



Law Council
OF AUSTRALIA

Office of the President

29 May 2018

Department of Home Affairs
6 Chan Street
Belconnen ACT 2617

By email: humanitarian.policy@homeaffairs.gov.au

Dear Sir/Madam

Discussion Paper: Australia's Humanitarian Program 2018-19

1. The Law Council of Australia appreciates the opportunity to provide written feedback on the Discussion Paper published by the Department of Home Affairs (**the Department**) in relation to Australia's Humanitarian Program in 2018-19. The Law Council acknowledges the significant contribution made by the Law Institute of Victoria in the preparation of this response.
2. The Law Council also welcomes the opportunity for continued dialogue with the Department on policy issues such as those contained in the Discussion Paper and remains highly supportive of the regular bilateral policy meetings that currently occur between the Department and representatives of the Law Council's Migration Law Committee, Federal Litigation and Dispute Resolution Section.
3. The following comments are offered to the Department in response to the issues raised in the Discussion Paper. The Law Council would be pleased to elaborate on any of the below points should the Department require further information.

Community Support Program

4. The Law Council welcomes the introduction of the Community Support Program (**CSP**) which has been increased to 1,000 places within the Offshore Humanitarian Program. The Law Council understands that the nature of the scheme is to prioritise opportunities for refugees with good settlement prospects.¹ However, the Law Council is concerned that the criteria for a CSP visa grant is primarily focused on the economic viability of refugees rather than considerations relating to humanitarian need.
5. The Department has listed settlement priorities for the CSP, stating that applicants should:
 - (a) be aged between 18 and 50;
 - (b) have functional English;
 - (c) have an offer of employment (or a pathway that leads to employment) or have personal attributes that would enable them to become financially self-sufficient within 12 months of arrival in Australia; and

¹ Department of Home Affairs, 'Discussion Paper: Australia's Humanitarian Program 2018-19', page 5.

- (d) be from a priority resettlement caseload (Democratic Republic of Congo, Afghanistan, Eritrea, Ethiopia, Myanmar, Bhutan, Syria and Iraq).²
6. It is noted that many of the refugee-producing countries that the Department has indicated as falling within the 'priority resettlement caseload' may have limited education and employment opportunities available to women and girls. This means that it may be difficult for women to negotiate an offer of employment, or to show a functional level of English prior to their arrival in Australia. For example:
- (a) the Department of Foreign Affairs and Trade (**DFAT**) Country Information Report for Afghanistan states that '[w]omen in conservative rural areas are highly unlikely to be able to access education or employment opportunities';³ and
 - (b) the DFAT Country Information Report for Iraq states that 'boys are likely to complete 11.5 years of schooling while girls are likely to complete 9.7 years of schooling'.⁴
7. This means that the priority criteria in its current form may inadvertently exclude many refugee women, who are often the most vulnerable and in most need of humanitarian support.
8. The priorities may also not adequately consider persons with caring responsibilities for young children which prevents them from undertaking employment or education. In many refugee-producing countries, men are often casualties of civil war, leaving women with the responsibility of caring for their children. In many of these countries single women may not be offered support and may be vulnerable to sexual or gender-based violence or exploitation. These women may not be able to find employment or study English and may find it difficult to demonstrate to the Department that they possess the personal attributes that would enable them to become financially self-sufficient within the first twelve months of arrival in Australia.
9. Additionally, in some countries listed for the priority resettlement caseload, ethnic and religious minorities who face systemic discrimination may be denied the right to education and employment opportunities. For example, the DFAT Country Information Report for Myanmar states that '(t)he Muslim population who identify as Rohingya ... are unable to access state-funded healthcare and education services'.⁵
10. The Law Council submits that it is against the spirit and intention of Australia's Humanitarian Program to deprioritise refugee status to people based on their lack of education or identifiable employment prospects, which may be a direct result of the persecution and discrimination they are fleeing.

Visa grant quotas

11. Consideration should be given to making the 1,000 places available through the CSP additional to the 18,750 places allocated in the 2018–19 Humanitarian Program. The purpose of the CSP would appear to be to bring economically viable refugees to Australia who have an ability to settle quickly. This is different to the intentions of the

² Department of Home Affairs, 'The Community Support Program', online at <www.homeaffairs.gov.au/trav/refu/offers/community-support-program>.

³ Department of Foreign Affairs and Trade, 'DFAT Country Information Report for Afghanistan' (September 2017), page 20.

⁴ Department of Foreign Affairs and Trade, 'DFAT Country Information Report for Iraq' (June 2017), page 6.

⁵ Department of Foreign Affairs and Trade, 'DFAT Country Information Report for Myanmar' (January 2017), page 6.

Humanitarian Visa Program and for this reason, consideration should be given to making these CSP places additional to the Government's quota, not part of it.

12. Further, the onshore protection caseload should be de-linked from the offshore Refugee and Humanitarian Program. That is, consideration should be given to not reducing the number of offshore visas granted in response to visas granted onshore, and viewing this offshore cohort as distinct stream for granting permanent status in Australia.

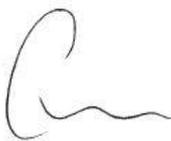
'Regional location' priorities

13. The Department has recently amended the processing priorities of the Special Humanitarian Program (**SHP**). It is understood that priority will now be given to an applicant that has either been proposed by an immediate family member who holds an SHP visa, or to an applicant proposed by a relative who genuinely resides in a regional location and who does not hold a Protection visa (XA-866) or Resolution of Status (CD-851) visa.⁶
14. The Law Council submits that the priority given to proposers in regional areas should be reconsidered. There are many proposers in non-regional areas that would benefit from family reunion under the SHP category, many of which may be based in a metropolitan area in order to access support services such as health, welfare and counselling. The Law Council submits that these proposers should not be de-prioritised based on their geographical location, and instead the focus of prioritisation under the SHP category should be primarily based on the circumstances of the applicant in their home country.
15. Finally, if the Department continues this priority consideration, the Law Council submits that there is a need for greater clarity on what will be deemed a 'regional location'. Currently, information made available by the Department defines a regional location as 'anywhere in Australia except Adelaide, Brisbane, Canberra, Melbourne, Perth or Sydney'. In particular, the Department has not clarified whether this refers to suburbs or whether this extends to areas around these capital cities. It is submitted that guidance, such as a list of eligible post codes, should be provided by the Department.

I trust these observations are of assistance.

Please contact Mr David Prince, Chair of the Migration Law Committee at david@kplaw.com.au in the first instance if you require further information or clarification.

Yours sincerely



Morry Bailes
President

⁶ Department of Home Affairs 'The Special Humanitarian Program (SHP)', online at <[www.homeaffairs.gov.au/trav/refu/offs/the-special-humanitarian-programme-\(shp\)>](http://www.homeaffairs.gov.au/trav/refu/offs/the-special-humanitarian-programme-(shp)>).