

**HOME AFFAIRS PORTFOLIO
DEPARTMENT OF HOME AFFAIRS**

PARLIAMENTARY INQUIRY SPOKEN QUESTION ON NOTICE

Senate Legal and Constitutional Affairs Committee
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

25 June 2021

QoN Number: 01

Subject: Family reunion visas not granted

Asked by: Nick McKim

Question:

Senator McKIM: Is the department aware of how many family reunion visas have been not granted, cancelled or not renewed on medical grounds or for health public interest criteria?

Mr Willard: We'll have to take that on notice.

Senator McKIM: Thanks.

Answer:

Reporting on the number of Family visas refused or cancelled on health grounds cannot be disaggregated in departmental systems.

Where Public Interest Criteria 4007 applies, the health requirement can be waived if the delegate is satisfied that the granting of the visa would be unlikely to result in undue cost to the Australian community, or undue prejudice to the access to health care or community services of an Australian citizen or permanent resident.

Where Public Interest Criteria 4005 applies, there is no capacity to waive the requirement that applicants be free from a disease or condition which would likely result in a significant cost to the Australian community in the areas of health care and community services, or prejudice the access of an Australian citizen or permanent resident to health care or community services.

All Partner and Child visa category applicants who are assessed as not meeting the health requirement (Public Interest Criteria 4007) must be considered for a waiver of that requirement. Most Parent and Other Family visa category applicants however must satisfy Public Interest Criteria 4005, for which a waiver is not available.

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25 June 2021

QoN Number: 03

Subject: Level of decision maker and escalation process

Asked by: Nick McKim

Question:

Senator McKIM: What level of departmental officer is responsible for determining whether or not to issue a waiver?

Ms Bjerregaard: There is an escalation process in place in considering such health waivers. For example, in our offshore operations, that would be considered by an Australian based posted officer from Home Affairs, who would make an assessment of that particular case. In particular circumstances, as Mr Willard has outlined, there may be a further escalation or a referral to colleagues in Australia to consider the other factors, such as prejudice to access and the other costs associated with considering that health waiver. So there are certainly degrees of escalation in place to consider this particular public interest criterion.

Senator McKIM: I'd be very happy for you to take this on notice if possible. Could you come back to the committee on how that escalation process works? I'm not sure how you kind of rank your officials inside the department but I would like to know whether particular levels of your officers have the authority to grant those waivers, what those levels are and how that escalation process works through the levels.

Mr Kefford: I would be happy to. If it's not transparent on the face of the guidelines, we'll provide that separately on notice.

Senator McKIM: Thanks, Mr Kefford.

Answer:

Where Public Interest Criteria 4007 applies, the health requirement can be waived if the delegate is satisfied that the granting of the visa would be unlikely to result in undue cost to the Australian community, or undue prejudice to the access to health care or community services of an Australian citizen or permanent resident.

Where Public Interest Criteria 4005 applies, there is no capacity to waive the requirement that applicants be free from a disease or condition which would likely result in a significant cost to the Australian community in the areas of health care and

community services, or prejudice the access of an Australian citizen or permanent resident to health care or community services.

Waiving the need to meet the health requirement may have significant implications for Australia's health care and community services. Consequently, under policy, only officers who are at the Executive Level 1 or above and delegated under Section 65 of the *Migration Act 1958* (s65) to grant or refuse visas may make a health waiver decision.

In cases where the estimated costs are AUD\$500,000 or more, or where prejudice to access has been identified, a referral to the Department's Health Policy section for a recommendation is required before the delegate makes a health waiver decision. In such cases, the Director of the Department's Health Policy section will provide a recommendation, however the final decision as to whether to exercise a health waiver rests with the s65 delegate.

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25 June 2021

QoN Number: 04

Subject: Refund provisions

Asked by: Paul Scarr

Question:

Senator SCARR: If I pay my fee of \$6,415 and for whatever reason I haven't read the website properly—I might not have the skills or whatever to get across the detail in that regard—but I'm desperate for an aged dependent relative to come to Australia and I've essentially made a mistake as I haven't fully had an insight into the fact that the waiting list is that long, is there a process where I can get a refund of my fee?

Mr Willard: There is a refund process. I have to say I'm not sure that circumstance would trigger the process. There are processes that relate to refunds on the basis of mistakes by the applicant.

Senator SCARR: That's not a mistake; that's a lack of understanding.

Mr Willard: In which case it may not trigger the refund process. It's set out in regulation what the refund processes are.

...

Mr Kefford: The only other thing I was going to say, which plays into this space and to your phone call test, as you've described it, is there is a point at which, while we're allowed to provide information, we're not allowed to provide advice to an individual, and so there's a line that we would have to walk up to quite carefully in that context too. We'll take on notice the refund provisions as described.

Answer:

The Visa Application Charge (VAC) for Subclasses 103 and 804 (Parent), Subclasses 114 and 838 (Aged Dependent Relative) and Subclasses 115 and 835 (Remaining Relative) visas are paid in two instalments.

- The first instalment is paid at time of application and comprises a base application charge for a primary applicant of \$4,425.
- The second instalment is paid before visa grant and is \$2,065 for each person included in the application (as at 1 July 2021).

The *Migration Regulations 1994* (the Regulations) provide for VAC refunds in limited circumstances. Regulation 2.12F(2) outlines circumstances in which the first instalment of a VAC must be refunded. They include circumstances where:

- the application was 'unnecessary' at the time it was made; or
- the applicant dies before a decision is made on the application.

The Department's procedural instructions state that an application is not considered 'unnecessary' where an applicant changes their mind about pursuing their application after it has been made. This includes circumstances where:

- a person applies for a visa but decides that they no longer want or need to travel to Australia; or
- a person decides that the decision on their visa is taking too long so applies for a different class of visa.

Regulation 2.12F(3) provides that the Minister may refund the amount paid by way of the first instalment of the VAC in relation to an application for a visa if, amongst other things, the application was made because of a mistake by the applicant. This regulation is intended to cover situations where, for example, the person made a mistake by lodging multiple applications instead of a combined application.

The Department's procedural instructions state that a refund due to a mistake by the applicant is not available where the applicant subsequently decides that an application was a mistake, for example where:

- the applicant changes their mind about pursuing the application;
- there is a change of circumstances after the application was lodged;
- the applicant does not satisfy a criterion for visa grant; or
- the applicant claims it was a mistake to have applied because their visa application was unsuccessful.

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25 June 2021

QoN Number: 06

Subject: "Other Family" application numbers

Asked by: Paul Scarr

Question:

Senator SCARR: How many applications for the 'other family' one?

Mr Willard: It's 1,215.

Senator SCARR: Just to be frank, that causes me substantial concern—that 1,215 people—

CHAIR: Paid their money.

Senator SCARR: paid their \$6,415 to get a visa which, on current processing times, is over 50 years away. That, to me, indicates—and I will put the question—that at least those people haven't had access to the right information at the right time, even if it's available on the website, around processing times and whether or not that's—

CHAIR: Can we take that one step further. Can you tell us whether or not these 1,215 folks came through with agents, or did they individually apply?

Mr Willard: I am not sure off the top of my head.

CHAIR: I understand that, but that would give a different light to it.

Mr Willard: Certainly if agents were involved that would be very concerning.

CHAIR: Or did they come through MPs' offices? What was the process by which they came to the department? Do they come through as individuals or do they come through with assistance? Is it possible to determine that?

Mr Kefford: We will see what we can find on that.

Mr Willard: I am not sure exactly what the answer will look like.

CHAIR: I don't know either. It just strikes me that—and it really does go to the heart of this—if people know this is happening it has pretty serious implications.

Answer:

For program year 2019-20, there were 1,215 Other Family visa applications lodged, with the table below showing the number of applications made involving Migration Agents.

Visa Subclass	Migration Agent Involved	Applications Lodged	% of Applications involving a Migration Agent
114 Aged Dependent Relative	<5	<5	<5%
115 Remaining Relative	<5	105	<5%
116 Carer	<5	224	<5%
117 Orphan Relative	39	212	18%
835 Remaining Relative	163	241	67%
836 Carer	212	335	63%
837 Orphan Relative	8	18	44%
838 Aged Dependent Relative	43	77	55%

For program year 2020-21, as at 31 May 2021, there were 841 Other Family visa applications, with the table below showing the number of applications made involving Migration Agents.

Visa Subclass	Migration Agent Involved	Applications Lodged	% of Applications involving a Migration Agent
114 Aged Dependent Relative	<5	<5	<5%
115 Remaining Relative	16	92	17%
116 Carer	93	187	49%
117 Orphan Relative	135	217	62%
835 Remaining Relative	42	79	53%
836 Carer	106	162	65%
837 Orphan Relative	5	10	50%
838 Aged Dependent Relative	48	91	52%

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QoN Number: 07

Subject: Suggestion of racial and religious profiling

Asked by: Kim Carr

Question:

CHAIR: It was Mrs Hogarth who made a suggestion to us which I took to mean there was effectively racial and religious profiling going on in terms of the assessments. I wouldn't mind if you could have a look at her evidence and let us know how you would respond to it. We're not making any judgement about it, but it's a serious matter to raise with the committee. I know what your formal position is, so it's quite disturbing that that suggestion has been put to us. I need you to tell us what you think of that proposition.

Mr Kefford: I'm happy to review that evidence on notice and respond.

CHAIR: Yes, of course—thank you.

Answer:

Australia has a universal, non-discriminatory visa system, which focuses on the contribution a person can make to Australia rather than their ethnicity, gender or religious beliefs. Australia enjoys high levels of social cohesion and broad public support for its Immigration Program. This is, in part, based on confidence in well-managed non-discriminatory migration.

All visa applications are assessed on their merit against criteria set out in the *Migration Act 1958* and *Migration Regulations 1994*, and in accordance with relevant Ministerial Directions and procedural instructions. The Department does not undertake any form of racial or religious profiling.

COVID-19 has significantly affected the availability of key assessment services, such as those for medical checks and penal clearances. This has affected the ability of applicants to meet visa criteria. Additionally, temporary changes in staffing levels in overseas visa offices as a result of local COVID-19 restrictions and lockdowns continues to impact processing.

In relation to Visitor visas, the table below shows Visitor visa lodgements and grants for program year 2020-21 (as at 31 May 2021), where the applicant was located outside Australia.

Applicant's Citizenship (Major Group)	Lodgements	Grants	Percentage of grants compared to lodgements* - %
Americas	8,037	5,827	72.5
North Africa and the Middle East	2,038	436	21.4
North-East Asia	23,886	26,534	110**
North-West Europe	16,278	7,744	47.6
Not Defined	749	<5	<5
Oceania and Antarctica	1,017	460	45
South-East Asia	17,537	12,445	71
Southern and Central Asia	15,515	4,567	29.5
Southern and Eastern Europe	5,736	3,311	57.7
Sub-Saharan Africa	1,998	469	23.5
Grand Total	92,791	61,797	66.6

Notes:

Includes subclasses 600, 601 and 651. Grants includes finalisations where the outcome recorded is 'granted'

*Not all visa applications lodged in program year 2020-21 were finalised in that year.

**Visas granted may include applications lodged prior to the 2020-21 program year, resulting in a grant figure over 100%.

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QoN Number: 08

Subject: Review/appeal process

Asked by: Kim Carr

Question:

CHAIR: That's true, but this is a point that Senator Scarr was making with you. If it's going to be subject to an appeal process, then natural justice, procedural fairness and all of those questions arise. The AAT is not the most swift of organisations, in my experience. 'Speedy' is not really its middle name. Surely there is a mechanism by which you can get a better review process yourselves.

Mr Kefford: The challenge would be that decision-makers have got to make the decision based on what's in front of them at that point in time.

CHAIR: Yes, but you've got to tell me by law. You're acting within the law, as—

Mr Kefford: Indeed. I suppose the concern was that, if we kept going back and asking for more information, the next criticism would be: why didn't you make a decision? So there's a balance to be struck and, essentially, as Mr Willard was referring to before, there are criteria that we're asked to apply on the information in front of us. Sometimes the AAT—

CHAIR: Alright. I concede the proposition you put to us, but we had a case this morning where it was put to us that a person who had been in a relationship for 36 years and had had six kids was knocked back by the department on genuineness.

Mr Willard: It's hard to comment without knowing the case.

CHAIR: I know, I know—you'll say to me that there are individual cases, but that was the evidence put to us.

Mr Kefford: Can I ask that we—

CHAIR: Review the evidence.

Mr Kefford: review that evidence and come back to you, including with some analysis that goes to Mr Willard's point about merits review versus other reasons why we might lose in a tribunal.

Answer:

The Department is unable to comment on individual cases.

All Family visa applicants must meet the requirements set out in migration legislation before a visa can be granted, including relationship, health, character, identity and sponsorship requirements.

The Department assesses applications on a case by case basis against relevant criteria, on the basis of information and evidence provided at time of application and decision. Before a refusal decision is made on an application, applicants are generally given the opportunity to submit additional information to support their claims and/or comment on adverse information. Applicants and sponsors may be interviewed by a departmental officer, generally over the telephone, and an interpreter will be offered if required.

Applications reviewed by the Administrative Appeals Tribunal (AAT) are assessed on the basis of information and evidence available at the time of the review, including evidence regarding a relationship which may not have been available at the time of the Department's decision. A decision by the AAT to set aside a refusal decision does not necessarily mean that the Department's decision was flawed.

AAT decisions are examined by visa processing managers and any issues identified with the departmental decision are followed up as part of standard quality assurance processes.

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QoN Number: 09

Subject: Possible improvements or solutions

Asked by: Kim Carr

Question:

CHAIR: We're getting to that point. If we're to make recommendations here about the improvement of the scheme, do you have any advice for this committee on how it could be improved which does not endanger the integrity of the program? As you know from my own engagement on these questions over many years—I've given you buggery on this for a long time, particularly on the questions of student visas and the like—I'm highly conscious of how important the integrity of the scheme is. I do acknowledge that there are people out there—there are crooks—who are trying to manipulate the scheme 'to achieve a migration outcome', as you described it. That is the language. I understand what you mean by that. But there are also people who clearly are not being afforded natural justice and procedural fairness, and that's what the AAT's finding. So how do we get that and reposition it to speed up the process for assessment and get people a reasonable outcome, particularly given you're reassessing the approach to be taken here?

Is there anything you can recommend to this committee that would improve the administrative practices and not endanger the integrity of the scheme? You might want to take that on notice and check with a few people. I'm not asking for an opinion, you understand?

Mr Kefford: I know. I'm accepting it as a genuine question. My hesitation is so as not to just blurt something out without thinking about it.

CHAIR: That's what I'm saying; take it on notice. We are looking for solutions here, not just for a whinge.

Mr Kefford: Part of it will also be the responsibility of the applicants to be—

CHAIR: Yes, all of those things are true.

Mr Kefford: There are two sides to that conversation.

CHAIR: Of course; that's right.

Answer:

The Department seeks to strike a balance between the efficient and timely processing of Family visas, and the management of integrity by careful consideration

of a range of risks, including but not limited to the genuineness of relationships, identity, protection of vulnerable women and children, and migration fraud.

Departmental processes can be further improved through:

- introducing more efficient, and where appropriate, automated communication channels with Family visa applicants and sponsors, as the digitisation of visa processing via ImmiAccount and other online systems continues;
 - For program year 2020-21 (since December 2020), over 38,000 Partner visa applicants were contacted individually via letters or phone calls to progress their applications. The ability of the Department to maintain this level of engagement with visa applicants in future program years will be impacted, as visa processing resources are diverted back to their original functions following COVID-19.
- transitioning to online lodgement for all Family visa applications;
 - Online lodgement of Partner visa applications and Partner sponsorship forms through ImmiAccount was introduced on 6 December 2013. Online lodgement provides a convenient, accessible and secure application lodgement channel. It also provides for electronic payment of Visa Application Charges (VACs) and the ability to check the status of an application online.
 - Currently, Parent, Child and Other Family visa applications continue to be lodged on a paper based application form via post or courier, and implementation of online lodgement capability for all family visa categories is ongoing via a phased approach.
- digital information exchange with other government agencies, such as the Australian Federal Police and Australian Taxation Office, which could remove or reduce the need for applicants to provide the Department with documents issued by another agency, such as a tax return assessment;
- modernising core processing systems:
 - Over a number of years, the Department has taken steps to modernise core visa processing systems to support improved outcomes and communication for the family visa cohort. New functionality has been introduced to support bulk correspondence for clients and push messaging to provide updates.
 - The Department is constantly improving accessibility and comprehension of content delivered across multiple channels.
 - The Department is also continuing to rollout digital offerings for clients through the electronic submission of applications and the ability to confirm application status and progress online.

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25 June 2021

QoN Number: 10

Subject: Balance of family test

Asked by: Nick McKim

Question:

Senator McKIM: Yes, absolutely. I had some questions about the balance of family test. Could I start by asking whether that balance of family test, which relates to different classes of parent visas, is required under legislation or regulation or by ministerial direction?

Ms Bjerregaard: The balance of family test is an objective test to determine the extent of the parent's link to Australia compared to in another country. It does require the applicant to demonstrate that at least half of their children are lawfully and permanently residents in Australia, or alternatively that more of their children reside lawfully and permanently in Australia than in any one single country overseas.

Mr Willard: Senator McKim, I think it is a regulatory test, but can I come back if that advice is incorrect?

Senator McKIM: Sure. Just to be clear, what I'm trying to find out is whether this is something that is required under the act, whether it's required under a regulation to the act, whether it's required by ministerial direction or whether it's simply an internal mechanism of the department.

Mr Willard: I think it's in regulations, but I'm not completely sure. So I'll come back on notice and give you the correct advice.

Senator McKIM: Thank you. It has been submitted to me that, in its effect, this discriminates against people from some cultural and racial backgrounds, and the reason for that is that many people from white or European backgrounds are more likely to have smaller families with fewer children than people from non-white backgrounds, and that therefore the effect of this test is to make it harder for a parent to qualify to come to Australia if they are not white. Does the department have a response to that?

Mr Willard: The test applies to all applicants equally, regardless of their nationality or race.

Senator McKIM: I do understand that, but the point I'm making is that, if a family has only two children, they only have to have one child in Australia to qualify, but, if a family has eight children, they'll need to have four of the children in Australia to qualify, which is obviously much less likely given the realities of the world. I make no

assertion about racism or anything in the department—it is absolutely not my intention to assert this—but the effect of this test is to make it harder for larger families to qualify, and people from non-white backgrounds are more likely to have larger families with more children. That's a consistent piece of feedback that comes to me, and that's why I asked in my first question why this test is required, because, in the view of many people in the culturally and linguistically diverse community in Australia, in effect—not in intent but in effect—it discriminates against people on the basis of race and cultural background.

Mr Kefford: Why don't we take that on notice with the authority behind the position, because it may well be that—were it to be in the regulation, as Mr Willard recalls—there was explanatory material at the time that would address that concern, too?

Senator McKIM: Alright, thank you.

Answer:

The Balance of Family test is prescribed in Regulation 1.05 of the *Migration Regulations 1994* (the Regulations). Schedule 2 of the Regulations requires applicants for a Parent category visa to meet the Balance of Family test.

In view of the limited number of places available to Parent visas in the annual Migration Program, the Balance of Family test ensures that only parents with close ties to Australia are eligible for the grant of a permanent Parent visa.

The Balance of Family Test is an objective test that determines the extent of a parent's link to Australia compared to any other country based on their children's country of residence. It requires applicants to demonstrate that at least half of their children are lawfully and permanently resident in Australia or, alternatively, that more of their children reside lawfully and permanently in Australia than in any one single country overseas.

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QoN Number: 11

Subject: Staff processing family visas

Asked by: Kim Carr

Question:

CHAIR: Can you tell us how many departmental staff engage in considering and deciding family and partner visa applications? Have we got any numbers on that?

Mr Willard: I do have a figure. This is a figure from the end of last quarter. About 41 per cent of our processing staff were focused on family.

CHAIR: How many would that be?

Mr Willard: It's 549 full-time equivalents.

CHAIR: What is that up from? What's the change?

Mr Willard: I would have to come back to you on that. There's been an increase. We transferred a number of staff who formerly were working in areas managing visitor visas, for example.

Answer:

In March 2021, departmental systems indicate 549 Full Time Equivalent (FTE) resources were focused primarily on the delivery of the family visa program.

In March 2020, departmental systems indicate 372 Full Time Equivalent (FTE) resources were focused primarily on the delivery of the family visa program.

The increase of approximately 50 per cent from March 2020 to March 2021 to support family visa program delivery is due to a reduction in temporary visa activity following reduced international travel and associated COVID-19 border measures.