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Office of the President

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Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By email: legcon.sen@aph.gov.au

Dear Committee Secretariat

Questions on Notice – Public hearing on the 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

Thank you for the opportunity to take the following questions on notice. The Queensland Law Society (**QLS**) appreciates being consulted on this important inquiry.

Please see below our responses to questions taken on notice, as requested:

1. **The Department has provided a list of figures as to time lines for visa classes. Could you look through those and give us advice as to whether you believe these estimates to be accurate and, in your opinion, whether the waiting times have improved in recent years or deteriorated?**

Based on our experience as practitioners, our view is that these figures do not accurately reflect the individual experience of visa applicants in relation to processing times for family visa applications.

While there has been a positive change in processing times for newly lodged partner visa applications, the benefits of this are not seen within the more complex caseloads such as family violence affected partner visa applications. These applications are subject to significant and ongoing delays, which has a detrimental impact on this vulnerableclient group.

Those who have not had their temporary partner visa decided are not eligible for any support from Services Australia other than Special Benefit. It can take a number of years for these partner visa applications to be processed and during this time applicants are ineligible for most support services including housing and subsidised childcare. This can lead to a decision to remain in a violent relationship, particularly when there are children they need to support. We have also seen even women get 'stuck' in refuges. This is because they are unable to transition from a refuge to Department of Housing accommodation. Similarly, they are unable to commence work because of the prohibitive costs of unsubsidised childcare. Refuges are designed as immediate crisis accommodation, and are not suitable as medium to long term

housing. This also puts pressure on scarce refuge accommodation which may then not be available to other women and children who seek to leave violent relationships.

While we acknowledge that these cases are more challenging to process, given the risks involved and the vulnerability of the client group, we submit that it would be more appropriate for applications relying on the family violence provisions to be given the highest priority.

Additionally, there are large numbers of standard partner visa applications lodged prior to July 2020 that have been subject to extended processing times significantly longer than the published 23 – 26 months. For example, one QLS member has a current matter involving a straight forward, low risk partner visa applications that is now at 35 months processing time (almost 3 years). The latest request received for this particular partner visa application was on 2 March 2020 – the request was for an Australian Federal Police check, which was uploaded to ImmiAccount the same day as the request.

In the experience of our members, it appears that the Department of Home Affairs is undertaking a 'backlog' approach to partner visa applications, whereby they are expediting newly lodged partner visa applications, to improve processing times, but treating already lodged visa applications as a discrete 'backlog' to be processed over time. This has the effect of decreasing processing times for newly lodged visa applications, but significantly increasing the processing times for older applications.

In relation to other family visa categories, including child visas, and the other family visa categories that are subject to queuing arrangements (Parents, Carer, and Remaining Relative), our experience is that there has been a significant deterioration in processing times over the last few years. For example, for child visas lodged offshore, the processing time was previously significantly quicker than the current published processing time of 15 – 19 months. In our experience these cases used to be given the highest priority by processing posts in acknowledgement of the importance of a quick processing time for this visa category, given that this caseload are largely dependent minor children. This is no longer the case.

2. **Prioritise the most significant changes you would like to see in regard to the family and partner reunions and visas relating directly to this inquiry.**

   Can you summarise what you consider are the ways in which the government can resolve the many concerns that you have raised in your submissions? What are the priorities?

We submit that the key points of priority should be as follows (we note that these are not in a particular order):

1. *Changes to be made to the consideration of the issue of 'genuineness' in the context of partner visa applications involving claims of family violence.*

Applicants for a Partner visa must establish that they are in a 'genuine' relationship with their sponsoring partner. In this context, 'genuine' means a committed relationship.

Where an application is refused on the 'genuine relationship' ground, this does not necessarily mean that the relationship is contrived or fraudulent. Rather, the application may have been refused because insufficient evidence has been provided to the Department to establish the

committed relationship. This can arise in matters where, for example, there are unrepresented applicants who do not understand the process and the level of evidence required by the Department. Given this, in our view, it is inappropriate to conflate refusals on the 'genuineness of the relationship' criterion with the incidence of fraudulent applications.

Further, we note that some of the 10 percent of applications refused on the genuineness ground relate to relationships that involve claimed domestic and family violence. Applicants for Partner visas who have experienced family and domestic violence can apply for consideration under special provisions relating to family violence under the *Migration Regulations 1994*. This process requires the applicant to first establish that there was a genuine relationship and then the Department may consider whether they experienced family violence. In relationships involving violence, it can be difficult for applicants to meet the first threshold of genuineness because the dynamics of violence can interfere with the applicant's ability to provide evidence of the relationship.

We consider it consistent with the intention of the family violence provisions that the Department consider evidence of a genuine relationship in the context of the violence which occurred during the course of the relationship. Currently, it is difficult for people who have experienced family violence to meet the prescriptive criteria required to establish a genuine relationship, and flexibility needs to be afforded to this cohort, in acknowledgement of how the dynamics of domestic and family violence can affect an applicant's ability to obtain and produce evidence. We also note that the establishment of the existence of family violence by its very nature is relevant to the consideration of whether or not a relationship existed between the visa applicant and sponsor. It is essential that these two issues be considered in context of each other.

Finally, we highlight that the Department has indicated there is a 90 percent grant rate for Partner visas. This indicates that the vast majority of applications in this category are found to be genuine, yet they are still subject to lengthy processing times.

2. *Expanding the definition of 'immediate family' in the Special Humanitarian Programme*

We consider that the limited definition of 'immediate family' should be expanded for the Special Humanitarian Programme. Currently, the definition of 'immediate family' is limited to spouse or de facto partner, dependent child, or a parent (if the proposer is under 18).

This limited definition of immediate family may not be consistent with cultural concepts of family outside Australia, and excludes a range of family members with a clearly dependent relationship to the proposer (such as elderly parents or single female relatives).

We note also that parents can propose to bring their dependent children, but dependent children (aged 18 and over) cannot propose to bring their parents.

In our view, the definition of 'immediate family' for the purposes of the Special Humanitarian Program should be expanded, in a manner that captures children, parents and siblings regardless of age. The legislation as currently drafted can have the tragic consequence of, for example, a dependent 19 year old having to build a life in Australia without a single family member in the country and with limited prospects of ever being joined by their parents.

Secondary criteria should be broadened to be consistent with the definition of Member of the Family Unit as per Regulation 1.12 (3). This amendment provides a pathway to family reunion for those discussed by Senator Scarr and Ms Kylie McGrath during the course of the hearing.

The legislation as currently drafted means that family members of Australians may face the prospect of having to leave behind dependent family members, such as their widowed mother or single and dependent sibling, in potentially unsafe circumstances. Our recommended amendments address this issue and better provide for reunion in circumstances where family units have been torn apart by violence.

3. *Improved training of case officers and provision of clear policy instruction in relation to considering incorrect and inconsistent information provided by visa applicants.*

As we noted in the QLS submission dated 30 April 2021, discrepancies in information provided as part of a visa application process may be more common depending on the particular client cohort. In our experience, this is particularly common for humanitarian visa applications where the following is often the case:

- The visa application may have been drafted by junior UNHCR officials in a time and resource-pressured environment;
- The visa applicant may be young, traumatised victims of significant violence, with limited education, reading or writing skills;
- They are separated from other family members by reason of conflict and war.

Visa decision-makers will often treat incorrect information as fatal to a visa application (for example, if they conclude that the applicant has provided false information about their identity), or it may result in subsequent split family visa applications being subjected to lower processing priority.

In our experience, decision-makers do not adequately consider the context in which incorrect or inconsistent information is provided in making these decisions, such as the country or personal circumstances of the visa applicant at the time the information was provided.

We propose that visa decision-makers should be provided improved training and policy instructions to appropriately weigh up evidence of incorrect information to determine how this should be considered in the context of the visa application.

4. *Improved access to legal assistance in Australia including dedicated funding to State Legal Aid services*

There are very limited services providing free migration legal advice and services in Queensland.

We note that Legal Aid Queensland does not provide direct assistance (except in extremely limited circumstances) for migration or citizenship application matters (in contrast to other State Legal Aid services).

The key provider of community legal service for visa applicants in Queensland is the Refugee and Immigration Legal Service (RAILS), which relevantly provides services to partner visa applicants relying on the family violence provisions and refugee and humanitarian visa holders looking to be reunited with family members.

RAILS is funded to provide refugee family reunion assistance through the Settlement Engagement and Transitions Support (SETS) programme. This is due to expire on 30 June 2022, and the programme as a whole is subject to review at a national level. We ask the committee to lend its support to the continuation funding this important work.

There has been a decrease in the number of pro bono legal services for migration matters over the past 12 months in Queensland, following the closure of Salvos Legal Humanitarian in Goodna, Queensland (due to the impact of COVID-19).

Any highly vulnerable applicants who fall outside of this scope of the excellent and professional services provided by RAILS may not be able to source appropriate free legal services in Queensland. QLS strongly supports increased funding to legal assistance providers, including community legal centres and Legal Aid services.

5. *Decreased processing times and increased transparency in processing times*

Current processing times for family visa applications are unreasonable and oppressive, particularly given the fact these caseloads are by definition made up of the immediate family members of Australian citizens and permanent residents.

We note that the delay in processing times has also had an additional impact during the global COVID-19 pandemic, given the imposition of travel restrictions on persons travelling to Australia from overseas.

Immediate family members (including spouse, de facto partner or dependent child) are in theory able to obtain an exemption to the COVID travel restrictions. In practice however, unless the person already holds a partner or child visa subclass, they will require an individual exemption application to be approved by the Australian Border Force to ensure that they are found to meet the definition of 'immediate family members'. This is because in order to travel to Australia, they will need to apply for a subclass 600 visitor visa (if they do not already have a partner or child visa). The subclass 600 visa is only processed once the person has received a COVID-19 travel exemption approval.

In our members' experience, the COVID-19 travel exemption process is administratively deficient, with no legislative or policy guidance underpinning the process, no transparency in decision-making (with no reasons provided for refusals), and no merits review process.

Once a visa applicant has been granted a subclass 309 Partner visa or a subclass 102 Child visa, they will be automatically exempt from any travel restriction, and can travel to reunite with family in Australia.

3. The Department tells us that, in 2021:

> … the Migration Program departed from a two-thirds/one-third distribution across the Skill and Family streams. The proportion of Family stream visa places increased to a planning level of approximately 50 per cent … with a focus on the Partner visa category (72,300 Partner places within a total of 77,300 places for the Family stream). This increase in Family stream places aimed to provide greater certainty to Australian citizens, permanent residents and their immediate family members during the pandemic, and contribute to addressing processing times in the Partner visa category.

They go on to say:

> … the Department of Home Affairs is prioritising processing of onshore visa applications … Prioritisation of onshore applications in the Family Program will also provide greater certainty for those awaiting an outcome on their permanent Partner visa application in Australia.

In your work, have you seen any difference in the department's practice?

As noted above, our members have seen a decrease in the processing times for partner visa applications, where the application has been lodged since July 2020. Processing times for partner visa applications lodged prior to that date remain high and growing.

The exception to this is partner visa applications involving family violence which have remained significantly delayed, with no perceived improvement in processing times. As per our response above, we recommend that applications relying on the family violence provisions be afforded the highest possible priority.

In our experience, we have not seen any particular decrease in processing times for second stage (permanent) partner visa applications. These remain significantly delayed.

In addition, we query the public policy benefit of prioritising onshore applications, particularly during the COVID-19 global pandemic. While it is crucial to ensure that permanent visa applications are granted as quickly as possible, where a person is already in Australia, they are already reunited with their immediate family members. Offshore family visa applications are subject to extended delays, and any further delay in processing their visa application means that their separation from their Australian loved ones is extended. This is particularly the case where they are not able to obtain a subclass 600 visitor visa (which requires an individual COVID-19 travel exemption to be approved before the visa will be granted).

We recommend that the Department of Home Affairs prioritise family visas where the family are separated due to COVID-19 over standard onshore family visas.

If you have any queries regarding the contents of this letter, please do not hesitate to contact

Yours faithfully

Elizabeth Shearer
President