

## **Submission to Legal and Constitutional Affairs References Committee inquiry into the impact of changes to service delivery models on the administration and running of Government programs – the privatisation of Australia’s visa and citizenship program**

This submission responds to the visa privatisation terms of reference of the inquiry which are as follows:

“The privatisation of Australia’s visa and citizenship program, including:

- i. the integrity of Australia’s visa and citizenship system,
- ii. the commercial implications and increased costs to industry, with particular regard for the tourism and higher education sectors,
- iii. the implications to national security, data security and privacy, and
- iv. the risk to public sector employment – especially rural and regional employment – through service delivery model changes.

### **Background**

My name is Abul Rizvi – I was formerly Deputy Secretary in the Department of Immigration responsible for design and delivery of Australia’s Visa and Citizenship Program. While I was not directly responsible for the IT platform to deliver these services, the Visa and Citizenship Programs were heavily dependent on that platform.

I also initiated repatriation of various visa processing functions from overseas posts to Immigration regional offices in Hobart, Adelaide and Perth. This was done to achieve efficiencies in visa processing, increase visa integrity as well as to ensure the ongoing viability of smaller immigration regional offices.

From 1991 to 1995, I was responsible for management of the budget of the Department of Immigration, including allocation of funds for visa and citizenship processing, development of the IT platform as well as the setting of application fees.

From 1995 to 2007, I was responsible for management of the permanent Migration Program and from 1999 to 2007, I was responsible for design and delivery of all migration and temporary entry functions.

I was awarded both the Public Service Medal and the Centenary Medal for my contribution to development of Australia’s immigration arrangements.

### **Key Points**

- No business case with risk plan and key performance indicators has been made available to the Australian public for the privatisation of visa processing - a core government function.
- The privatisation appears to be driven by the artificial constraints imposed by the staffing cap on Home Affairs despite significant growth in both visa application revenue (due to both increases in charges and growth in caseload). This staffing cap appears to be one of a number of drivers of massive visa application backlogs, processing time

blow-outs and a general decline in the health of Australia's visa system making it vulnerable to rogue operators.

- Visa application revenue significantly exceeds the resources allocated for processing of the vast majority of visa types. Under a privatised model, part of any additional revenue generated will need to be directed to the winning tenderer.
- Pressure to increase visa application revenue through both increased charges and increases in the size of the caseload (ie net overseas migration) will be intense. That is not a positive for the public interest.
- It is not clear how privatisation will address the massive visa and citizenship backlogs Home Affairs has allowed to be built up noting that the 2019 Budget shows funding for visa processing in the outyears is forecast to decline and the new privately owned and developed IT platform is unlikely to be available for a number of years. These backlogs are contributing to undermining of control of Australia's immigration system that former Prime Minister John Howard has recently warned against.
- There has been no public explanation as to how visa privatisation will assist the government regain control of the immigration system.
- The risks associated with visa privatisation, once Home Affairs has become totally dependent on a monopoly owner of the visa processing IT platform, are extensive. Home Affairs has provided no explanation of how these many risks are to be managed.
- It is essential the government ensure it maintains a fallback visa processing IT platform or has a relatively smooth pathway for the government to buy back the IT platform owned by the monopoly provider if (or indeed when) the visa privatisation fails.

### **Rationale and Business Case for Visa Privatisation**

A clear and coherent rationale, business case, risk plan and key performance indicators for the proposed privatisation of the visa and citizenship function has not been made available to the Australian public. The Prime Minister or the Minister for Immigration have not explained to the Australian public why this major change to government operations is needed or how it will provide an overall public benefit.

Given the central role of the visa and citizenship function to any national government, the lack of a publicly available rationale and business case for such a major change to the way government operates should be of concern to all Australians.

While there have been references to the (administratively imposed) staffing cap and a growing visa caseload as being factors driving the need to privatise the visa and citizenship function, this in itself is not a sufficient rationale or business case.

There is no question the IT platform for visa processing requires regular upgrading and possibly even major re-development. But no explanation has been provided for why this is best done via a 'privatisation' model compared to 'outsourcing' or indeed by in-house staff.

Under a 'privatisation' model, actual ownership of the new visa processing IT platform will be held by the winning company. The winning company will need to generate sufficient

revenue to cover its costs to develop and maintain the platform to a satisfactory level. This raises a new set of risks. How these risks are to be managed remains cloaked in secrecy.

Before the Government signs any contracts to pass ownership of the visa processing IT platform to a private company, the Prime Minister and the Minister for Immigration must explain the rationale for this major change and make the business case (as well as the relevant risk management plans) available to the public so that all Australians can understand why Australia's visa and citizenship functions are being privatised.

Nothing less than the control and management of Australia's borders is at stake. As former Prime Minister John Howard recently said in an interview with the BBC "My experience as almost 12 years as prime minister was that whenever the Australian population thought that immigration was being controlled and properly monitored they supported high immigration [numbers]. If people think it's methodical they will support it. That came through very strongly. If they feel that control is slipping they will turn against it. I think that would apply to just about any country in the world. It's basic common sense".<sup>i</sup>

The current Prime Minister and the Minister for Immigration have a responsibility to explain to the Australian public that control will not further slip away from the Government with privatisation.

This can be done without breaching commercial-in-confidence requirements.

### **Application Fee Revenue and Resources Allocated to Processing**

Australia's visa and citizenship systems operate under an application fee charging regime. For most visa types, revenue collected significantly exceeds the level of resources devoted to processing the relevant applications. That includes the attributed costs of the IT platform, etc. Australia's visa application fees are already amongst the highest in the world. This fact was highlighted by the Productivity Commission in its 2016 Report on the Migrant Intake.

Visa and citizenship application fees have operated under tax legislation, rather than cost recovery arrangements, for close to 30 years. This allows the Government to set these fees at levels well above cost recovery. As a result, increases in visa application fees and charges have increasingly outstripped resources allocated to visa processing.

Major increases in visa application fees, combined with increases in the volume of applications, has resulted in rapid growth in visa application revenue.

All visa and citizenship fee revenue is directed to the Consolidated Revenue Fund (CRF). Government decides how much of this revenue is allocated to the Department of Home Affairs and the Home Affairs leadership decides how much is then allocated to application processing and how much to other Home Affairs functions.

It is thus partly a budget decision of Government that determines how quickly and how thoroughly applications are processed – policy, ministerial and senior leadership directions, visa design, the efficiency of the visa processing IT platform and staff training and morale are also important factors.

Under a privatised arrangement, it appears likely that revenue from visa application fees will be split three ways:

- Partly to CRF and retained for other broader budget purposes – part of this may also include any payback arrangements Home Affairs has agreed with the Department of Finance to offset upfront costs to implement the privatisation initiative and/or efficiency dividends over and above the standard requirement. Such payback arrangements would be reflected in declining outyear funding for visa processing and related functions in the Home Affairs budget;
- Partly to Home Affairs ostensibly for visa processing subject to the decisions of the Home Affairs leadership and any pay back commitments the Home Affairs leadership has made to the Department of Finance as part of the visa privatisation initiative. It remains an open question as to what staffing and other cost reductions Home Affairs will need to implement to live within its declining budget due to privatisation. For example, there has been speculation of closing the Working Holiday Maker global processing centre in Hobart; and
- Partly to the new owner of the visa processing IT platform and subsequently responsible for processing a growing range of visa types.

The portion of visa application revenue that flows to the winning company will likely be generated through further increases in visa application charges which will need to be re-negotiated from time to time. These negotiations will become a driver of how visa and citizenship applications are managed. Each further fee increase will also impact on the competitiveness of key Australian industries, including Tourism and International Education. These industries should be consulted on further increases in students, visitor and working holiday maker application fees.

The pressure from the private company to increase fees and grow the caseload further (ie increase net overseas migration levels) will be intense.

This makes it even more important Government publicly explain why a better outcome could not be secured through 'outsourcing' and/or 'in-house' re-development of the visa processing platform? How much of the decision to adopt the 'privatisation' model is being driven by the staffing cap? What capabilities and understanding of immigration systems and processes will the winning private company have that Home Affairs does not? And if the private company does have such expertise, why not buy that expertise rather than transfer ownership of the visa platform to a private company?

### **Application Backlogs and Visa Integrity**

A possible rationale for going down the privatisation path is that Home Affairs considers (whether rightly or wrongly) that this is its best option to regain control of Australia's visa system and our borders.

Home Affairs would be well aware that key indicators of the current health of the visa system are flashing red ([see here for details](#)):

- Visa application backlogs and processing times have ballooned to unheard of levels in recent years;
- People entering on visitor visas and then changing status to a long-term temporary or permanent stay after arrival in Australia now represent around 25 percent of Net Overseas Migration after growing steadily over recent years – well above the 5 percent to 10 percent that had in the past been viewed as acceptable;
- The backlog of people on bridging visas was almost 230,000 in March 2019 and has also grown rapidly in recent years – under the Howard Government, a bridging visa backlog approaching 100,000 was viewed as unacceptable;
- The backlog of migration and refugee applications at the AAT has grown rapidly to over 60,000 and continues to grow relentlessly month by month.

These backlogs have encouraged rogue operators to use the delays in our visa system to bring in record numbers of non-genuine asylum seekers – over recent years, asylum seeker numbers have exceeded all past records, including at the peak of the boat arrivals era in 2009-12 or around the time of the Tampa.

It is extraordinary that Government ministers are publicly arguing this loss of control over Australia's borders is nothing to worry about ([see here](#)). In private, ministers in a Government obsessed with border control must be worried. They will have noted the comments of former Prime Minister John Howard in a recent BBC interview arguing the importance of immigration being 'controlled and properly monitored'.

So could privatisation of the visa system be the solution to regaining control of the visa system?

A possible argument is that visa privatisation will shift certain workload to the winning tenderer and thereby create space within the (artificial) Home Affairs staffing cap to enable it to start dealing with the various backlogs it has allowed to be created. Leaving aside the dubious merits of the staffing cap, this argument must be considered within a risk framework as it assumes that a private company can develop the IT platform and manage parts of the workload more efficiently and with less risk to visa integrity.

### **Risks of monopoly ownership of visa processing IT platform**

The timeframe for development of the new IT platform will likely be between 2-3 years. Given the current blow-outs and abuse of the visa system, that is a long time to wait before a possible solution is available. Is the Government preparing the Australian public for things to get even worse during that period given the projected decline in funding for visa processing and the blasé comments about the backlogs from Minister Reynolds (see response from the Minister to a parliamentary question without notice from Senator Keneally)?

Previous attempts at major redevelopment of Australia's visa processing IT platform have encountered significant delays and cost blow-outs due to developers underestimating complexity and the constantly changing nature of immigration policy. What allowance has

Home Affairs made for the winning bidder similarly underestimating complexity? How will Home Affairs deal with delays and cost blow-outs? How will these be paid for?

What contingencies has Home Affairs made for delivery of an IT platform that fails to operate as intended? Will the existing platform continue to be upgraded in the interim in case the tenderer's IT platform fails? What will that cost and has Home Affairs adequately budgeted for that?

Australia's visa system, like that of all developed nations, is complex. While Home Affairs has for years talked about visa simplification, that remains a pipe-dream. If anything, Home Affairs has in recent years made the visa system more complex and more confusing. The replacement of the sub-class 457 visa is a good example.

Maintaining an IT platform for such an increasingly complex visa system will inevitably involve growing costs. Will Government agree to ever increasing visa application fees to meet the demands of the private company that would be the monopoly owner of the IT platform?

Governments have always demanded that Australia's visa system be responsive to emerging issues and developments. This requires not only changes to legislation, procedures, staff training and public information but also changes to the IT platform. As the private company that owns the IT platform will hold the whip hand, will government always have to agree to whatever price the owner of the IT platform demands? It is hardly as if the government can go to another company to do the upgrade – it won't own the system anymore.

The Government may consider this is not an issue as it can always increase visa application fees without damaging the budget bottom line. But is that type of thinking really sustainable?

Can Australia simply keep forever increasing application fees much faster than the rate of inflation for students, visitors, working holiday makers and skilled migrants without any consequences? There will inevitably be push back from relevant industries to such an approach.

Or will Home Affairs be reluctant to recommend changes to visa arrangements to deal quickly with emerging visa integrity issues because it cannot afford the price the owner of the IT platform demands?

An even greater risk is if Government intends to tighten policy that may lead to a reduction in the number of applications – and thus a reduction in application fee revenue. Will Home Affairs be reluctant to recommend such a policy change because of the costs it would have to meet to keep the owner of the IT platform no worse off?

Home Affairs will know that it cannot afford to allow the owner of the IT platform to get into financial trouble. Will there be a fallback plan for the possibility of the owner of the IT platform getting into financial difficulties?

The winning tenderer will be under pressure to deliver strong financial returns to its investors. That requires not just increasing revenue but also limiting costs. How will Home

Affairs deal with demands from the owner of the IT platform to make changes that save costs and automate processing but risk visa integrity?

A possible way out of this dilemma for Home Affairs would be to allow the owner of the IT platform to use that platform in 'innovative' ways to increase profits. But these 'innovative' uses are unlikely to be in the public interest (see below).

### **Premium service channel**

One of these 'innovative' uses could be the introduction of a premium service stream where applicants who are prepared to pay a much larger fee would receive a faster and more facilitative service (code for a higher probability of being granted the visa).

While Home Affairs will no doubt argue there is no risk to visa integrity from such an approach as all visa decisions would be made 'under the control of the Minister', the slippery slope is there for all to see. It is as obvious as the consequences of privatising the regulation of building standards.

It would not be possible for the owner of the IT platform to promote a premium service with a very high application fee if it could not show evidence of a much higher rate of success compared to a lower cost basic service that is both slower and with a lesser likelihood of success.

### **Ownership and use of sensitive data for commercial purposes**

Another 'innovative' way for the owner of the IT platform to increase profit would be through the extraordinary data the owner would hold. Australia's citizenship and visa databases hold some of the most extensive and detailed data on Australian citizens, family and humanitarian sponsors, education providers, overseas students, tourists and companies who sponsor overseas workers. This database would be incredibly valuable.

A first issue is the protection of this data. But even more significantly will be how the IT platform owner could use and/or sell the data. While Home Affairs may argue it would never agree to this data being used inappropriately, the pressure from the owner of the IT platform to chip away at Home Affairs' resistance would be relentless.

### **Using the IT platform to direct users to other commercial providers**

Finally, the IT platform itself will interact with millions of Australians and people from overseas every year. The opportunity to use the platform to 'guide' users to the services of specific companies (eg airlines, banks, real estate agents, hotels, tourism operators, labour hire companies, health insurance companies) is immense. It will appear to users that these commercial operators are either endorsed by government and/or must be used by them as part of acquiring their visa.

Once again, the ability of Home Affairs to prevent the IT platform from being used inappropriately emerges. The risk in terms of lessening competition and/or misrepresenting the position of various companies as being 'government approved' is significant. Advice on this should be sought from the ACCC.

## Conclusion

The overall risks of going down the privatisation path for visa processing are immense while the benefits appear marginal at very best:

- The Prime Minister and the Minister for Immigration must be open with the Australian public on the business case, risk management plan and key performance indicators for privatisation before signing any contracts.
- These plans must be subject to a proper external audit by the Auditor-General's Office and the ACCC.
- If the privatisation proceeds, the contract must include a pathway and mechanism for the government re-acquire the IT platform at reasonable cost, if the privatisation fails.
- The contract must also expressly prohibit introduction of a premium service channel; sale or use of data for any commercial purposes; and use of the IT platform to direct users to other commercial service providers.

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<sup>i</sup> Howard, John (2019), in Nick Miller, John Howard schools Britain on attitudes to immigration, Sydney Morning Herald, 14 August 2019, <https://www.smh.com.au/world/europe/john-howard-schools-britain-on-attitudes-to-immigration-20190813-p52gs9.html>