



Submission of the Legal Services Commission of South Australia

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

Term of Reference b: Waiting times for processing and integrity checking of applications for relevant visas

The Commission acknowledges the security and other challenges faced by the Department of Home Affairs in relation to verification of identity.

Applicants too, face significant challenges when required to provide extensive documentation to prove identification. Such documentation may not be readily available due to a number of factors, including forced or hasty departure from their country of origin, inability to bring their personal documents, inability to return to, travel in or contact their country of origin, destruction of documents during conflict, and low quality standards for identity documents in their country of origin.

The Commission submits that the criteria for establishing the identity of applicants should be widened. There are a number of alternative means of identity verification which could be used. These alternative means could include:

- Extensive interviews to establish a comprehensive and consistent chain of events in relation to each applicant about their background, refugee status, family history etc.
- Registration with available international biometric databases such as the EuroDac to have access to other data sources to assist with establishing identity.
- DNA tests where a blood relationship is required to be established with a sponsor who resides in Australia.

Term of Reference d: Cost of Applying for Relevant Visas

Prospective protection visa applicants are advised that they must lodge pre-payment of the Visa Application Charge (VAC) online via an ImmiAccount. Whilst the option to lodge by paper remains, the option to nominate payment by debit/credit card on the application form has been removed. The requirement is now for online payment only. The removal of the other options for payment creates a significant obstacle for applicants in detention. They do not have access to the internet to create an ImmiAccount for pre-payment of a VAC. Applicants who are non-English speaking, dealing with mental or physical trauma and/or who lack any supports face difficulty in meeting this requirement.

Application forms for other visa categories, for example, visitor visa (form 1419), parent (forms 47PA and 47PT) and New Zealand citizen Family Relationship (form 147) provide the option to pay by providing credit or debit account information on the relevant forms. We submit that the requirement for online payment of the subclass 866 VAC creates a substantial obstacle for those applicants who are in detention and that an option for providing payment details should be reinstated on the 866 application form.



Term of Reference g: Eligibility for and access to family reunion for people who have sought protection in Australia

The "split family" provisions of the *Migration Regulations 1994* allow for immediate family members of the primary applicant to be granted a permanent visa of the same subclass if certain criteria are met. The Minister is not required to consider whether the family member has suffered persecution or discrimination. When considering whether there are compelling reasons to grant the visa, the Minister is only required to have regard to the extent of the applicant's connection with Australia.

By contrast, there are significant hurdles for the immediate family members of those who were granted onshore protection visas to be reunified.

An immediate family member of a holder of a Protection (Subclass 866) visa or Resolution of Status (Subclass 851) visa can apply for a Global Special Humanitarian Visa (Subclass 202) at no cost. When considering whether there are compelling reasons to grant such a visa, the Minister must have regard not only to the extent of the applicant's connection with Australia, but also to the degree of discrimination to which the applicant is subject in the applicant's home country. The Minister must also consider whether there is any suitable country available, other than Australia, that can provide for the applicant's settlement and protection from discrimination. Finally, the Minister must have regard to the capacity of the Australian community to provide for the permanent settlement of persons such as the applicant in Australia. It is extremely unclear how an applicant can successfully address the last criterion in his or her application.

Applications under these protection provisions can take years to process with a high risk of rejection based on the subjective criteria of sufficient discrimination, capacity to resettle elsewhere, or whether the Australian community has the capacity to provide for their permanent settlement.

As a consequence, immediate family members often look to apply for partner visas (Subclasses 309 and 100), which currently cost \$7,715, or child visas (Subclass 101), which currently cost \$2,665 each. Costs for secondary applicants of partner visas are \$1,935 for minor dependants and \$3,860 for adult dependants. Reunification of, for example, a family comprising of a couple with one adult child and one minor child would cost \$13,510 for visas alone. These costs often prove prohibitive of family reunification and lead to permanent separation.

It is submitted that the current regulations pose an undue burden and difficult legal tests on immediate family members of holders of onshore protection visas who have been afforded international protections under the *Refugees Convention* as those on offshore humanitarian visas.

The current regulations may lead to an unjustified permanent separation of the family contrary to the importance and protection of the family unit recognised in articles 17 and 23 of the *International Covenant on Civil and Political Rights* and of the interests of children recognised in articles 3, 7 and 9 of the *Convention on the Rights of the Child*.

We suggest that Clause 202.222(1) should be expanded to apply to applicants proposed by a holder of a Subclass 866 or 851 visa. Alternatively, we suggest that fees for partner visas and child visas be reduced or waived for immediate family members of such proposers.