

17 February 2017

Mr Jason Wood MP
Chair
Joint Standing Committee on Migration
PO Box 6021
Parliament House
CANBERRA ACT 2600

By email: migration@aph.gov.au

Dear Chair

Joint Standing Committee on Migration - Inquiry into Migrant Settlement Outcomes

1. The Law Council is grateful for the opportunity to provide this submission to the Joint Standing Committee on Migration (**the Committee**) Inquiry into Migrant Settlement Outcomes (**the Inquiry**).
2. The Law Council of Australia is grateful for the assistance of the Migration Law Committee of the Law Council's Federal Litigation and Dispute Resolution Section and the Law Institute of Victoria (**LIV**) in the preparation of this submission.
3. The Law Council makes the following key comments:
 - (a) settlement services would benefit from further integration and better resourcing;
 - (b) sufficient focus can be placed on enhancing migrants' English language skills *after arrival* such that it is not necessary to alter current entry requirements to assess English-language ability pre-arrival;
 - (c) Australia is well-protected by the current laws and policies imposed both prior to, and following, a migrant's arrival in Australia and it is therefore never appropriate to include criteria allowing refusal or cancellation of a visa for 'settlement outcome' related reasons; and
 - (d) the Law Council supports effective policies and training for law enforcement in relation to migrants and multiculturalism to ensure that best practice standards are being applied across all jurisdictions and supports the use of diversionary options such as warnings, cautions or youth justice conferences where appropriate.

Settlement Services in Australia

4. The Law Council notes that the Inquiry will examine the the 'mix, coordination and extent of settlement services available and the effectiveness of these services in promoting better settlement outcomes for migrants'.¹ The Law Council suggests that any discussion about settlement outcomes should be nuanced and include consideration of each visa program (skilled, family, humanitarian) and the overarching purpose of the program. The role of settlement services for each visa program varies greatly and this should be taken into consideration.
5. The Law Council also recommends that there is a need for a broad approach to settlement services which are provided on-arrival and are accessible by all migrants. This should include, for example, education on a range of topics including local laws, cultural and social values, family violence, employment, and labour exploitation.
6. The Inquiry has received numerous submissions dealing with settlement services, including from organisations with first hand experience in providing settlement support to newly arrived migrants across Australia. Such organisations are well placed to provide expert advice in relation to particular services and areas where there may be a gap in service delivery.
7. In this context, the Law Council recommends that the Committee inquire into the benefits of integrated service delivery models that would allow people from migrant backgrounds to access information and referral pathways for legal services, education, healthcare, language and social services in the one place. The need for an integrated service model for migrants has been noted, for example, by the Victorian Auditor General in 2014.² The Australian Commonwealth Government has stated its commitment to such a model in the National Settlement Framework, which contains a commitment to 'enhance inter-governmental and cross sector collaboration, information sharing and coordination of services'.³

Best practice strategies

8. The Inquiry will also examine 'national and international best practice strategies for improving migrant settlement outcomes and prospects'.⁴ The LIV has noted that Victoria is the only state which operates a unique 'dual track' system, where adult courts can, in certain circumstances, sentence young offenders (defined in the *Sentencing Act 1991* (Vic) as those aged under 21 years at the time of sentencing) to serve a custodial sentence in a youth detention facility rather than an adult prison. The Court has the power to order this if it believes that the young person has reasonable prospects for rehabilitation, or is particularly impressionable, immature or likely to be subjected to undesirable influences in an adult prison.
9. The LIV have noted that this system was created to prevent vulnerable young offenders from entering the adult prison system at a young age. The LIV encourages

¹ Joint Standing Committee on Migration, Parliament of Australia, *Inquiry into Migrant Settlement Outcomes – Terms of Reference* (17 November 2016).

² Auditor-General (Vic), *Access to Services for Migrants, Refugees and Asylum Seekers*, Victorian Auditor-Generals Office (29 May 2014).

³ Department of Human Services (Cth), *The National Settlement Framework* (November 2016) 4.

⁴ Joint Standing Committee on Migration, Parliament of Australia, *Inquiry into Migrant Settlement Outcomes – Terms of Reference* (17 November 2016).

the Committee to consider recommending that similar systems be adopted in other jurisdictions. Such a system can play an important role in assisting in the rehabilitation of young migrant offenders.

English Language Ability

10. The Law Council notes that the Inquiry will examine the 'importance of English language ability on a migrant's, or prospective migrant's, settlement outcome'.⁵ English language ability is a crucial element of the settlement of all migrants in Australia. This is because migrants are required to traverse the complexities of building a new life in Australia, including navigating regulation, dealing with government bodies such as Centrelink, obtaining and maintaining employment, and of course engaging with the broader community.
11. The extensive investment made by government, training institutions, settlement providers and others assists in ensuring that a migrant's transition to life in Australia includes assistance with the English language.
12. This is manifested in two clear ways:
 - (i) Increasingly government and private sector bodies are enhancing their services to take into account migrants from culturally and linguistically diverse backgrounds, including through providing translators, interpreters and, often, staff fluent in community languages.
 - (ii) Government's commitment to funding the delivery of English language services, including:
 - The Adult Migrant English Program (**AMEP**) and Skills for Education and Employment;
 - English as a Second Language training within government-funded schools; and
 - Interpreting and Translating Services and the maintenance of the National Accreditation Authority for Translators and Interpreters.
13. The Law Council also understands that many settlement service providers offer additional language services, including conversation classes, on a volunteer basis.
14. However, the Law Council notes the submission of Settlement Council of Australia (**SCOA**) which details some limiting factors within the provision of English language training, such as conflicts with AMEP class schedules and the obligations in seeking employment.⁶ As such, the Law Council supports SCOA's recommendation 8 that:

English language training must be prioritised for all new arrivals, on an as needs basis, such that sufficient time is given, and funding provided, to ensure each person can learn English sufficient for them to participate in society,

⁵ Ibid.

⁶ Settlement Council of Australia, Submission to the, Joint Standing Committee on Migration, *Inquiry into Migrant Settlement Outcomes*, 31 January 2017, 49-50.

*schooling and employment (as relevant) without being subject to the pressure of balancing English training with other obligations.*⁷

15. In this light, the Law Council considers that sufficient focus can be placed on enhancing migrants' English language skills *after arrival* such that it is not necessary to alter current entry requirements to assess English-language ability pre-arrival, particularly for humanitarian and family migrants.

Current Migration Processes

16. The fourth item in the Inquiry's terms of reference requires the Committee to consider 'whether current migration processes adequately assess a prospective migrant's settlement prospects'.⁸
17. The Law Council is of the view that it is not appropriate to include criteria allowing refusal or cancellation of a visa for 'settlement outcome' related reasons. This is particularly the case in relation to the humanitarian stream, where migrants are not chosen for economic reasons. Even for family and skilled visas, such an approach is fraught with difficulty.
18. Australian migration processes and requirements contain significant safeguards relating to, for example, health, character, security and debts (all of which relate to a person's life in Australia, not the visa requirements of the particular class). These involve tests focused on public and national interest, and offer broad discretion to refuse visas even where a person meets the core requirements of the visa itself.
19. It is not possible to assess, with any degree of certainty, how well a migrant will eventually settle, their likelihood of finding employment or the possibility that they will commit a crime. It is even more difficult to test a migrant to determine what the settlement prospects of future generations of that migrant's family may be.
20. The Law Council is aware of recent media reports that suggest departmental level consideration of establishing a temporary or provisional visa on all migrants as a precondition to obtaining permanent residency.⁹ For the above reasons, the Law Council believes this is unnecessary.
21. Further, imposing a mandatory temporary visa on all migrants would be counterproductive to settlement outcomes. It is unlikely that such an approach could effectively measure how well a migrant and their family will settle in Australia. Nor would such an approach be an effective objective measure to be tested as a precondition to granting permanent residency. Attempts to change Australia's migration processes in these ways would depart from Australia's successful, non-discriminatory migration program.

⁷ Ibid 50.

⁸ Joint Standing Committee on Migration, Parliament of Australia, *Inquiry into Migrant Settlement Outcomes – Terms of Reference* (17 November 2016).

⁹ Paul Karp, 'Coalition's secret visa plan 'risks increasing violent extremism'', *The Guardian* (online), 30 November 2016 <<https://www.theguardian.com/australia-news/2016/nov/30/coalitions-secret-visa-plan-risks-increasing-violent-extremism>>.

Youth migrants and the adequacy of the character test

22. The Law Council notes that the terms of reference for the Inquiry require the Committee to give particular consideration to social engagement of youth migrants, including involvement of youth migrants in anti-social behaviour such as gang activity, and the adequacy of the *Migration Act 1958* (Cth) (**Migration Act**) character test provisions as a means to address issues arising from this behaviour.
23. The Law Council supports effective policies and training for law enforcement in relation to migrants and multiculturalism to ensure that best practice standards are being applied across all jurisdictions. The Law Council also supports the use of diversionary options such as warnings, cautions or youth justice conferences where appropriate.
24. In addition, the Law Council notes that Australia is well-protected by the current suite of law and policy, imposed both prior to, and following, a migrant's arrival in Australia and there is no case for any increase to those checks and balances currently contained in the Migration Act. Most Australian visas require applicants to satisfy certain public interest criteria set out under the Migration Act and *Migration Regulations 1994* (Cth), including character requirements. The *Migration Amendment (Character and General Visa Cancellation) Act 2014* (Cth) was introduced in 2014, substantially lowering the failure threshold of the character test and expanding the Minister for Immigration and Citizenship's (**the Minister**) powers to cancel or revoke a visa.
25. The Law Council notes that in some cases, such as with the current character test, the threshold is too broad and the safeguards insufficient to prevent visas being cancelled on individuals that may not actually present any risk to the community.
26. As set out in the Law Council's submissions to the Senate Legal and Constitutional Affairs Legislation Committee regarding the Migration and Maritime Powers Amendment Bill (No. 1) 2015 [Provisions]¹⁰ and the Migration Amendment (Character Cancellation Consequential Provisions) Bill 2016,¹¹ the Law Council and the LIV have previously expressed concerns with the character test. In particular, concerns related to amendments that substantially broadened the grounds on which a non-citizen's visa could be refused or cancelled, such as:
 - (a) s 501(6)(b) which lowered the threshold of evidence required to demonstrate that a person is a member of a criminal or terrorist organisation;
 - (b) s 501(6)(d) which lowered the threshold from 'significant risk' to 'risk' of a person engaging in criminal conduct or harassment and who represents a danger to the Australian community or 'risks' being involved in activities disruptive to the Australian community; and

¹⁰ Law Council of Australia, Submission to Senate Legal and Constitutional Affairs Legislation Committee, Parliament of Australia, *Inquiry into the Migration and Maritime Powers Amendment Bill (No. 1) 2015 [Provisions]*, 16 October 2015 <http://www.lawcouncil.asn.au/lawcouncil/images/3069_-_MA_MP_Amm_No_1_2015.pdf>.

¹¹ Law Council of Australia, Submission to Senate Legal and Constitutional Affairs Legislation Committee, Parliament of Australia, *Inquiry into the Migration Amendment (Character Cancellation Consequential Provisions) Bill 2016*, 4 March 2016 <http://www.lawcouncil.asn.au/lawcouncil/images/3124_-_MA_Character_Bill_2016.pdf>.

(c) s 501(6)(g) and (h) which provides that a person will not pass the character test where they have been assessed by the Australian Security and Intelligence Organisation as directly or indirectly a risk to security, or where an Interpol Notice has been issued from which it is reasonable to infer that a

27. The current test, contained in S 501(6)(b) of the *Migration Amendment (Character and General Visa Cancellation) Act 2014* (Cth), also allows for a visa cancellation on the basis of a person's association with another person who may not have been convicted of any criminal offence but whom the Minister reasonably suspects has been involved in criminal conduct. There is no need to establish whether the non-citizen is aware of this or not.

28. The Law Council appreciates the opportunity to provide this submission to the Committee.

29. Please contact John Farrell, Policy Lawyer on (02) 6246 3714 or at john.farrell@lawcouncil.asn.au in the first instance, should you require further information.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Fiona McLeod', written in a cursive style.

Fiona McLeod SC
President