



Law Council  
OF AUSTRALIA

*Federal Litigation and  
Dispute Resolution Section*

11 February 2021

Mr Andrew Kefford PSM  
Deputy Secretary  
Immigration and Settlement Services  
Department of Home Affairs  
BELCONNEN ACT 2617

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

Dear Mr Kefford

### Australia's 2021-22 Migration Program

1. The Law Council's Federal Litigation and Dispute Resolution Section welcomes the opportunity to provide input in relation to Australia's 2021-22 Migration Program. This submission has been prepared by the Section's Migration Law Committee (**the Committee**)<sup>1</sup>.
2. The Committee notes that the 2020-21 Migration Program has involved significantly reduced overall migration to Australia, especially compared to previous planning levels for 2019-2020, which were not fully met due to the COVID-19 pandemic.

### Skilled Visas

3. Relevant 2020-21 planning levels include the following:

Skilled Independent – 6500	
Skilled Nominated - 11,200 available (11952 allocated, as set out below) <ul style="list-style-type: none"><li>• ACT – 802</li><li>• NSW – 3550</li><li>• VIC – 2500</li><li>• Qld – 1000</li><li>• NT – 500</li><li>• WA – 1100</li><li>• SA – 1500</li><li>• Tas – 1000</li></ul>	Regional – 11200 available (9781 only allocated, as set out below) <ul style="list-style-type: none"><li>• ACT – 598</li><li>• NSW – 2800</li><li>• VIC – 1043</li><li>• Qld – 1250</li><li>• NT – 500</li><li>• WA – 340</li><li>• SA – 1850</li><li>• Tas – 1400</li></ul>

<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.

4. These have reduced significantly compared to the 2019-20 levels, as set out below:
  - Skilled Independent - 9,355 onshore 3,631 offshore - 12,986 total;
  - State/Territory Nominated - 13,621 onshore 7,874 offshore - 21,495 total; and
  - Regional - 13,789 onshore 9,583 offshore - 23,372 total.
5. The 189 visa program in particular has become nearly impossible for applicants to qualify. Many onshore potential applicants, who a year or so would have met the criteria and are living in Australia and contributing to the economy, can no longer apply. Skilled Nominated numbers for states and territories have been so significantly cut that only priority COVID-19-related occupations are included.
6. With the reduction in numbers for both the 190 and 491 State/Territory nominated programs, this means State and Territories are limiting their selection to a restrictive list of occupations. For the Australian economy to benefit from a skilled program, there needs to be a wider range of occupations available on the 189 that receive invitations, and/or an increase in allocation to States and Territories to enable a wider selection of suitably skilled applicants.
7. The Committee is concerned that having such a restrictive program, will mean that people onshore who could have been eligible for a skilled visa, will have no alternative but to depart Australia. Australia will lose out on these skilled applicants. This is especially so with travel bans unlikely to be lifted before 2022, which means that potential offshore applicants will be unable to come to Australia.
8. It is further concerned that by effectively transferring numbers to the Partner visas, the Skilled Program fails to deliver.

### **Parent Visas**

9. The Committee notes that the 2020-21 planning numbers for parent visas are only 4500. This compares to the previous planning levels for 2019-2020 where a total of 4399 parent visas were granted (525 in Australia, 3874 offshore), of which 3730 were contributory parent visas and 669 non-contributory parent visas.
10. The Committee considers that this total needs to be increased. Family migration is an important part of attracting skilled migrants, especially if parents can be included.
11. It further observes that the entire purpose of the creation of the 'user pays' subclass 143 Contributory Parent visa pathway was to replace the old, cheaper subclass 103 Parent visa, which was facing an enormous queue of such length (now over 10 years) as to be meaningless. However, despite government fees of over \$50,000 per applicant, even prior to the COVID-19 pandemic, the processing times had grown to over 48 months, making this visa pathway of very limited value.

### **Partner Visas**

12. The Committee further considers that the Partner visa program should be based upon the huge number of applications in the system at this time, plus the projected number of applications for the year, based upon recent years.

13. In this context, the Committee emphasises that it is unlawful to impose a quota upon partner visa grants by way of planning level allocations.<sup>2</sup> Moreover, it is in contravention of basic human rights obligations to uphold the family as the fundamental unit of society<sup>3</sup> and negatively impacts upon the well-being of Australian families.

### **Business Visas**

14. The Committee is concerned that processing times in this program have extended to now three years or more. In practical terms, processing times of this magnitude robs these visas of most practical value for visa applicants and in effect removes these visa pathways from effective government management. Dependants who lodge their applications before turning 23 years at that time of application, are now no longer eligible. The biggest issue in this category is not the numbers but the ability for case officers to process them. This needs to be given priority through offering faster processing and increasing the age of dependants.
15. The Committee also notes that despite the Covid-19 concessions offered to 188 visa holders, the concessions do not extend to dependants seeking to be included in the 188 extension streams, where their age is over 23, and is no longer recognised as a Member of Family Unit under regulation 1.12.

### **Global Talent Visas**

16. As the Australian Government is aware, 2020 saw the COVID-19 pandemic disrupting the world and international markets. Global firms are looking for talented individuals as well as to re-assessing their business models and their markets.
17. In 2021, Australia can use this opportunity to attract the best talent to its shores. These individuals can make significant changes to Australia's economic recovery and sustain its long-term prosperity. Therefore, the need for skills should not be undermined. Whilst setting the bar high, there is a need to identify talent and attract entrepreneurs who can tap into international markets and create employment within Australia.
18. The Committee considers that this program is working well and should be maintained. In addition, the Global Talent Officers are performing well. Going forward, care should be taken to ensure that:
- officers are well trained to make an assessment on an Expression of Interest and subsequent assessment on the visa process; and
  - checks and balances exist to maintain the integrity of the program.

### **Resident Return Visas**

19. Australia should also retain Resident Return Visa holders who are working overseas and gaining essential and valuable skills that they can bring back to Australia.

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<sup>2</sup> *Migration Act 1958* (Cth), s 87.

<sup>3</sup> Eg, International Covenant on Civil and Political Rights, opened for signature 19 December 1996, 999 UNTS 171 (entered into force 23 March 1976), art 23.

20. These applicants have already been assessed and it is in Australia's interest that it retains this cohort of talent.

### **Humanitarian Visas**

21. The Federal Budget for 2020-21 places a cap of 13,750 places on the Humanitarian Program. The Department has not yet released its summary for Australia's Offshore Humanitarian Program.
22. However, the Committee notes that the overall figures are a reduction of 5,000 places from 2019-20, where 18,750 places were allocated, with 17,100 for the offshore refugee program.
23. Due to the COVID-19 pandemic, the program was suspended on 19 March 2020, with only 13,171 visas being granted, made up of 11,521 Offshore Humanitarian visas and 1650 Permanent Protection visas.
24. The Committee is concerned that the reduction for the 2020-21 year, taking into account that the previous 2019-20 year cap was not met, will lead to a greater waiting time for Humanitarian visas.
25. While it acknowledges that the COVID-19 pandemic has had an impact, the Humanitarian Program is important, both in terms of Australia's contributions globally (and therefore in relation to its international reputation), and also increases in numbers of displaced refugees, which means that this program should not be ignored.

### **Conclusion**

26. Thank you once again for the opportunity to comment on Australia's 2021-22 Migration 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



**Michael Tidball**  
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