



GAP VETERAN & LEGAL SERVICES

MIGRATION DIVISION

GAP Legal Pty Ltd
ABN: 35 649 353 471 | MARN: 1796927

PO Box 222, Fyshwick ACT 2609

FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE Inquiry into Australia's engagement in Afghanistan

GAP Legal Services have directly assisted close to 2,500 Australian visa holders in the Afghanistan humanitarian crisis. Most of our clients are Afghan Nationals who worked with the Australian Government and its contracting partners: GardaWorld, Hart Australia, Sodexo, Jones Lang LaSalle and Nine Mile Constructions. We also act for several ADF interpreters and mission essential personnel, at-risk journalists, judges, and high-value individuals. They and their families, predominantly women and small children are all Australian visa holders who have met the requisite clearances under the Australian visa program. Despite giving the same level of commitment to supporting Australia, a very small number of our clients do not have Australian visas. We seek assurances from the Australian Government to reconsider their applications which were made during considerable distress. To that end, we appeal to the Government for compassion and understanding.

As we contemplate our Nation's engagement in Afghanistan, we hope to articulate what actions still need to be taken to safeguard those who are anxiously awaiting our help. Those who remain in Afghanistan face considerable risk because of the extent and duration of their work for Australia. So while they are grateful to the Australian Government for its support, as we are too, our clients are still a long way from being evacuated to safety.

The GAP Legal Services team tasked with supporting our clients in the Afghanistan humanitarian crisis was only assembled five short months ago. Since then, we have worked effectively and efficiently under extremely difficult circumstances, with no funding and minimal resources. What we have achieved and continue to achieve in support of Australia's engagement in Afghanistan, particularly in the evacuation phase's lead-up and post evacuation phase, is remarkable. We have proven to the Australian Government that we are a reliable and very effective partner worthy of more direct engagement in the future. To that end, our efforts are aligned to providing critical, timely and accurate information to the Australian Government to best understand the challenges and experiences of Australian Visa Holders and non-Visa holders in humanitarian crisis, regardless of the location.

On a personal note, I would also like to acknowledge three people who have supported me personally throughout this crisis: Warrant Officer (Retd) Kerry Danes, Mr Justin Bassi, Chief of Staff for the Australian Minister of Foreign Affairs, and Mr Dan Parker, Chief Operations Manager of the Australian Special Forces Veteran Charity—Wandering Warriors. Together we have been working on the operational side of things to plan and execute overland evacuations. I am very grateful for their expertise and guidance, given the enormity of our task and the challenges that we continue to encounter on the ground.

In conclusion, of the many recommendations that we present to you today, I believe we must give particular consideration to better engagement between the Australian Government and groups, like GAP Legal Services, who have long-standing relationships with key stakeholders in many affected populations. We need to establish more fluid communication hubs in each State of Australia to collect, analyse and disseminate critical information for the Government to improve its crisis preparedness and response in the likelihood of future humanitarian crises.

Dr Kay Danes, OAM
Humanitarian Adviser
GAP Legal Services

Glenn Kolomeitz
Director/Lawyer
GAP Legal Services



SUBMISSION

Dated:
Saturday, 9 October 2021

FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE INQUIRY

“AUSTRALIA’S ENGAGEMENT IN AFGHANISTAN”

Submission by:

Glenn Kolomeitz
Immigration Lawyer/Director
GAP Legal Pty Ltd

Dr Kay Danes OAM
Humanitarian Adviser
GAP Legal Pty Ltd

Douglas Grierson
Head of Migration/Director
GAP Legal Pty Ltd

Bronwyn Archer Dawson
Operations Manager/Director
GAP Legal Pty Ltd

Grace Tosic
Compliance Manager
GAP Legal Pty Ltd

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Attachments

1. Dr. Kay Danes AOM, Observations and Considerations: examples of communications (inclusive of raw data), personal observations, questions, and recommendations

Over 2,300 Afghans now supported and represented
Over 20,000 individual pieces of communication shared and actioned
Offers of support including the sourcing of more aircraft
Dozens of letters sent to Ministers of Parliament
Current situation in Afghanistan as of 04 October 2021

Executive summary and recommendations

Volunteer advocates and immigration lawyers like *GAP Legal Services*, continue to carry the weight of, and moral responsibility for aiding Afghans who were issued (or rejected) Australian Humanitarian Stay (Temporary) 449 Visas and who remain at risk in Afghanistan, and those located in other parts of the world as displaced persons. This document is prepared with the aim of providing information to the Australian Government to better understand the challenges and experiences of those Australian Visa Holders and non-Visa holders.

Our aim has always been, and continues to be, focussed on delivering solutions based on realistic expectations, especially in times of humanitarian crises, so the Australian Government can be assured of our capacity, experience and integrity, as a reliable partner.

To that end, we make the following key recommendations:

List of recommendations

1. Adherence to Ministerial Direction Number 84 of 24 June 2019, issued under s 499 of the *Migration Act 1958*, that provides:

“Where the Department of Foreign Affairs and Trade has prepared [a] country information assessment expressly for protection status determination purposes, and that assessment is available to the decision maker, the decision maker must take into account that assessment, where relevant, in making their decision. The decision maker is not precluded from considering other relevant information about the country.”

Reference: <https://www.dfat.gov.au/about-us/publications/country-information-reports>

2. Better engagement is needed between the Australian Government from a whole of government perspective and should include genuine consultation with individuals and groups who hold the expertise and long-standing relationships with key stakeholders in affected populations.
3. The processing of LEE and Refugee visa certifications and subsequent visa applications must be improved. The Afghanistan visa process evidenced inefficiencies, a lack of situational awareness, inordinate delays, and a lack of understanding of individual departments of the cross-departmental processes involved. Industry must be engaged at an early stage in this process, such that the following initiatives are appropriate:
 - A preferred supplier panel of Migration Institute of Australia (MIA) members only to expedite visas
 - Department of Home Affairs to facilitate an ‘Approach the Market’ to a key group of MIA members,
 - Department of Home Affairs to have a preferred supplier panel of MIA members to regulate costs incurred by individuals, and to mitigate current scams and the like.
4. Continued evacuations and humanitarian crisis response must be improved. The Afghanistan evacuation operation could have been better coordinated between Australian Government Departments and Industry crisis groups utilising local resources. Industry must be engaged at an early stage in this process such that the following initiatives are appropriate:
 - A preferred supplier panel of industry experts to further support and assist with the ongoing humanitarian crisis
 - Department of Foreign Affairs to facilitate an ‘Approach to Market’ to key/select contributors to further facilitate, coordinate evacuations.

5. Many hundreds of former LEEs and their families are in Australia on temporary visas under subclass 449, which are due to expire in as little as one month. There are many hundreds of 449 visa holders in Afghanistan who were unable to evacuate and similarly facing lapsed visas in the coming months or weeks. There are also many former LEEs still in Afghanistan who are yet to receive either LEE certification or visas of any variety. A family of a former LEE were evacuated by a United States aircraft to Dubai. They were then flown to Germany and are now in a refugee camp in Texas and are yet to receive visas. It is recommended the Minister approve the transfer of 449 visas to permanent visa subclasses, and grant visas to LEEs and families still in Afghanistan, or in refugee camps elsewhere.
6. Establish more fluid communication hubs utilising security and intelligence experts in each of the State communities of Australia to collect, analyse and disseminate critical information. This will enable Australians and Australian visa holders to make informed decisions around their personal safety and movements during a humanitarian crisis.
7. Crisis management exercises (CME) based on the lessons learned from this humanitarian crisis could improve crisis preparedness in the likelihood of a similar crisis in the future.
8. Fund migration advocacy to assist clients with humanitarian visa applications in order to streamline the process for the Australian Government, and to minimise the impact of moral trauma among applicants.
9. Develop a contingency to engage corporate cooperation and financial support to assist with the provision of chartered air assets to affect a solution for emergency evacuation of civilian populations.
10. Implement a QR Code system for Australian Immigration with links to other Australian Departments that links to Australian passport holders and Australian visa holders' biometric data.
11. Implement an Australian Emergency Passport (with an emergency travel visa) to assist those persons who are at risk of persecution and require urgent evacuation during a humanitarian crisis, and to those who are unable to obtain their country's approved travel documents as a result of that country becoming a failed state.
12. In future, ensure Australian Government contracted partners maintain an up-to-date biodata register of all their staff, especially local nationals engaged to act on their behalf, and ensure that data is accessible to the Australian Government in times of humanitarian crisis.

About GAP Legal Services

GAP Veteran & Legal Services, including its commercial legal entity, *GAP Legal Pty Ltd* (trading as *GAP Legal Services*, to be referred to as *GAPLS* throughout this document), and its subsidiary human resources arm, *GAP Resource Management*, is a veteran-owned and operated, multidisciplinary firm serving veterans and their families. *GAP* is headquartered in Canberra and has an office in Sydney.

The executive and operational staff of *GAPLS* are former Australian Defence Force (ADF) members and/or International Humanitarians with a diversity of experience across the legal, logistics, intelligence, managerial, engineering, and special operations spectrum of military, security and police activities, operating in armed conflict, disasters and other complex emergencies.

The Migration Division of *GAPLS* was established to assist Afghan nationals who worked for or with Australian military forces, diplomatic functions, and reconstruction/development initiatives in Afghanistan to secure visas to Australia. Our vision is focused on delivering solutions based on realistic expectations, including in times of humanitarian crises.

Glenn Kolomeitz is a former Army officer and veteran of the conflicts in Timor Leste and Afghanistan, a former NSW Police officer with experience in coronial investigations and counter-terrorism, and a former defence policy adviser. He is a director of *GAPLS*, where he specialises in immigration law, public international law, criminal law and appellate

administrative law. In addition to undergraduate law, policing, and intelligence analysis degrees, Glenn has postgraduate degrees in international law, defence studies, military law, strategic intelligence, fraud and financial crime investigation, investigation management, and business administration. He is presently writing his doctoral thesis on command responsibility for war crimes.

In executing its mission to assist Afghan nationals with their migration processes, *GAPLS* partnered with special humanitarian advisers. Dr Kay Danes OAM, senior humanitarian adviser, diplomatic liaison, and facilitator of evacuations in Kabul. Dr Danes has a PhD (Law & Justice), a Masters Degree in Human Rights, and relevant academic and professional security qualifications. She has administrative experience working in Australian and Foreign Diplomatic Posts in the Middle East and extensive operational experience in armed conflict, disasters, and other politically sensitive and complex emergencies.

Our strategic operations adviser is Warrant Officer Class One (Retd) Kerry Danes, CSM, a retired SASR Veteran with over 42 years' service with the ADF. He has deployed numerous times to several ADF operational theatres, including Afghanistan, where he deployed several times and twice as a Regimental Sergeant Major (RSM) of two Special Operation Task Group rotations. Throughout his career, Kerry Danes specialised in counter-terrorism, hostage rescue and crisis continuity planning in extreme environments.

GAPLS also partnered with the veteran-operated charity, Forsaken Fighters in identifying LEE clients and processing applications for LEE certification and subsequent visa application completion and lodgement. The founder and CEO of Forsaken Fighters Inc, Jason Scanes, is a former Army intelligence officer who was commissioned from senior non-commissioned rank and served 19 years in the Australian Regular Army. Jason was instrumental in taking the case of a former interpreter with whom he worked in Afghanistan to the Full Court of the Australian Federal Court. He successfully challenged the rejection of that LEE interpreter for certification under the Defence LEE program. Forsaken Fighters aims to raise the voices and awareness of those 'Afghan Allies' left behind in Afghanistan and draw attention to the need to review the LEE visa policy. It also works to ensure appropriate assistance is afforded to those deemed 'at significant risk of harm' by the Australian Minister of Defence.

Together *GAPLS*, Dr Kay Danes and Mr Kerry Danes, along with Forsaken Fighters, provide critical assistance to Australian and Australian Visa Holders in Afghanistan, inclusive of up to 1,000 who were evacuated from Kabul airport ahead of the 31 August 2021 deadline.

In addition, *GAPLS* remain up to date with the evolving situation and provide services to a further 1,300 Australian visa holders seeking urgent evacuation from Afghanistan.

GAPLS is well placed to provide commentary to the Committee based on practical experience and lessons learned from the Afghanistan humanitarian crisis.

Introduction and background to the submission

GAPLS welcomes the opportunity to provide a submission to the Foreign Affairs, Defence and Trade Reference Committee Inquiry into *“Australia’s Engagement in Afghanistan”*.

Why GAPLS is making a submission?

As a Veterans owned business, *GAPLS* started with a commitment of representation to around 200 individuals. We now act on behalf of and represent more than 2,500 people in the Afghanistan humanitarian crisis. During the initial evacuation phase, we interacted with the Department of Foreign Affairs & Trade (DFAT), the Australian Defence Force (ADF), various Ministers, Australian Federal and State Members of Parliament. We thank all those involved in providing us assistance during such challenging times, which enabled us to achieve significant outcomes for our clients.

Our presentation and approach could be summarised as emotive; the process and tasks you see as numbers and statistics, we see as people, families, and children. There has also been a direct (negative) impact on our veterans and current serving ADF personnel. Many of whom struggle with the thought of leaving ‘mates’ behind. Those friendships, in particular, were forged under significant and sometimes very traumatic circumstances. The volume of our team’s effort involves more than 5,000 hours, seven individuals working over several weeks with very little respite. We have achieved an incredible output of correspondence, communications, interactions with a range and scope of people and operational intensity during this time, and our work continues.

GAPLS has achieved remarkable success for such a small organisation. We have worked according to well-crafted contingencies that have literally kept people alive: Governors, Sultans, Brigadiers, Generals, Soldiers, Interpreters, Policemen, Female Judges, Journalists, Doctors, Australian Embassy staff and hundreds of families.

GAPLS work and success are recognised by senior government officials in Australia and Internationally.

GAPLS is making this submission because we want to highlight the challenges our clients and we have faced during this humanitarian crisis. We hope that positive outcomes will result from the lessons we have learned. To that end, better engage the Australian Government and build more robust, collaborative efforts to current practice to support those who once protected Australian lives and others during the Afghan war.

1. The fragile situation in Afghanistan – common knowledge. *How did the Australian Government miss it?*

a. Public Information from the Australian Government

DFAT Country Information Report Afghanistan.¹ This report, the most recent one dated 27 June 2019, and prior versions² provide clear accounts of the risks and fragile nature of the Afghanistan situation.

Ministerial Direction Number 84 of 24 June 2019. This Direction refers decision-makers on protection claims to the country information reports. This Direction provides: Where DFAT has prepared a country information assessment expressly for protection status determination processes, and that assessment is available to the decision-maker, the decision-maker must take into account that assessment, where relevant, in making their decision. The decision-maker is not precluded from considering other relevant information about the country [emphasis added].³

b. Information from applicants under the LEE visa programs

Applications for certification under the Defence and DFAT LEE programs required the applicants to describe how they were 'at significant risk of harm as a result of their employment with [Australian agencies]'.⁴ As part of the extensive application process, the details provided to the respective Afghan LEE programs evidence a deteriorating security situation in Uruzgan, Kabul and elsewhere in which former locally engaged employees of Australian agencies were living. The information provided included, for example, instances in which former LEEs were injured by Taliban forces in apparent retribution for the work performed by the LEEs for Australia. Visa applicants included frank, candid and evidence-based information clearly outlining the situation they faced on a daily basis, and which was escalating. This information shows a cruel and difficult story, which is consistent with the DFAT Country Information Report, latest version 2019. Responses from the respective LEE visa programs confirm their knowledge of the situation in Afghanistan. See below.

From: Afghan LEE <[redacted]>
Date: 18 August 2021 at 3:19:48 PM GMT+4:30
To: [Name redacted]

Subject: Additional information required [SEC=OFFICIAL: Sensitive]

OFFICIAL: Sensitive

Dear Mr [Name redacted],

You provided an account of your kidnapping and torture. Did you report this to the police, did you get treatment from hospital for your injuries? Can you provide police / hospital admission reports to support your claims?

Please provide by **22 August** if possible.

Yours sincerely
Department of Foreign Affairs and Trade

The challenges did not commence with the rapid advance of the Taliban on Kabul, but rather, they began many months, if not years, beforehand. *GAPLS* have an evidentiary paper trail that demonstrates departments claiming to be taken by surprise were provided ample warnings over many months and years leading up to the 'fall' of Kabul to the Taliban.

¹ Department of Foreign Affairs and Trade, *DFAT Country Information Report Afghanistan* (Report, 27 June 2019).

² See Department of Foreign Affairs and Trade, *DFAT Country Information Report Afghanistan* (Report, 18 September 2017).

³ Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Cth), *Direction No 84: Consideration of protection visa applications under s499 Migration Act 1958* (24 June 2019).

⁴ Minister for Immigration and Citizenship (Cth), *Legislative Instrument: Class of persons under paras 200.211(1A)(a) and 201.211(1A)(a) of Sch 2 to the Migration Regulations 1994* (IMMI 12/127, 1 January 2013).

c. The closure of the Australian Embassy in Kabul

Late in April 2021, the Department of Defence (DOD) and the Office of National Intelligence advised DFAT on a number of occasions that the closure of the Australian Embassy in Kabul might be required owing to the deteriorating security situation and the drawdowns of US and international forces and the ADF from Afghanistan.

On 04 May 2021, the Australian Foreign Minister, Senator the Hon. Marise Payne, received a formal recommendation from her Department to close the Australian Embassy five days before she arrived in Kabul on 9 May 2021. During this period, the Australian Embassy contractors began downsizing their personnel.

On 28 May 2021, the Australian Embassy in Kabul was officially closed as the Australian military withdrew from Afghanistan. This left thousands of Australian passport and visa holders at considerable risk and at the mercy of hostile forces and other belligerents occupying Afghanistan at the time. Those particularly at-risk were over 200 individuals who worked for the Australian Embassy as Security Guards and Contractors, inclusive of their families, which brings their total to at least 1000 individuals left with no support from the Australian Government.

On 15 June 2021, the Australian Embassy Security guards were served Employment Termination Notices by hand. The advice to them and those terminated prior to this date was 'due to the project reduction and downsizing of personnel requirements, as notified by GardaWorld's client.'

On or around 02 August 2021, two months after the Australian Embassy 'temporarily' closed, it was observed by former security staff that an Australian delegation accessed the Embassy over a period of several hours. A GardaWorld Operations Manager, accompanied by five members of a GardaWorld Security Assessment Team were seen to be escorting 'a group of individuals' into the Embassy. With the benefit of hindsight, the persons who observed these events believe the purpose of the visit was to 'remove, secure or destroy critical documentation and assets of the Australian Embassy' ahead of the Embassy's permanent closure. At no time leading up to the fall of Kabul were the Australian Embassy security guards and other contractors notified that the Embassy was closing permanently, even though that would have been obvious to those parties.

On 15 August 2021, two weeks after the Australian Embassy was 'sterilised' -- the city of Kabul fell into the hands of the Taliban, who vowed to hunt down and kill anyone who had helped the 'foreigners' in the country. At the very top of that 'kill list' were Government, military, police, Embassy security personnel, judicial members and journalists.

The closure of the Australian Embassy may have been the right thing to do to protect the lives of Australian diplomats and locally engaged staff, many of whom were evacuated well ahead of the 31 August deadline. However, it had devastating consequences for the Australian Embassy guards, contractors and their families (the Embassy Group) who were deemed ineligible to apply for a humanitarian visa under the 'At Risk Afghan Employees Visa Scheme.' This scheme was reserved only for those who were directly employed by the Embassy or other specified agencies, not contractors.⁵

The denial of responsibility for the Embassy Group was evident in media statements, particularly at a Ministerial level. Whilst it is true that the Australian Embassy group were the direct (employee) responsibility of the Private Security Company—GardaWorld, arguably, there was a moral responsibility on the part of the Australian Government to afford the Embassy Group a duty of care. The Government was well aware that the Embassy Group was at risk due to their service to the Australian Government. The rhetoric at the ministerial level stating that the Private Security Companies and other Australian contractors were coordinating the evacuation of the Embassy Group is false.

There can be no denying that the sudden closure of the Australian Embassy denied thousands of vulnerable individuals and groups of people the critical time they needed to create emergency contingencies and move themselves and their families to safety. As a result, those Australian visa holders remain in Afghanistan and face the likelihood of brutal reprisals.

⁵ See, eg, Letter from Ian Biggs, Assistant Secretary Afghanistan and Regional Branch, DFAT to Bashir Watandost (File No 20/1665#10, dated 21 June 2021).

d. Pleas from Humanitarian, Dr Kay Danes OAM

In recognition of the plight of Afghanistan nationals and the deteriorating security situation that had the potential to impact thousands of Australians and Australian visa holders, Dr Danes OAM made appeals to the Australian Government in correspondence, social media, newspapers and television programs. At no time was Dr Danes invited to directly engage the Government despite repeated offers to assist them as a Subject Matter Expert. Samples:

Publisher/platform	Date	Title	Link
SBS News	7 October 2021	Australian advocates appealing to Taliban to get Afghan allies out of Kabul	Australian advocates appealing to Taliban to get Afghan allies out of Kabul (sbs.com.au)
The Daily Telegraph	September 2021	Afghan families hope for new lives	Dailytelegraph.com.au Subscribe to The Daily Telegraph for exclusive stories
International Government Webinar	3 September 2021	The Current Situation in Afghanistan hosted by WEL Afghanistan Branch	https://www.facebook.com/events/837515010236192/?ref=newsfeed
The Daily Telegraph	2 Sept 2021	'Taliban will kill my family but Australia won't help'	Dailytelegraph.com.au Subscribe to The Daily Telegraph for exclusive stories
ABC Radio	24 August 2021	Afghan guards being turned away at airport	https://www.abc.net.au/radio/programs/worldtoday/afghan-guards-being-turned-away-at-airport/13511806
SBS News	27 August 2021	Government unsure if any Australians were caught up in 'evil' Kabul suicide blasts	https://www.sbs.com.au/news/government-unsure-if-any-australians-were-caught-up-in-evil-kabul-suicide-blasts/57fb484a-81c7-4a56-b7a9-ab1b88c857ef
The Australian	24 August 2021	'There's a bit of catch-up going on'	"There's a bit of catch-up going on" amid removal of people from Afghanistan The Australian
The Courier Mail	September 2021	'It will be graphic': Aid worker's grim fears for Australia's Afghan helpers	Couriermail.com.au Subscribe to The Courier Mail for exclusive stories
Radio National	29 August 2021	Hope running out for former Australian embassy guards stranded in Afghanistan	https://www.abc.net.au/radionational/programs/sundayextra/13516874
The Canberra Times	AUGUST 26 2021 - 5:00AM	Canberra's Afghan community wants govt to save as many lives as possible as September deadline looms	Canberra's Afghan community wants govt to save as many lives as possible as September deadline looms The Canberra Times Canberra, ACT
Sky News	24 August 21 13:57 pm	'There's a bit of catch-up going on' amid removal of people from Afghanistan	"There's a bit of catch-up going on" amid removal of people from Afghanistan Sky News Australia
The Mandarin	19 August 2021	Anti-Taliban protestors killed on the streets as deposed president of Afghanistan speaks out	https://www.themandarin.com.au/166388-anti-taliban-protestors-killed-on-the-streets-as-deposed-president-of-afghanistan-speaks-out/
The Mandarin	18 August 2021	Processes delaying help for Afghan interpreters and staff	https://www.themandarin.com.au/166167-processes-delaying-help-for-afghan-interpreters-and-staff/?fbclid=IwAR2jkV8V6nsYgxAizUPe0xZJnwIGpcXHI07opZmCW-B7wdI2zt3N_9LRHfw
Sky News	17 August 2021	'Incompetent' and 'cognitively impaired' Joe Biden is now 'racing for the exit door'	"Incompetent" and "cognitively impaired" Joe Biden is now "racing for the exit door" Sky News Australia
Voices of War Podcast	16 August 2021	Vedran (Maz) Maslic	https://twitter.com/TheVoicesOfWar/status/1427157531072208897?s=20
Sky News	16 August 2021	Afghanistan situation 'greatest failure' of Western democracies in recent memory: Alan Jones	https://www.google.com.au/url?sa=t&rc=1&q=&esrc=s&source=video&cd=&cad=rja&uact=8&ved=2ahUKEwiDnojLsbfzAhX76XMBH5vmA7MQtwJ6BAGKEAM&url=https%3A%2F%2Fwww.youtube.com%2Fwatch%3Fv%3DN_ucO-sQ2_c&usq=AOvVaw3y5-EgXPf1WAYgpeo5ZNu
Tom Ravlic Podcast	15 August 2021	Exclusive: Australian humanitarian advocates reveal the latest from people on the ground in Kabul.	https://www.youtube.com/watch?v=1ki8kwPqwDY
International Government Webinar	04 August 2021	The Current Situation in Afghanistan hosted by WEL Afghanistan Branch	https://www.facebook.com/photo/?fbid=4003055206486570&set=a.1140780182714101
ABC News	19 Jul 2021 5:36pm	Veterans burn medals to protest Australia's 'failure' to protect Afghan translators from the Taliban	Veterans burn medals to protest Australia's 'failure' to protect Afghan translators from the Taliban - ABC News
Sky News Allen Jones	19 July, 2021 - 21:33 pm	Australia 'dragging its heels' on visas for Afghan allies	Australia "dragging its heels" on visas for Afghan allies Sky News Australia
The Daily Telegraph	June, 09, 2021	Nation has a moral duty to evacuate Afghans who helped us	Dailytelegraph.com.au Subscribe to The Daily Telegraph for exclusive stories
Sky News Allen Jones	07 July, 2021 - 21:15 pm	'Window of opportunity rapidly closing' for govt to get Afghan aid workers to 'safety'	"Window of opportunity rapidly closing" for govt to get Afghan aid workers to "safety" Sky News Australia

e. Pleas from the Voice of Veterans, Forsaken Fighters

Australian Veterans joined forces to advocate on numerous forums and promote the plight of the Afghanistan nationals. The following information is shared with permission from Mr Jason Scanes, Chief Executive Officer, Forsaken Fighters.

Twitter	25 September 2021	Visas for ADF interpreters and families - Petition	https://twitter.com/JasonScanes/status/1441645849583386629?s=20
Herald Sun	25 September 2021	Plea to save Diggers' interpreters from Taliban	Heraldsun.com.au Subscribe to the Herald Sun for exclusive stories
Twitter	20 September 2021	Aircrafts into HKIA	https://twitter.com/JasonScanes/status/1439865016233066496?s=20
The Mercury	16 September 2021	Veterans fighting to help their Afghani comrades	Subscribe to The Mercury
SBS - Dateline	15 September 2021	Left behind by Australia, Afghan interpreter finds refuge in the UK	Left behind by Australia, Afghan interpreter finds refuge in the UK (sbs.com.au)
ABC News	07 September 2021	Former ADF interpreter flees Afghanistan only to be told Australian temporary humanitarian visa was issued 'in error'	Former ADF interpreter flees Afghanistan only to be told Australian temporary humanitarian visa was issued 'in error' - ABC News
9News	02 September 2021	Concern biometric data puts Afghans who helped Australia at further risk	Afghanistan News: Concern biometric data puts Afghans who helped Australia at further risk Exclusive (9news.com.au)
Fraser Coast Chronicle	September 2021	'Kick to the guts': Veterans on harrowing impact of Afghanistan aftermath	Couriermail.com.au Subscribe to The Courier Mail for exclusive stories
The Australian	September 2021	All those lives were lost in vain: grieving father	Subscribe to The Australian Newspaper home delivery, website, iPad, iPhone & Android apps
The Australian	September 2021	Heroes' race to defy deadly 'sliding doors'	Subscribe to The Australian Newspaper home delivery, website, iPad, iPhone & Android apps
ABC News	28 August 2021 at 4:49am	Australians in Afghanistan plucked from suburbs in daring mission to reach Kabul airport	Australians in Afghanistan plucked from suburbs in daring mission to reach Kabul airport - ABC News
The Guardian	27 August 2021	Afghan allies feel 'abandoned' by Australia and New Zealand, as Kabul evacuation flights end	Afghan allies feel 'abandoned' by Australia and New Zealand, as Kabul evacuation flights end Australia news The Guardian
Illawarra Mercury	27 August 2021 - 8:00 pm	Gerroa veteran advocate Glenn Kolomeitz pleads for Afghan staff to be brought home to Australia	Gerroa veteran advocate Glenn Kolomeitz pleads for Afghan staff to be brought home to Australia Illawarra Mercury Wollongong, NSW
Nikkei Asia	27 August 2021 12:04 JST	Australia urged to do more for Afghan aides as time runs out	Australia urged to do more for Afghan aides as time runs out - Nikkei Asia
The Guardian	26 August 2021	'Please help us': former embassy guard issues personal plea to Scott Morrison as he tries to flee Afghanistan	'Please help us': former embassy guard issues personal plea to Scott Morrison as he tries to flee Afghanistan Australian foreign policy The Guardian
ABC News	25 August 2021	Afghan interpreter rejected for protection visa evacuated to the Netherlands	Afghan interpreter rejected for protection visa evacuated to the Netherlands - ABC News
The Sydney Morning Herald	22 August 2021	'He could have done something': Why Diggers feel let down by Scott Morrison	Taliban Afghanistan: Why Australian soldiers feel let down by Scott Morrison (smh.com.au)
The Saturday Paper	19 August 2021	Dutton dog whistle over botched rescue	Dutton dogwhistle over botched rescue The Saturday Paper
The Guardian	18 August 2021	Peter Dutton suggests some former Afghan guards and interpreters could pose security risk to Australia	Peter Dutton suggests some former Afghan guards and interpreters could pose security risk to Australia Australian foreign policy The Guardian
The Guardian	18 August 2021	Australia rescues just 26 people from Afghanistan on evacuation flight with space for 128	Australia rescues just 26 people from Afghanistan on evacuation flight with space for 128 Australian foreign policy The Guardian
The Guardian	17 August 2021	Australia will not be able to rescue all Afghans who served alongside military, Scott Morrison says	https://www.theguardian.com/australia-news/2021/aug/17/australia-will-not-be-able-to-rescue-all-afghans-who-served-alongside-military-scott-morrison-says
VICE	17 August 2021	Afghans Living Abroad Are Helplessly Waiting For News From Home	Afghans Living Abroad Are Helplessly Waiting For News From Home (vice.com)
Sky News	18 August 2021	Feeling of 'desperation and fear' for interpreters in Afghanistan	Feeling of 'desperation and fear' for interpreters in Afghanistan Sky News Australia
The Washington Post	18 August 2021 at 10:18 am EDT	Was it 'worth it'? Nations that sent troops to Afghanistan grapple with Kabul's fall.	Allies ponder worth of Afghan intervention after Kabul fall - The Washington Post
2GB Radio - 873AM	16 August 2021	Taliban moves into Kabul as Afghan president flees the country	https://www.2gb.com/taliban-moves-into-kabul-as-afghan-president-flees-the-country/
The Australian	14 August 2021	Taliban 'are coming to kill us', say Afghans in Oruzgan province	Taliban 'are coming to kill us', say Afghans in Oruzgan province (theaustralian.com.au)
News.com	14 August 2021 - 10:53AM	Australian Government urged to evacuate Afghans who helped our troops, now caught in Taliban crossfire	Taliban Afghanistan 2021: Australian Government urged to evacuate Afghans caught in Taliban crossfire news.com.au - Australia's leading news site
SBS News	13 August 2021	As the Taliban's power grows, advocates for Australia's Afghan interpreters warn evacuations must happen now	As the Taliban's power grows, advocates for Australia's Afghan interpreters warn evacuations must happen now (sbs.com.au)

Townsville Bulletin	17 July 2021	'Negligent': Veterans say lives at risk for Afghan allies	Subscribe to the Townsville Bulletin
The New Daily	15 July 2021	'It's over for them': Veterans blast delays to save Afghan interpreters	Afghan interpreters who served Australia in war left stranded, in danger (thenewdaily.com.au)
The Guardian	08 July 2021	Australia's refusal to protect Afghan interpreters from the Taliban is a catastrophic moral failure	Australia's refusal to protect Afghan interpreters from the Taliban is a catastrophic moral failure Jason Scanes The Guardian
The Guardian	24 June 2021	Afghans who helped Australia at risk after receiving Taliban 'night letters', former Dfat adviser says	Afghans who helped Australia at risk after receiving Taliban 'night letters', former Dfat adviser says Afghanistan The Guardian
ABC News	23 June 2021	Canada pledges to speed up resettlement of Afghans who worked with its military against Taliban	https://www.abc.net.au/news/2021-07-24/canada-to-fast-track-afghan-resettlement/100320632
SBS News	18 June 2021 at 1:56pm	Fears that Australia is moving too slowly on visas for Afghan interpreters	Fears that Australia is moving too slowly on visas for Afghan interpreters (sbs.com.au)
The Canberra Times	10 June 2021	Afghan interpreters have earned a place in Australia	https://www.canberratimes.com.au/story/7290374/afghan-interpreters-have-earned-a-place-in-australia/
6PR 882, Talk News	09 June, 2021	Fears grow for Afghan interpreters placed on Taliban kill list	Fears grow for Afghan interpreters placed on Taliban kill list - 6PR
The Daily Telegraph	09 June, 2021	Nation has a moral duty to evacuate Afghans who helped us	Dailytelegraph.com.au Subscribe to The Daily Telegraph for exclusive stories
Sky News Alan Jones	08 June 2021 - 21:45 pm	'Resurgent Taliban are on the hunt': Forsaken Fighters CEO	'Resurgent Taliban are on the hunt': Forsaken Fighters CEO Sky News Australia
The Sunday Morning Herald	08 June 2021 3.30pm	For mateship's sake, get Afghan interpreters out - fast!	https://www.smh.com.au/national/for-mateship-s-sake-get-afghan-interpreters-out-fast-20210607-p57vrl.html
Crickey Talks	03 June 2021	Anger mounts as Australia declines to fast-track plans to save 'our' Afghan translators from Taliban retribution	Anger as Australia fails to fast-track help for 'our' Afghan translators (crikey.com.au)
The Guardian	25 April 2021	Interpreters who helped Australian forces in Afghanistan plead for visas to escape 'extreme threats'	Interpreters who helped Australian forces in Afghanistan plead for visas to escape 'extreme threats' Afghanistan The Guardian
The Guardian	24 April 2021	Interpreters who helped Australian forces in Afghanistan plead for visas to escape 'extreme threats'	Interpreters who helped Australian forces in Afghanistan plead for visas to escape 'extreme threats' Afghanistan The Guardian
The New Daily	10:00pm, 16 Apr 2021	As Diggers prepare to quit Afghanistan, fears grow for interpreters we'll leave behind	Fears for Afghan interpreters Diggers will leave behind (thenewdaily.com.au)
The Guardian	30 May 2021	'The first group they will kill': why Afghan allies are terrified about Australia's exit	'The first group they will kill': why Afghan allies are terrified about Australia's exit Australian foreign policy The Guardian
SBS	2 March 2020 at 7:20pm	This Australian Army interpreter has finally been brought to the country he served	Canada pledges to speed up resettlement of Afghans who worked with its military against Taliban - ABC News
ABC News	Sat 29 Sep 2018 at 2:36pm	Peter Dutton meets retired soldier, but still no go on humanitarian visa for Afghan interpreter	Peter Dutton meets retired soldier, but still no go on humanitarian visa for Afghan interpreter - ABC News
ABC News	Mon 10 Sep 2018 at 7:40pm	Veterans fighting for protection visas for Afghan interpreters	https://www.abc.net.au/news/2018-09-10/veterans-fight-peter-dutton-over-visas-for-afghan-interpreters/10221716
ABC News	03 August 2018 at 9:03am	'His life is in danger': Afghan interpreter launches legal fight for Australian visa	'His life is in danger': Afghan interpreter launches legal fight for Australian visa - ABC News
ABC News	23 Jun 2016 at 2:36pm	Former Australian soldiers fight to get Afghan interpreter a visa	Former Australian soldiers fight to get Afghan interpreter a visa - ABC News

f. Media reporting generally

GAPLS continues to be proactive in the media to who capacity to the Australian Government and other key stakeholders, and to ensure the Australian public are cognisant of the extreme danger facing Afghan LEEs, among them, our clients.

- [How many Afghans does Australia owe a moral obligation to? \(crikey.com.au\)](#)
- [Australia's Afghan rescue effort ramps up | Northern Beaches Review | Manly, NSW](#)
- [BREAKING | First flight out of Afghanistan arrives at Australian base - 6PR](#)
- [Morrison condemns inhuman attack in Kabul | The West Australian](#)
- [Call for public inquiry over federal Government's failure to act in Afghanistan | news.com.au — Australia's leading news site](#)
- [For mateship's sake, get Afghan interpreters out - fast! \(smh.com.au\)](#)
- ['Please help us': former embassy guard issues personal plea to Scott Morrison as he tries to flee Afghanistan | Australian foreign policy | The Guardian](#)
- [Glenn Kolomeitz says communication with the Taliban the next step | The Canberra Times | Canberra, ACT](#)
- [Australia did a disservice to Afghan allies threatened by Taliban | Daily Telegraph](#)
- [Australian visa holders in Afghanistan turned away at the airport - RN Breakfast - ABC Radio National](#)
- [Taliban in Afghanistan: Security checks next hurdle for Afghans evacuated by Australia \(afr.com\)](#)
- [Stranded Afghans granted temporary visas by Australia in fear of being forgotten \(sbs.com.au\)](#)
- ['Please help us': former embassy guard issues personal plea to Scott Morrison as he tries to flee Afghanistan | Australian foreign policy | The Guardian](#)
- [Backflip over Afghan visas | The Saturday Paper](#)
- [Afghanistan sees return to the 'bad old days' of the Taliban | The Australian](#)

2. The Australian Government humanitarian visa processes & processing time

a. Department of Foreign Affairs and Trade

i. Mass rejections of Afghan LEE visa applications

Typically, Visa applications for Afghan nationals take a minimum of 12 months to 10 years to process. However, as the country descended into chaos, the visa applications for the Embassy group were processed very quickly. Refer to Attachment A for additional sample documents, observations, and considerations.

On 21 August 2021, dozens of individuals from the Embassy Group received mass LEE certification rejection letters in Microsoft Word format (File Number: 21/327#16), a standard templated letter with the same group file number. This, even though all of the applications were submitted by individuals and not as a group. The mass rejection letters lacked any consistency. Dozens of rejection letters were sent randomly to the Embassy Group, and many of those officers had impeccable documentation.

On 21 August 2021, at approximately 5:55 am, one of the most senior Australian Embassy Security Guards, [name redacted], was sent a rejection letter. This did not make any sense. Senior Security Officer [name redacted] provided exceptional service to the Australian Embassy from 2010 up until June 2021. The wording in the letter sent to him on the eve of the evacuation was clinical and insensitive. There was no articulation or explanation as to why his application was rejected. Simply that it had been. See below.

The rejection letter did not give any consideration to the fact that as a Senior Embassy Security Guard, [name redacted] was seen by Taliban to be 'traitorous' because he worked for the Australian Embassy and its Government and for the benefit of the Afghan President Ghani. [Name redacted] also submitted in his application details of his ethnicity which put him at considerable risk from Taliban reprisals.-The wording in the rejection letter states, 'Particular priority will be given to persecuted minorities...' which was, in reality, less than authentic. [Name redacted] had clearly articulated in his 'threat statement' to the Australian Government that he was at significant risk due to him and his family being part of an ethnic minority. In fact, several of the Australian Embassy group and their families are Hazara, an ethnic group who have endured a distinct history of oppression, including slavery, torture and genocide. Others in the Embassy Group belong to a minority by faith—Shia Muslim.

These elements and by the nature of their employment alone should have guaranteed the Embassy group priority for evacuation. [Name redacted] was one of 200 Australian Embassy Security Guards and Contractors who faithfully served the Australian Government for over a decade. Yet, like [name redacted], many of those were also sent rejection letters.

What is most disturbing is that the Australian Government knew and reported on the risks the Embassy group and their families face on a daily basis as a result of their employment. They and their families are frequently and deliberately targeted for harm. The Taliban Government publicly and repeatedly broadcasted their intentions [and still do] to seek retribution against anyone who worked for the Coalition forces and Foreign Governments, including the Australian Embassy Security Guards, Contractors and their families.

Questions:

- Did the Australian Government think the threat to the Embassy guards and their families was minimal?
- Did the Australian Government have any plan to evacuate the Australian Embassy guards and their families, at any time, before or after the 31 August deadline?
- Did the Australian Government at any time discuss the evacuation of the Australian Embassy guards and their families with the Private Security Company that employed them (GardaWorld)?

On Sunday 22 August at 8:21 pm, Australian Embassy Security Guard [redacted] received another letter from the Australian Government. This time he was granted a Humanitarian Stay (Temporary) visa subclass 449 to facilitate urgent travel to Australia.

Approximately 12 Embassy Guards were cleared in the immediate aftermath of the fall of Kabul, in contrast to the many dozens who were rejected as part of the mass rejection initiative. Those who were accepted were merely told by email to 'complete and lodge their Form 842s'. The Form 842 is a voluminous document that was required to be printed and lodged in hardcopy at an Australian Embassy/Consulate or by post. By this stage, the Australian Embassy in Kabul had closed, and the postal service was all but non-existent. Completing and printing in excess of 50 pages inclusive of evidence was all but impossible in the circumstances on the ground in Kabul at that time. The Australian Embassy group were hiding from the Taliban and brutal reprisals.



ii. Department of Home Affairs

Under pressure from the Australian media, the Government did a backflip on the visa issue and allowed Afghans at risk to seek a Humanitarian Stay (Temporary) subclass 449 Visa. This subclass of visa has no recognised application mechanism such that it is a highly discretionary grant on the part of the Government. But with the Embassy closed, many Afghans, including the Embassy group, were unable to lodge their applications in person, which at the time was a stipulation of lodgement. The postal service for the entire country was shut down. Visa applications require a high level of administration, English language, and cognitive ability. Most Afghans working for the Australian Embassy have a reasonable to high-level command of the English language, but English is not their first language. The Visa application is complex, and many of the Embassy group struggled to understand the detailed instructions, vocabulary, and syntax of the Visa application process.

Moreover, under normal circumstances, the Embassy group would have been able to seek advice from consular or Immigration officers to assist them with their applications. But with the Embassy's sudden closure, the Embassy group were prevented from accessing that expertise. Moreover, they were no longer receiving any salary. Their contracts were cancelled, and the stipend of US\$2,500 paid as severance pay was quickly consumed by rent, food, and medical supplies. Indeed, the Embassy Group did not have sufficient funds to engage a local Migration Agent with the professional acumen to assist them with the insurmountable task of navigating the Australian migration policy and legislation, let alone being able to afford the US\$1,000-US\$1,500 price tag for that service. That is, of course, assuming they could find someone both qualified and willing to assist them, given that the country's entire legal sector had shut down. The Embassy Group have no means to pay for commercial air flights when these resume, and without an income, they and their families will be subject to further hardship, assuming they survive the Taliban's promised retribution.

3. Prime Minister and Ministerial advice to the media

The Embassy group was repeatedly rejected at the airport gates by ADF and foreign soldiers. They did not accept the digital e-Visa or the Australian Evacuation Flight offer issued by DFAT. DFAT expressly stated in the Australian media that these facts were false. This messaging was inconsistent with the evidence coming out of Afghanistan from our clients, including photographs [audio and video sent via WhatsApp] taken at the gates by LEEs desperate to prove they held Australian visas. See below.



4. Processes and communication inconsistent, unclear, flawed and frequently failed

a. LEE Program

The Afghan LEE Visa Programs managed by DOD and DFAT, respectively, have proven to be a manifest failure. Timelines for the processing of applications for LEE clearance, i.e., clearance to then apply for a visa, have been objectively excessive. Empirical evidence shows cases of up to three years between the submission of an application and clearance or rejection. Often no acknowledgement of receipt of applications was provided by the DOD or DFAT LEE teams. Thus, no anticipated timelines were provided.

There was no apparent consistency in the decisions to clear LEE applicants for subsequent visa applications or reject them, thus denying many the opportunity to apply for a visa under the LEE program. The mass rejections process taken contemporaneously with the Taliban advancing on Kabul, discussed in greater detail in later paragraphs of this submission, serves to demonstrate the lack of any sense of urgency in this process until it was arguably too late. As well, the lack of any consistency in the clearance process.

These concerns are evidenced in the apparent 'flip-flop' by the Minister for Foreign Affairs when confronted with the reality of the mass rejection letter debacle by Australian media outlets. The response involved a very quiet retraction of many rejection letters and the coincidental granting of temporary humanitarian visas under subclass. 449. Though sadly, not everyone received a 449 as stated.

Had the DOD and DFAT LEE Visa Program teams responded to correspondence from *GAPLS* and others in this space, over many months or years, this administrative failing could have been avoided or, at the very least, mitigated.

b. Temporary Visa Program

i. Class UJ subclass 449 Temporary Safe Haven visa – obstacles and challenges

Subclass 449 visas provide for temporary humanitarian stays in Australia, allowing holders to remain in Australia 'until a date specified by the Minister.'⁶ The visa notifications offered to clients to date indicate the Minister has specified a period of three months. Further, the Regulations expressly preclude holders of 449 visas from applying for permanent protection visas under Class XA subclass 866.⁷ This limitation is stated in the visa notifications provided to clients.

The combined effect of these conditions generates significant challenges for 449 visa holders and for persons/organisations assisting such visa holders. Visa holders who have arrived in Australia are required to renew the 449 visas every three months, or they face the prospect of being deemed, unlawful non-citizens. Representatives of such visa holders, of which many are, such as *GAPLS*, are acting in a pro bono capacity for, face a significant logistical challenge in meeting the three-month deadline and lodging renewals in light of the sheer quantum of clients and differential visa grant dates.

Holders of 449 visas can apply for longer-term temporary protection visas under Class XD subclass 785.⁸ This class of visa allows for a validity period of three years in certain circumstances.⁹ The Minister has expressly precluded 449 holders from applying for any other visas without the approval of the Minister, as stated in the visa notifications provided to clients.

⁶ *Migration Regulations 1994* (Cth) Sch 2, cl 449.511.

⁷ *Migration Regulations 1994* (Cth) Sch 1, Item 1401(3)(d).

⁸ *Migration Regulations 1994* (Cth) Sch 1, Item 1403(3)(d).

⁹ *Migration Regulations 1994* (Cth) Sch 2, cl 785.511.

All of the LEEs who worked for Australian agencies were (and still are) exposed to brutal reprisals as a result of that engagement. 449 visas offer no prospects of permanency in Australia. This lack of certainty is aggravated by the fact conditions may be imposed on 449 visa holders that precludes them from working¹⁰ or from working more than 40 hours/fortnight indefinitely.¹¹ Those Afghans who have arrived in Australia have expressed a willingness to contribute and not become a burden on Australian society.

ii. Class XB subclass 201 In-country Special Humanitarian visa – the LEE entitlement

Whilst only a handful of clients received clearances to apply for visas under the LEE program, and even less eventually secured visas under that program, we maintain the view that all clients of *GAPLS* referred to us are eligible for visas under the LEE program. This program allowed for the grant of visas under Class XB subclass 201 whilst the applicants were living in Afghanistan¹²

Subclass 201 visas are permanent visas. This fact negates many of the obstacles and limitations applicable to the temporary visas discussed in the preceding paragraphs. However, the problem is that in granting 449 visas to our clients, the Department has denied our clients the opportunity to secure the permanency of 201 visas. We contend this was and is their entitlement. This denial of the entitlement is aggravated by the Minister's Direction in the visa notification correspondence that the 449 holders cannot apply for any other visa class/subclass without Ministerial approval.

iii. Class XB subclass 200 Refugee visa – the LEE entitlement

In the event our clients manage to self-evacuate from Afghanistan into third countries, we maintain the view that they are similarly entitled to the permanency of visas under the LEE program – in this instance, under subclass 200.¹³ Again, in granting 449 visas to our clients, notwithstanding their entitlement to permanency under subclass 200 in this instance, the Department has denied our clients their entitlement and reasonable opportunities they could properly expect under the LEE visa program.

The granting of visas under subclass 449 appears to have been a quick resolution of a problem generated from the failure of DOD and DFAT to expeditiously and efficiently process LEE visa program applications. That contention is supported by the mass production and distribution of templated rejection letters in the immediate aftermath of the Taliban advancing on Kabul, the subsequent apparent revocation of such rejections and the concurrent granting of 449 visas en masse.

The 449 visa process, whilst undoubtedly expedient, has created compounding problems for such visa holders and persons/organisations representing or assisting these visa holders.

The granting of 449 visas do not, it is submitted, negate in any way the entitlement of our clients to permanency under the other visa subclasses subject of the LEE visa program. Notwithstanding the obstacles imposed by the Regulations and aggravated by the Minister's statements in the visa notification correspondence, our client's entitlement to permanent visas under the LEE program has not been extinguished, nor can it be extinguished. It is incumbent on the Government to put in place mechanisms to rectify these problems as a matter of fairness and in compliance with the subject legislative instrument and the intent of the Afghan LEE visa program.

¹⁰ *Migration Regulations 1994* (Cth) Sch 2, cl 449.612 / Sch 8, Item 8101.

¹¹ *Migration Regulations 1994* (Cth) Sch 2, cl 449.612 / Sch 8, Item 8104.

¹² *Migration Regulations 1994* (Cth) Sch 2, cl 201.211(a).

¹³ *Migration Regulations 1994* (Cth) Sch 2, cl 200.211(a).

c. Visa holders rejected at the airport gates

The Embassy group were repeatedly rejected by ADF and foreign soldiers who did not accept the digital e-Visa or the Australian Evacuation Flight offer issued by DFAT. They said both were fake. This is likely because the email and the Flight offer did not have any corresponding reference number for linking the letter to the e-Visa email. Either that or the soldiers were not informed that the Embassy group and countless others would be descending upon them with digital e-Visas.

With the benefit of hindsight, it was obvious why the ADF soldiers thought the e-Visas and Evacuation flight offer were fake because the wording in the opening paragraph of the Evacuation flight offer was contradictory. In the initial sentence, the letter 'invited' the Visa Holder to 'apply' for a Temporary Humanitarian Stay visa (subclass 449). In the subsequent sentences, the letter 'advised' the visa holder that the presentation of the letter indicated 'acceptance' of the offer of a temporary stay in Australia. The advice in the attached letter did not align with the advice at the airport. The instructions in the letter directed people to gates that were not open or were controlled by the Taliban. They, therefore, presented a security risk to the Embassy group.

As it was, DFAT had sent e-Visas to thousands of people who were clinging to them with every hope of evacuation, but for the fact, those papers were worthless because time and time again, the soldiers rejected anyone who didn't have an actual visa in their passport, or who was trying to enter the airport with an Australian or US (or other coalition) passport. Again, with the benefit of hindsight, it was clear that DFAT had not considered some of the critical dilemmas Australian visa holders would face while waiting to be pulled from the canal of human sewage. For one, there was no phone charging facilities in 'the ditch', which countered the advice DFAT had issued in the email that directed people to 'keep your telephone charged.' Fortunately, the Embassy Group had the foresight to take multiple phone chargers with them and were wisely conserving the life of each battery. Their problem was that when they showed the soldiers their e-Visas, those soldiers told them to leave the area.

5. The Evacuation Phase

In any given crisis, such that was unfolding at the Kabul airport, communication is understandably limited and often unclear. However, communication between key decision-makers and recovery groups is critical. It must consider the urgency and necessity for information, albeit limited, to develop ongoing contingencies to safeguard vulnerable populations. *Refer to Attachment A for additional sample documents, observations, and considerations.*

a. ADF soldiers rejected Temporary Humanitarian Stay visa holders

The Embassy group were repeatedly rejected by ADF and foreign soldiers. They did not accept the digital e-Visa or the Australian Evacuation Flight offer, and they said both were fake. This is likely because the email and the Flight offer did not have any corresponding reference number for linking the letter to the e-Visa email. Either that or the soldiers were not informed that the Embassy group and countless others would be descending upon them with digital e-Visas.

b. The confusion around Gate Access

The Taliban at the airport were cooperating with the Coalition military forces. They were not preventing people from leaving Afghanistan.

‘The greatest challenge we had was not from the Taliban. Granted, getting through those checkpoints was not easy, and at times our people were beaten quite savagely. But our main problem was the lack of communication with DFAT and less communication with our ADF. It felt very much like we were outsiders, not to be trusted or even eligible to evacuate. I felt extremely frustrated by the fact that whilst I had contact with the DFAT POC, they seemed to be completely overwhelmed. The lack of information to Australian visa holders was extremely poor,’ says Dr Kay Danes.

Over the course of those four days that the Embassy group stood in the canal of sewage waiting to be rescued, *GAPLS* made every attempt to create opportunity after opportunity to evacuate the Embassy group. They communicated for those four days with the DFAT POC in Kabul and ADF commanders in Canberra and other locations. They communicated with DFAT Consular Operations (CONOPS), Immigration and Home Affairs. The communication was akin to an impenetrable fortress. *GAPLS* sent ‘map coordinates’ via WhatsApp messages to the DFAT POC so there could be no mistaking where the Embassy group were located. They even downloaded an actual digital map of Kabul airport and provided this to the DFAT POC, marking the point where the Embassy Group were located. The Australian Embassy delegates sent photos of themselves in front of identifiable airport buildings (the tower with the Turkish flag on it), which were forwarded to the DFAT POC.

c. Inadequacy of Australia's evacuation response

Whilst it is acknowledged that the Australian Government has faced immense challenges with the evacuation response, there are deep concerns within the community about the lack of engagement between the Australian Government and those advocating for Australian visa holders and non-visa holders in Afghanistan. Evacuation planning and implementation are shared responsibilities. In some circumstances, the responsibility to decide to evacuate, or seek shelter, falls on individuals, assisted by the warnings and information provided to them by Government. Evacuation routes are assisted by local knowledge to understand not only the risks that could arise to evacuees but also the knowledge of and availability of the routes themselves. Local capabilities are a critical source of information and resource that, in this case, was under-utilised by the Australian Government and its agencies. Thus, many Australian visa holders were left to fend for themselves in an extremely volatile situation that was made more dangerous due to the lack of communication and support from the Australian Government. Consider this context: the US Government approved a plan and a budget within days to utilise outside groups to evacuate their people and Afghans who hold US visas via charter flights.




GAPLS presented daily detailed biodata, including ‘in-situ’ photographs to expedite and support those on the ground get through to DFAT and/or ADF personnel at the airport gates.

One phone call received from DFAT demanded an in-country phone number be given *“you have 10-minutes to reconfirm a number.”* GAPLS explained it was 4am Kabul time. The reply *“We will reconfirm the number ASAP along with an alternative number”* was not deemed an acceptable response.

In order to keep the window of opportunity open with communications with DFAT, GAPLS replied with, *“please understand there are no power points alongside the Abbey Gates for people to use to charge their phones. They have been standing there for four days now. I will get you the best number and an alternate for you to have options/contingency number...If I don't get to you in 10 minutes, can I leave a message on your work voicemail? Also, just wanting to share, did you know your voicemail is full based on my previous attempts to leave messages for you...”*

This was met with *“yes, that is the way we have it here...”* Do you have an email address I can use? *“No, we don't give it out”*

An example shown below is the level of detail of the Australian Visa Holders that was forwarded by GAPLS to DFAT to assist in the identification process and to expedite the evacuation process.

	NAME	LOCATION	PHOTO	PHONE	D.O.B	ID NUMBER (TASKIRA)	SPOUSE/PARTNER DETAILS	CHILDREN DETAILS
11	[REDACTED]	K: [REDACTED] S [REDACTED] A		997 [REDACTED]	[REDACTED]	[REDACTED]	Wife: [REDACTED]	1. [REDACTED] 2. [REDACTED] 3. [REDACTED]
14	A [REDACTED]	S [REDACTED]		997 [REDACTED]	[REDACTED]	[REDACTED]	Wife: [REDACTED] DOB: [REDACTED]	1. [REDACTED] 2. [REDACTED] 3. [REDACTED] 4. [REDACTED] 5. [REDACTED] 6. [REDACTED]
19	A [REDACTED]	D [REDACTED] S [REDACTED]		997 [REDACTED] 997 [REDACTED]	[REDACTED]	[REDACTED]	Wife: [REDACTED] DOB: [REDACTED]	1. [REDACTED] 2. [REDACTED] 3. [REDACTED] 4. [REDACTED] 5. [REDACTED]

6. Next steps

a. 449 visas

We have a situation now in which many hundreds of our LEE clients and their families are in Australia on temporary visas under subclass 449, which are due to expire in as little as one month. We have many hundreds of 449 visa holders in Afghanistan who were unable to evacuate. They, too, are similarly facing lapsed visas in the coming months or weeks. There are also many former LEEs still in Afghanistan who are yet to receive either LEE certification under the LEE visa program or visas of any variety. One family of a former LEE who was evacuated by a United States aircraft to Dubai and then to Germany are now in a refugee camp in Texas and is yet to receive visas. A number of Australian Embassy guards are in Turkey, Iran and other unknown locations. All remain at risk and are entitled to permanency and certainty, neither of which has been provided by the Australian Government. We maintain that 449 visa holders are precluded from applying for any other class of visa without Ministerial approval. It is incumbent on the Minister to give such approval as a matter of priority.

b. Government services

Many families who are now in Australia on 449 visas have been unable to access Medicare, Centrelink or other services. Families are extremely grateful to have safely arrived in Australia and thankful for the empathy shown by the Australian people; however, as of Thursday, 7 October 2021 many are unable to visit a doctor or have access to any funds. We have individuals in urgent need of medication for the treatment of epilepsy, diabetes, and a blood disorder. A baby is due in one family. In another family, we received the devastating news that the mother miscarried and required hospitalisation.

c. Standardisation of processes and fees associated with submission of Form 842

- i. Adherence to Ministerial Direction Number 84 of 24 June 2019, issued under s 499 of the *Migration Act 1958*, that provides:
- ii. *“Where the Department of Foreign Affairs and Trade has prepared [a] country information assessment expressly for protection status determination purposes, and that assessment is available to the decision maker, the decision maker must take into account that assessment, where relevant, in making their decision. The decision maker is not precluded from considering other relevant information about the country.”*

Reference: <https://www.dfat.gov.au/about-us/publications/country-information-reports>

- iii. Better engagement is needed between the Australian Government from a whole of government perspective. It should include genuine consultation with individuals and groups who have the expertise and long-standing relationships with key stakeholders in affected populations.
- iv. The reception and processing of LEE visa certifications and subsequent visa applications must be improved. The Afghanistan visa and evacuation operation evidenced inefficiencies, a lack of situational awareness, inordinate delays, and a lack of understanding of the processes involved on the part of respective departments. Industry must be engaged at an early stage in this process such that the following initiatives are appropriate:
 - A preferred supplier panel of Migration Institute of Australia (MIA) members only to expedite visas
 - Department of Home Affairs to facilitate an ‘Approach the Market’ to a key group of MIA members
 - Department of Home Affairs to have a preferred supplier panel of MIA members to regulate costs incurred by individuals to elevate current SCAMS etc.

d. Continued evacuation and humanitarian crisis support

- i. DFAT to have a preferred supplier panel to assist with ongoing evacuations and humanitarian crisis.
 - DFAT to facilitate an ‘Approach to Market’ to key/select contributors to further facilitate, coordinate evacuations in consideration of the recommendations resulting from this Inquiry.