



Law Council  
OF AUSTRALIA

*Federal Litigation and  
Dispute Resolution Section*

9 April 2021

Mr Michael Willard  
First Assistant Secretary  
Immigration Programs Division  
Immigration & Settlement Services Group  
Department of Home Affairs  
BRADDON ACT 2612

By email: [correspondence.family.policy@homeaffairs.gov.au](mailto:correspondence.family.policy@homeaffairs.gov.au)

Dear Mr Willard

## **REFORMS TO PARTNER VISA PROGRAM**

1. The Migration Law Committee (**the Committee**)<sup>1</sup> of the Law Council of Australia's Federal Litigation and Dispute Resolution Section supports the Australian Government's intent to implement reforms to strengthen the integration of applicants into the community, support vulnerable applicants and give them an opportunity to successfully interact in the community.
2. However, the Committee is of the view that functional English as currently defined in the visa context does not achieve the desired outcomes of social cohesion. That is, functional English as defined by the current framework is not "functional" in the everyday sense of the word. Nor does the Committee support Sponsors having to undertake English tests – that does not appear to serve any overarching purpose, given that Sponsors must be permanent residents or eligible New Zealand citizens.
3. If functional English were nevertheless imposed as the requisite standard, the majority of visa applicants who do not speak English (especially those who fall within the vulnerable applicant category targeted by this change) would be unable to meet the standard within the required timeframe and would be relying on the "reasonable efforts" clause.
4. The Committee is of the view that there should be clear policy direction on what constitutes "reasonable efforts" as an alternative to functional English. An emphasis on the Adult Migrant English Program (**AMEP**) is desirable, particularly in light of the new program focussing not only on English language but also on cultural and legal principles, such as workplace laws, discrimination and family violence, and providing a superior integration tool rather than a simple English test.

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<sup>1</sup> The Law Council of Australia is a peak national representative body of the Australian legal profession. It represents the Australian legal profession on national and international issues, on federal law and the operation of federal courts and tribunals. The Law Council represents 60,000 Australian lawyers through state and territory bar associations and law societies, as well as Law Firms Australia.

5. “Reasonable efforts” criteria should be used as a broad discretionary tool, with some clearly defined scenarios to provide certainty to applicants.
6. For example, the Committee is of the view that policy should provide clear criteria on what constitutes reasonable efforts, such as:
  - (a) completion of 510 hours of AMEP will generally satisfy delegates of “reasonable efforts”, regardless of performance;
  - (b) completion of a Certificate II in Spoken and Written English (Australian Core Skills Framework (**ACSF**) 2 indicator);
  - (c) completion of 510 hours of English tuition at a private Registered Training Organisation (**RTO**); or
  - (d) completion of 510 hours of English tuition with an Australian Charities and Not-for-profits Commission (**ACNC**) registered organisation (churches, community groups).
7. Specific reference should also be made to AMEP home tutoring as a reasonable effort, as visa applicants may not be able to attend external classes or online lessons.
8. Delegates should be directed to take into account factors such as:
  - (a) internet connectivity/access in the area where the applicant is living;
  - (b) caring arrangements and domestic circumstances; and
  - (c) long distance tutoring arrangements.

### **Exemptions**

9. In addition to the disability exemptions, the Committee is of the view that applicants should be exempt from the English requirement if:
  - (a) an applicant meets the family violence provisions – a visa should not be refused because someone was unable to learn English while experiencing and fleeing from family violence;
  - (b) applicants are over the age of 60, in line with the Australian citizenship test exemptions; and
  - (c) applicants are offshore applicants whose visa application takes longer than 2 years to process (those applicants would be eligible for permanent residence at the time of decision, without the benefit of onshore AMEP).

### **Adverse information**

10. The Committee is generally opposed to unnecessary or irrelevant disclosure of convictions to sponsors and applicants. Careful consideration may also need to be given to existing legislative frameworks regarding discrimination on the basis of

irrelevant criminal record and spent convictions at the federal<sup>2</sup>, state and territory level, to ensure overall consistency and clarity.

11. Subject to that point, if disclosure were legislated, the Committee would recommend that only convictions where the offence involves violence or other clearly concerning conduct (eg, serious fraud, corruption) should be disclosed to applicants/sponsors and where they are relevant.
12. Convictions should not be disclosed if the sponsorship would be refused for other reasons.

### Other matters

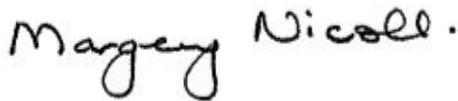
13. In addition to the above, the Committee recommends that:
  - the sponsorship approval process should be part of the visa application process (contemporaneous lodgement), to ensure that applicants have a right to apply for a visa at the same time as the sponsorship process is being considered. That is likely to shorten the processing period and would also mean the applicant would have a right to stay in Australia or continue the application while a sponsorship refusal is being considered by the Administrative Appeals Tribunal or Federal Circuit Court;
  - there be no limitations imposed by Schedule 1 of the *Migration Regulations 1994* (Cth) (**the Regulations**) on lodging a further onshore partner visa if the previous visa was refused only because the sponsorship was refused; and
  - exceptions to section 48 further onshore lodgements for skilled visas if the previous visa was refused only because the sponsorship was refused. That adjustment would require a simple change to r 2.12 of the Regulations to enable applicants in this category to apply for any of the following:
    - **General Skilled Migration visas** (these visas can be applied for by invitation only);
    - **Skilled Work Regional (Provisional) (Class PS)** – subclass 491 visa where the applicant is nominated by a State or Territory government;
    - **Temporary Skills Shortage (Class GK)** – subclass 482 visa;
    - **Employer Nomination (Permanent) (Class EN)** – subclass 186;
    - **Regional Employer Nomination (Permanent) (Class RN)** – subclass 187 visa;
    - **Skilled Employer Sponsored Regional (Provisional) (Class PE)** – subclass 494;
    - **Business Skills – Business Talent (Permanent) (Class EA)** visa (those visas can be applied for by invitation only); and

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<sup>2</sup> See, eg, *Australian Human Rights Commission Act 1986* (Cth), s 3(1) and Australian Human Rights Commission Regulations 2019.

- **Business Skills (Provisional) (Class EB)** (those visas can be applied for by invitation only).
  - a priority processing system for long term partners, particularly families with children, by way of a Ministerial Direction under s 499 of the *Migration Act 1958* (Cth); and
  - clear visitor visa policy which includes a “genuine visitor purpose” of arriving onshore in order to lodge a partner visa.
14. Thank you once again for the opportunity to comment on the reforms to the Partner Visa Program. For further comment or clarification on any of the matters raised in this submission, please contact Valerie Pereira, Deputy Chair, Migration Law Committee at [valerie@dagamapereira.com.au](mailto:valerie@dagamapereira.com.au) or on (03) 9428 1198.

Yours sincerely

A handwritten signature in black ink that reads "Margery Nicoll." The signature is written in a cursive, slightly slanted style.

**Margery Nicoll**  
Deputy Chief Executive Officer