to be apart for many months unless they can afford to visit each other. Visitor visa may also be difficult to obtain during this waiting period, depending on the applicant's country of origin and the associated risk profile. Once the temporary visa is granted, these applicants can then wait similar amounts of time for the second permanent stage of their application to be assessed.

[1] ABS Series 3310.0 - Marriages and Divorces, Australia, 2014, released November 2015

These long waits for processing have ongoing impacts on visa holders' ability to gain Australian citizenship. To be eligible to apply for Australian citizenship the applicant must have resided in Australia for four years, with the last 12 months of this period as a permanent resident. A delay in gaining a temporary visa, which is then exacerbated by a further lengthy delay in obtaining the permanent partner visa, may result in the visa holder spending well in excess of the preliminary three years, before they can start their 12 months as a permanent resident.

Temporary partner visa holders report that many employers do not understand that they are free to work in Australia or feel they will not be long term employees because they are not permanent residents. These visa holders also find that some banks will not take their salaries or assets into account when calculating loan amounts for mortgages and other finance. Temporary residents are unable to purchase property in Australia in their own right without Foreign Investment Review Board approval, although they may be able to receive a waiver of this in some circumstances when buying with a partner.

The DIBP policy settings also underwent a radical change in July 2014 in relation to cases where one partner was unlawfully in Australia. It is not an uncommon occurrence that the overseas partner in the relationship has become unlawful while in Australia. Schedule 3 of the Migration Regulations 1994 contains a number of clauses relevant to partner visas that require applicants to be lawfully in Australia when lodging their application. Until July 2014, DIBP policy recognised the possibility that there may be compelling reasons why the person had become unlawful and provided the means to waive the Schedule 3 requirement. Waivers were considered on the basis of whether compelling and compassionate grounds existed for the applicant's unlawful status. An Australian born child of the couple was considered under policy to be sufficient reason to grant the waiver.

In July 2014 this clause was removed from the policy documentation. Without the Schedule 3 waiver, unlawful applicants were unable to lodge partner applications in Australia. They are forced to leave the country to lodge offshore applications and be separated from their partners and children for extended periods, while they waited for their application to be decided. The MIA provided representations to the DIBP on the hardship this caused, which included: families with several children where the breadwinner was required to depart; elderly couples in long term marriages who were separated; and situations were severe medical or psychological conditions of the Australian partner were not considered and that they were cared for by their partner.

The number of migrants applying for partner visas is reported to have doubled since the early 1990s, according to Dr Bob Birrell,[2] reaching 47,752 in 2013/14[3]. However, this is not necessarily an indicator that partner visas are being used to fraudulently bypass other legislative migration requirements. In that time period so too has the opportunity to meet and form a relationship with an overseas partner, through increased international travel and employment opportunities and the growth in skilled migrants moving to Australia and then being joined by a partner. Improvements in communications have allowed relationships to be more easily maintained at a distance. The changing demographic of source countries will also have impacted with an increase in nationalities that may be more likely to want a partner from their original homeland.

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[2] Masanauskas J, More than 1000 partner visas cancelled in migrant marriage sham, Herald Sun, 27 January, 2014.
[3] http://www.sbs.com.au/news/article/2014/01/29/marriage-scams-uncovered-amid-crackdown-partner-visa-fraud

The total number of partner stream visas approved between July 2010 and July 2014 was just over 188,000. It was reported that 1053 visas were cancelled in the same period, equating to 0.6% of granted visas. Of these cancellations, 31 were cancelled because incorrect information and/or bogus documents were provided, 33 were cancelled on character related grounds and 72 visas held by members of the family unit of a person whose visa has been cancelled. The remaining visas were cancelled because the visa holders were living overseas and did not maintain the onshore residency requirements. [4]

While the MIA acknowledges there is a degree of fraudulent activity by individuals within the partner migration stream, this also occurs in other streams. However, does the extent of this warrant the implementation of an extra application process? A process that is likely to negatively impact processing.

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While the MIA supports added protection for vulnerable migrant groups and children, it also questions the cost and processing impact of introducing a further level of application to partner visa applicants. The requirement for the proposed sponsorship application to be approved *before* a visa application is lodged, has the potential to increase the already lengthy processing times.

The MIA notes that the Financial Impact Statement in the Explanatory Memorandum asserts that the financial impact of the changes will be low and that the costs can be met from within existing resources. The MIA strongly disputes this assertion. The processing times for partner applications are already extremely slow and a large backlog exists. Adding an extra application to the process for each couple, will add around 50,000 extra sponsor applications into the process per year. It is difficult to understand how the DIBP can claim the processing of such a large number of extra applications will be able to be met within the financial constraints of its current funding. Partner applicants are already paying almost twice the fees of other permanent residency applicants and receiving far slower service.

The MIA believes that the conclusion reached by the Australian Law Reform Commission in its 2012 Report 117 *Family Violence and Commonwealth Laws—Improving Legal Frameworks* remains valid and "that, because of concerns about Australia's international obligations, as well as procedural fairness and privacy, sponsorship requirements should not be altered". These concerns have not been addressed in the Migration Amendment (Family Violence and Other Measures) Bill 2016.

Recommendation 1:
The MIA recommends that the extra sponsor application and approval process not be introduced.

Recommendation 2:
The MIA recommends that if this extra sponsor application is introduced, extra financial resources and staff be allocated to the partner visa processing sections, to reduce the impact on current partner processing service standards.

[4] ibid

The MIA believes that while the provisions in this Bill that address family violence through better character checking arrangements are worthwhile, the proposed statutory obligations and sanctions for sponsors are not defined, justified or explained, and as such cannot be supported. The proposed alignment of partner sponsorships with temporary work sponsorships has no explained merit.

The MIA is also concerned about the content of these as yet unknown sponsorship requirements that may be imposed on sponsors. Will the family sponsor be required to demonstrate they meet a specific minimum salary rate or have funds and other assets available to support their partner? At what threshold level will these be set? Such criteria have the potential to impose further hardship on applicants. Will these criteria prevent applicants achieving the basic human right to companionship and family life?

Recommendation 3:
The MIA recommends that if family sponsor obligations are introduced, adequate and thorough consultation on the content of such obligations be undertaken, prior to their introduction.

Recommendation 4:
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