



Law Council
OF AUSTRALIA

Australia's 2022-23 Migration Program

Department of Home Affairs

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Table of Contents

About the Law Council of Australia	3
Acknowledgement	4
Executive Summary	5
Consultation questions	6
Primary questions	6
Should the Australian Government increase/reduce/maintain the size of the Migration Program in 2022-23 and why?.....	6
What is the ideal composition of the Skill and Family streams of the 2022-23 Migration Program?.....	7
Skill stream.....	8
Family stream.....	9
Partner visa applications.....	10
How can Australia remain attractive to prospective migrants to support our recovery from the impacts of COVID-19 in the short term and support a future Australia for 2030 and beyond?.....	14
Skilled stream.....	14
Family stream.....	16
Supplementary questions	17
How can the Skill stream of the Migration Program effectively address workforce shortages while boosting efforts to upskill and reskill Australians?.....	17
How can the Migration Program help address the challenge of uneven population growth and economic development between urban and regional Australia?.....	18
Temporary Safe Haven visas.....	18
How can migration policy settings better support economic security of women in Australia overall, and migrant women in particular?.....	20
Family violence and temporary migration.....	20
Expansion of family violence provisions.....	21
‘Evidence’ of family violence.....	22
New Temporary Visa.....	23
How can migration policy settings better support social cohesion outcomes in Australia?.....	24

About the Law Council of Australia

The Law Council of Australia exists to represent the legal profession at the national level, to speak on behalf of its Constituent Bodies on national issues, and to promote the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world.

The Law Council was established in 1933, and represents 16 Australian State and Territory law societies and bar associations and the Law Firms Australia, which are known collectively as the Council's Constituent Bodies. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Australian Capital Territory Law Society
- Bar Association of Queensland Inc
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Bar
- Law Firms Australia
- The Victorian Bar Inc
- Western Australian Bar Association

Through this representation, the Law Council effectively acts on behalf of more than 60,000 lawyers across Australia.

The Law Council is governed by a board of 23 Directors – one from each of the constituent bodies and six elected Executive members. The Directors meet quarterly to set objectives, policy and priorities for the Law Council. Between the meetings of Directors, policies and governance responsibility for the Law Council is exercised by the elected Executive members, led by the President who normally serves a 12 month term. The Council's six Executive members are nominated and elected by the board of Directors.

Members of the 2021 Executive as at 1 January 2021 are:

- Dr Jacoba Brasch QC, President
- Mr Tass Liveris, President-Elect
- Mr Ross Drinnan, Treasurer
- Mr Luke Murphy, Executive Member
- Mr Greg McIntyre SC, Executive Member
- Ms Caroline Counsel, Executive Member

The Chief Executive Officer of the Law Council is Mr Michael Tidball. The Secretariat serves the Law Council nationally and is based in Canberra.

Acknowledgement

The Law Council of Australia (**Law Council**) thanks the Migration Law Committee of its Federal Litigation and Dispute Resolution Section for its considerable assistance in drafting this submission.

Executive Summary

1. The Law Council appreciates the opportunity to provide a submission to the Department of Home Affairs (**Department**) regarding its planning process for the 2022-23 Migration Program. The Law Council's submission addresses each of the questions in the Department's Discussion Paper, 'Planning Australia's 2022-23 Migration Program'¹ (**Discussion Paper**).
2. The Law Council considers that the 2022-23 Migration Program should be sufficiently large to address the present skills shortages in the economy and to rebuild population growth in the wake of the COVID-19 pandemic, as well as ensure that the family migration backlogs can be adequately addressed. It expects this figure would be an increase on the figure of 160,000 from recent years, the determination of a final figure is best left to the Australian Government.
3. In terms of composition, within the Skill stream, in recent years the global talent pathway has proven successful in efficiently delivering a visa outcome to talented applicants, and this dynamism has driven demand and supply of this type of visa. However, global talent visas are not accessible to all skilled migrants, and the pathway is not best directed to address skills shortages, particularly in semi-skilled labour. As a result, it is necessary to ensure that skilled occupation visas remain attractive as alternative pathways for skilled and talented people seeking an opportunity to work and live in Australia.
4. Demand for, and supply of, skilled occupation visas has dropped in recent years, and the Law Council considers a number of reforms are required to that program to increase its attractiveness to migrants. These reforms are detailed in the submission, and they include modernising the occupation lists, improving the transition from temporary skill visas to permanent residency, and relaxing some of the criteria for temporary skilled visas. Changes could also be made to improve certainty for global talent visa applicants.
5. Within the Family stream, the Law Council considers that allocation to the Partner visa sub-stream must remain at a figure which will enable all applications to be processed expeditiously, particularly if there is no amendment to Direction 80, which places former boat arrivals who hold permanent Protection visas on the lowest priority for processing.
6. The Law Council also considers that the Department should take action to arrest to increasing backlog in Parent visas. While Parent visa holders may not have as beneficial impact on the economy as other migrants, access to family reunion is relevant to a country's attractiveness for skilled migration, and there are also social and community benefits to completing the family unit for migrant families.
7. The Law Council proposes several measures to improve the economic security of migrant women by bolstering the availability of visas to migrant women experiencing family violence, particularly those who are secondary holders of a temporary visa.
8. Finally, in relation to questions of social cohesion, the Law Council considers that there is an intrinsic benefit to a robust migrant scheme – both in its impact on society generally and within migrant families. It also considers that social cohesion is enhanced by a non-discriminatory migration system and changes could be made to address this, particularly in relation to former boat arrivals.

¹ Department, 'Planning Australia's 2022-23 Migration Program', <[link](#)>.

Consultation questions

9. In its Discussion paper, the Department invited submissions in relation to the following primary and supplementary questions:

Primary questions

- Should the Australian Government increase/reduce/maintain the size of the Migration Program in 2022-23 and why?
- What is the ideal composition of the Skill and Family streams of the 2022-23 Migration Program?
- How can Australia remain attractive to prospective migrants to support our recovery from the impacts of COVID-19 in the short term and support a future Australia for 2030 and beyond?

Supplementary questions

- How can the Skill stream of the Migration Program effectively address workforce shortages while boosting efforts to upskill and reskill Australians?
- How can the Migration Program help address the challenge of uneven population growth and economic development between urban and regional Australia?
- How can migration policy settings better support economic security of women in Australia overall, and migrant women in particular?
- How can migration policy settings better support social cohesion outcomes in Australia?

10. The Law Council's submission addresses each of those questions, in turn.

Primary questions

Should the Australian Government increase/reduce/maintain the size of the Migration Program in 2022-23 and why?

11. The Migration Program allocation for 2022-23 should be sufficiently large to address present skills shortages in the economy, particularly in areas of semi-skilled labour, and rebuild population growth in the wake of the COVID-19 pandemic, as well as ensure that the family migration backlogs can be adequately addressed. The final figure is a matter for the Australian Government.
12. The 2021 Intergenerational Report (**Intergenerational Report**) makes clear the positive impact of migration on the economy:²
- over the long-term, economic growth is slowing;
 - the main reason for economic growth slowing is slower population growth;

² The Treasury, '2021 Intergenerational Report Australia over the next 40 years', June 2021, <[link](#)>viii, 6, 7, 10.

- migrants are expected to be the largest source of population growth going forward and the proportion of population growth driven by migration is forecast to increase from around 60 per cent in the last decade to 74 per cent by 2060-61;
 - because ‘migrants tend to be younger and higher skilled, this population growth can also support labour force participation and productivity’, migration contributes to economic growth and can help offset population ageing.
13. From 2012-13 to 2018-19 inclusive, the Migration Program had a planning level or ceiling of 190,000 places,³ although in the last two years of that range that eventual figure was a little more than 160,000.⁴ In the 2019-20 Budget, the Australian Government announced that the Migration Program would be 160,000 over the next four years.⁵
 14. However, the Intergenerational Report also records that the COVID-19 pandemic has sharply limited migration, which has affected population growth – population growth in 2020-21 was expected to be the lowest it has been in over a century.⁶
 15. Specifically, at the time of the Report, net overseas migration was expected to be negative in 2020-21 (-97,000) and 2021-22 (-77,000), before rebounding to +235,000 by 2024-25. This forecast was in part based on an assumption that the Migration Program would continue at the 2023-24 level of 190,000.⁷
 16. In a press conference on 21 October 2021, the Hon Alex Hawke MP, Minister for Immigration Citizenship, Migrant Services and Multicultural Affairs acknowledged skilled labour shortages in the economy and the role of the skilled migration program in addressing those shortages. Minister Hawke stated: “after a shortage period you can imagine the government will consider carefully the shortages, how we meet those shortages and we do need to increase the program”.⁸
 17. The Law Council supports consideration being given to a short-term boost to migration to assist with the post-pandemic recovery.
 18. The Law Council’s view is that in today’s global economy having a workforce that is fluent with global expertise is a necessity.

What is the ideal composition of the Skill and Family streams of the 2022-23 Migration Program?

19. An answer to this question depends in part on the objectives for each stream and the overall size of the program. The allocation to each stream should be sufficient to achieve those objectives.
20. Those objectives will be informed by the economic imperatives mentioned above. However, the Law Council considers that the intangible, social benefits of migrants to the Australian community should also be considered. These include, as stated in the

³ Based on a review of the Migration Program reports on the Department’s website, <[link](#)>.

⁴ Department, ‘2020-21 Migration Program Report’, <[link](#)>, 14.

⁵ Commonwealth, Budget Measures Budget Paper No. 2 2019-20, <[link](#)>, 11.

⁶ The Treasury, ‘2021 Intergenerational Report Australia over the next 40 years’, June 2021, <[link](#)>, 6.

⁷ Ibid, 16.

⁸ Hon Alex Hawke MP, Minister for Immigration Citizenship, Migrant Services and Multicultural Affairs, Press Conference transcript (21 October 2021), <[link](#)>.

Intergenerational Report, the 'contributions of migrants to cultural diversity, community connections [and] innovation'.⁹

21. The Intergenerational Report states that Treasury modelling shows that '*permanent migrants who arrive younger and are highly skilled make a higher economic and fiscal contribution during their time in Australia, compared with those migrants who arrive later in life or are lower skilled*'.¹⁰
22. As a result, it is not surprising that migrants in the Skill stream deliver a 'higher economic and fiscal dividend than those arriving via the Family stream and Humanitarian Program'.¹¹ 'Fiscal dividend' is a balance of fiscal benefits (additional tax revenue) and fiscal costs (aged care, education, health, infrastructure, transfer payments and settlement services).
23. The Treasury states that the Family stream is driven by social objectives, such family reunion and cultural diversity.¹²
24. The Treasury in its December 2021 paper 'The Lifetime Fiscal Impact of the Australian Permanent Migration Program' produced similar calculations as to the fiscal impact of Skilled, Family, and Humanitarian migrants – with Skill stream having the most positive fiscal impact, Partner visa holders broadly comparable to the Australian population, and Partner visa holders a lower fiscal impact.¹³
25. Importantly, that paper notes that 'the Family visa stream exists to reunite families – mostly granting visas to the partners and parents of Australian citizens and permanent residents – rather than for economic reasons'.¹⁴ It also acknowledges that: the model used in the paper:¹⁵

[C]urrently treats all migrants separately as individuals, rather than estimating the overall fiscal impact of family units who migrate together. While this simplifying approach will not affect the aggregate results, it will affect the estimates of fiscal impact within categories (such as the interpretation of lifetime fiscal impact by age at arrival). Extending FIONA's results to family units would produce a more complete picture of the migration program.

Skill stream

26. The Skill stream is made up of four visa types: Skilled Independent, Business Innovation and Investment, Global Talent and Employer Sponsored visa. In the last two program years, priority has been given to onshore applicants that drive economic growth and investment ie, Business Innovation and Investment visas, Global Talent and Employer Sponsored applicants.
27. The Subclass 858 (Global Talent) visa consists of two pathways: the global talent pathway and the distinguished talent pathway.
28. The global talent pathway is filled by people who are endorsed by the Prime Minister's Special Envoy for Global Business and Talent Attraction or by an Australian Citizen or permanent resident with national standing,¹⁶ because they are highly skilled in one of

⁹ The Treasury, '2021 Intergenerational Report Australia over the next 40 years', June 2021, 24.

¹⁰ Ibid, 22.

¹¹ Ibid.

¹² Ibid, 23.

¹³ The Treasury, 'The Lifetime Fiscal Impact of the Australian Permanent Migration Program' (December 2021), iv.

¹⁴ Ibid, 8.

¹⁵ Ibid, 21.

¹⁶ Subclause 858.212(1) of Schedule 2 to the Regulations.

the ten target sectors and able to attract a salary that meets the high-income threshold (matters which sit outside the *Migration Regulations 1994* (Cth) (**Regulations**)).¹⁷ This pathway was introduced in 2019-20 and has increased year on year – starting from 4,109 in its first year, 9,584 in its second year, and a program allocation of 15,000 for 2021-22.

29. The distinguished talent pathway is largely for people who have an ‘internationally recognised record of exceptional and outstanding achievement’, are still prominent in that area, and would be an asset to the community or (for those under 18 or over 55) would be of ‘exceptional benefit to the community.’¹⁸ While applications for that pathway have gradually increased, the allocation has stayed static around 200, which has meant that the number of undecided applications before the Department for decision (**onhand**) is growing.
30. In contrast, the trend of the Skilled Independent and Employer Sponsored visas (**skilled occupation visas**) is downwards – both in the number of applications and the number of visas allocated to this cohort within the Migration Program.
31. One reason for this decline is the establishment of the Global Talent visa. The experience of practitioners is that global talent program is flexible and efficient, and for applicants who may conceivably satisfy the criteria for both a Global Talent visa and a Skilled Independent or Employer Sponsored visa, practitioners are find it easier to use the former pathway.
32. For this reason, particularly if there are not substantive changes to the skilled occupation visa program, the Law Council considers that there should continue to be upward movement in the allocation to the global talent pathway.
33. However, not all people who may conceivably satisfy the criteria for a skilled occupation visa will satisfy the criteria for a global talent visa, and it is important to maintain a robust skilled occupation pathway who fall outside of the global talent pathway. Further, the global talent pathway does not connect migrants directly to businesses, provide for specific placement of new applicants in regional areas, or directly address skills shortages. The maintenance of a robust skilled migration pathway will assist Australia to remain competitive with other nations and offer incentives for overseas students and other temporary visa holders to commit long-term to Australia.
34. In a context of the Law Council proposing several reforms to the skilled occupation visa (discussed further in the response to the following question), it has not committed to a view on the proportional split of allocation within the Skill stream.

Family stream

35. The family stream is made up of three sub-streams: Partner; Parent and Other Family¹⁹ (made up of Carer, Remaining Relative, Orphan Relative, and Aged Dependent Relative).²⁰

¹⁷ Department, ‘Visas for innovation’ (website), <[link](#)>, accessed on 1 December 2021.

¹⁸ Subclause 858.212(2) of Schedule 2 to the Regulations.

¹⁹ Department, ‘Planning Australia’s 2022-23 Migration Program’, <[link](#)>, 1.

²⁰ See clauses 1123A and 1123B of Schedule to the *Migration Regulations 1994* (Cth) (**Migration Regulations**).

36. Of these three, Partner visa holders are more likely to be younger and to contribute directly to population growth, and thus is the sub-stream within the Family stream which appears most likely to contribute positively to economic growth.
37. Partner visas were the only sub-stream within the family stream addressed in the Department's 'Continuous Survey of Australia's Migrants' (CSAM)²¹. The Department's 'Planning Australia's 2022-23 Migration Program' document, states, with reference to the CSAM data:
- 'Partner visa migrants have traditionally had a high labour force participation rate of 76.6 per cent (11 points higher than for the general population), as well as an employment to population ratio of 69.6 per cent (7.3 points above the general population) after 18 months of arrival in Australia.'*
38. Australian citizens, as well as their partners working overseas, are highly qualified and pay a higher-than-average amount of tax. The pandemic has necessitated these persons to return to Australia. However, they are unlikely to return if their partners are not granted visas. Wealthy expatriates returning to Australia after living overseas for years have reportedly helped boost the economy as it recovers from the impact of COVID-19 on the economy.²²

Partner visa applications

39. The Law Council's views on the program number for the Family stream are partially informed by the Afghan cohort, for whom there are currently far fewer available places than there have been applications.²³
40. The allocation to Afghans under the 2021-22 Humanitarian Program is 3,000 places. While the Australian Government has flagged that is a floor and may rise,²⁴ as the Department also stated on 15 November '[n]o matter whether it's 3,000 or more, it's going to be significantly less than the number of applications we have in'.²⁵
41. In these circumstances, the Law Council would like to see the Family stream be used to reunite Afghans in Australia with their family to the extent possible.²⁶
42. In Senate Estimates on 25 October 2021, the Department gave evidence that there are fewer Partner visa applications before it for decision (60,000) than the program size (72,000).²⁷

²¹ Department, 'Continuous Survey of Australia's Migrants Cohort 5 Report—Change in outcomes 2018' (2020), <link>, 10.

²² Zach Hope, 'Brain gain for Australia', *The Age* (online, 27 March 2021), <link>.

²³ The Law Council has recommended that the Australia Government commit to substantially increasing the number of humanitarian visa places allocated to Afghans: see submission to the Foreign Affairs, Defence and Trade Committee regarding its inquiry into Australia's engagement in Afghanistan, <link>, [41]-[54] and the transcript of evidence given in a hearing before that Committee on 8 November 2021, <link>, 15 and 18.

²⁴ Commonwealth, *Hansard*, Senate (Foreign Affairs, Defence and Trade References Committee), 15 November 2021, 32 (Mr David Wilden, First Assistant Secretary, Refugee, Humanitarian and Settlement Division, Department of Home Affairs) and Prime Minister of Australia, press conference transcript, 22 November 2021, <link>.

²⁵ Commonwealth, *Hansard*, Senate (Foreign Affairs, Defence and Trade References Committee), 15 November 2021, 29 (Mr David Wilden, First Assistant Secretary, Refugee, Humanitarian and Settlement Division, Department of Home Affairs).

²⁶ Anecdotally, Law Council members have reported that family reunion is a common inquiry from Afghans seeking legal advice: see supplementary submission to the Foreign Affairs, Defence and Trade Committee regarding its inquiry into Australia's engagement in Afghanistan, <link>, 3-4.

²⁷ Commonwealth, *Hansard*, Senate (Legal and Constitutional Affairs Legislation Committee), 25 October 2021, 101 (Mr Michael Willard, First Assistant Secretary, Immigration Programs, Department of Home Affairs).

43. The evidence was given in the context of a question about the impact of Direction 80 on the processing of Family visa applications from Afghans. Direction 80 provides that visa applicants who were sponsored by a refugee who arrived in Australia by boat would be given lowest processing priority for a Family visa, subject to an exemption provision.²⁸
44. A senior Departmental official recently stated that ‘because of the 72,000-plus partner visas delivered last year, we’re in a position now to be able to start dealing with this case load, although it remains the lowest priority in terms of processing priority directions’.²⁹
45. On 15 November 2021, the Department gave evidence to the Foreign Affairs, Defence and Trade References Committee that there are just under 7,500 Afghans with Partner visa applications outside of Australia.³⁰
46. It is worth contextualising these comments with reference to recent Migration Program numbers.
47. According to the Department’s 2020-21 Migration Program Report, 2020-21 was the only year out of the last four in which there were fewer Partner visa lodgements than Partner visa grants.³¹ The number of onhand Partner visa applications increased from 77,734 at the end of 2017-18, to 88,660 at the end of 2018-19, to 96,361 at the end of 2019-20, before dropping to 64,111 at the end of 2020-21.
48. If Direction 80 is not going to be amended,³² then the Law Council’s view is that the allocation to the Partner sub-stream should be sufficient to ensure that applications lodged on behalf of the families of boat arrivals are processed. That is, that the allocation should be higher than the anticipated lodgements, so that the number of onhand applications continues to drop. Given that the COVID-19 pandemic likely contributed to lodgements dropping in 2019-20 and 2020-21, it may be reasonable to expect that with the borders expected to re-open through 2022, the number of lodgements may increase, and this should be taken into account.
49. If, as the Law Council has previously recommended,³³ there is a change in policy to amend Direction 80 and permit holders of Temporary Protection visas (**TPVs**) and Safe Haven Enterprise visas (**SHEVs**) to lodge Family applications, the Family stream should be sufficiently large to ensure that applications by affected persons can be expeditiously processed.

Parent and other family visa applications

50. The number of onhand Parent visa applications has increased in each of the last four years as lodgements have remained steady at between 12,664 and 14,827 and the

²⁸ The Law Council has stated that it would like to see this aspect of Direction 80 repealed and for amendments to be made to allow Afghans in Australia on Temporary Protection visas and Safe Haven Enterprise Visa to sponsor a child, a parent or spouse to come to Australia: see submission to the Foreign Affairs, Defence and Trade Committee regarding its inquiry into Australia’s engagement in Afghanistan, <link>, [146]-[149] and the transcript of evidence given in a hearing before that Committee on 8 November 2021, <link>, 15.

²⁹ Commonwealth, n 28, 101 (Mr Michael Willard).

³⁰ Commonwealth, n 26, 33 (Mr David Wilden).

³¹ Department, ‘2020-21 Migration Program Report’, <link>, 55.

³² The Law Council understands that it is, contrary to its preferred position, the Australian Government’s current intention that Direction 80 would remain in place.

³³ Above, n 23.

program allocation has steadily dropped to 4,500 visas.³⁴ There were 114,359 Parent visa applications on-hand at the end of 2020-21.³⁵

51. Priority is given to Parent visa applicants who are willing and able to pay a premium, both through Direction 80 itself and in the program allocation. Of the 4,500, in 2020-21 the number of places allocated to:
 - Contributory Parent visas – a visa which ordinarily has a minimum cost of \$47,825³⁶ – was 3,600 places; and
 - (non-contributory) Parent visas – a visa which ordinarily has a minimum cost of \$6,490³⁷ – was 900 places.
52. According to the Department's website, it estimates that new Contributory Parent visa applications lodged that meet the criteria to be queued are likely to take at least 64 months to be released for final processing, while new Parent and Aged Parent visa applications lodged that meet the criteria to be queued are likely to take at least 30 years for final processing.³⁸ According to information published on by the Department in response to an application made under the *Freedom of Information Act 1982* (Cth), approximately 16.5 per cent of Parent visa applications lodged in 2020-21 were non-contributory.³⁹
53. The Law Council understands the comparatively low allocation of Parent visas is likely due to the holders of such visas having a comparatively less beneficial impact on the economy than Partner visa holders.
54. In its 2016 report, 'Migrant Intake into Australia',⁴⁰ the Productivity Commission reported that economic outcomes of immigrant parents are poor, and they make considerable claims on social security systems.⁴¹ The Productivity Commission notes that their social contributions mainly benefit the family members themselves, rather than broader society, and while 'any moves to restrict parent visas would have some effects on the decisions of their children to migrate ... this may not be a critical issue since the capped places for parent visas is a small fraction of the places available for skilled migrants'.⁴²
55. It went on to report that a contributory visa charge of just under \$50,000 'meets only a fraction of the fiscal costs' of migrant parents and on a cost-benefit analysis, 'the case for retaining parent visas in their current form is weak'.
56. This view is informed by an economic analysis.
57. The Law Council's view is that Parent visas have a positive social and economic benefit to Australia society and should be maintained. The rights to respect for the

³⁴ Department, n 31, 56.

³⁵ Ibid.

³⁶ Subclause 1130(2) of Schedule 1 to the Migration Regulations and Department, 'Contributory Parent visa' (website), <link> (accessed 6 December 2021).

³⁷ Subclause 1124(2) of Schedule 1 to the Migration Regulations and Department, 'Contributory Parent visa' (website), <link> (accessed 6 December 2021).

³⁸ Department, 'Visa processing times – Parent visas – queue release dates and processing times', <link> (accessed on 6 December 2021).

³⁹ Department, 'Freedom of Information Request FA 21/08/00314', <link>, 1.

⁴⁰ Productivity Commission, 'Migrant Intake into Australia', No. 77, 13 April 2016, <link>.

⁴¹ Ibid, 26.

⁴² Ibid, 26-27.

family⁴³ should also be protected and fulfilled. The Law Council agrees with the Productivity Commission that migrants are generally more attracted to countries which allow family reunification. Parents assist younger migrant families, particularly those with children, settle into life in Australia, including by providing child care assistance. The Intergenerational Report mentions that ‘attitudes towards women returning to work after having children have also shifted; there is increased societal support for women combining work and parenting responsibilities’.⁴⁴

58. Further, Parent visas are also subject to Direction 80, and given the swelling backlog of Parent visa applications, there appears little prospect that the parents of former boat arrivals will be able to join their children and families. This is another reason to amend Direction 80.
59. The Law Council considers that the allocation to the Parent visa sub-stream should be increased, both in 2022-23 and beyond, so that the program allocation is at least as significant as the number of new applications and the queue time for processing these visas is reduced. If Australia is to provide for Parent visas, there should at least provide citizens and permanent residents with a realistic prospect of being reunited with their parents.
60. The Law Council also supports increasing the allocation of Other Family visas, such as the Subclass 117 (Orphan Relative) visas. The Department’s 2020-21 Migration Program Report indicates that the number of Other Family visa applications has dropped each of the last four years, with a refusal rate of 51.5 per cent.
61. That Report does not break down the number of Orphan Relative visa applications it has received and granted over the last four years, nor the backlog of these visas. The Department reported elsewhere that there were 115 Orphan Relative visas granted in 2019-20.⁴⁵ As at 30 June 2021, the average processing time for Subclass 117 (Orphan Relative) visas was 51 months,⁴⁶ with 90 per cent of applications processed within 76 months.⁴⁷ Given the circumstances of applicants for this visa, the Law Council suggests that the Department should aim to bring processing times for these visas down by increasing the allocation of these visas.

Recommendation

- **Direction 80 should be amended or repealed and re-made so that permanent visa holders who arrived by boat are not the last priority for processing.**
- **Amendments should be made to the Regulations to permit TPV and SHEV holders to sponsor family to join them in Australia.**
- **Whether or not those amendments are made, the allocation to the Partner sub-stream should be sufficient to ensure that applications lodged on behalf of the family members of former boat arrivals are able to be processed.**

⁴³ Eg, International Convention on Civil and Political Rights, arts 23 and 17(1). The Human Rights Committee has stated that the term family should be given a broad interpretation to include all those persons comprising the family as understood in the society of each country.

⁴⁴ Treasury, n 2, 40.

⁴⁵ Department, ‘Australia’s Migration Trends 2019-20 Highlights’, <link>, 8.

⁴⁶ Department, ‘Freedom of Information Request FA 21/08/00877’, <link>, 5.

⁴⁷ Department, ‘Orphan Relative visa’ (website), <link> (accessed on 6 December 2021).

- **The Parent visa sub-stream and other family visas should be increased, both in 2022-23 and beyond, so that the program allocation is at least as significant as the number of new applications, with a more even distribution of Contributory and non-contributory Parent visas.**

How can Australia remain attractive to prospective migrants to support our recovery from the impacts of COVID-19 in the short term and support a future Australia for 2030 and beyond?

Skilled stream

62. The Law Council considers that there are a number of improvements which could be made to the Skilled Independent and Employer Sponsored visas, which are inefficient and can be a disincentive to skilled workers applying for an Australian visa. As overseas skilled workers are contemplating global career opportunities, the complexity of the immigration landscape in the receiving country, including the certainty of potential pathways to permanent residency, are material to the immigration choice they make.
63. Without improvements, Australia risks losing highly skilled immigrants to countries like Canada, the United Kingdom, the United States and New Zealand.
64. The Law Council recommends that the following improvements can be made to Skill programs to attract prospective migrants:
- The current Australian and New Zealand Standard Classification of Occupations (**ANZSCO**) occupations do not reflect roles and occupations within emerging technologies. It is recommended ANZSCO be replaced with a new system that is agile and adapts to emerging labour needs.
 - Pathways to permanent residence should be simplified. To attract prospective migrants, the pathway to permanent residence needs to be more certain and predictable. Potential changes to occupation lists impact pathways to permanent residence and this can dissuade prospective migrants. It is recommended that the Medium and Long Term Strategic Skills List (**MLTSSL**) and the Short Term Skilled Occupation List (**STSOL**) be reviewed and consolidated into one list that provides a pathway to permanent residence for all occupations on that consolidated Skilled Occupation List (**SOL**).⁴⁸
 - The existing requirement to hold a Subclass 482 (Temporary Skill Shortage) (**TSS 482**) visa with an employer for a three-year period before being eligible for applying for permanent residence can also dissuade prospective migrants.⁴⁹ It is recommended that the period be reduced to two years.
 - The General Skilled Migration (**GSM**) pathway⁵⁰ requires applicants to generate sufficient points to qualify for an application to apply for the visa. This pathway should be directed towards ensuring that Australia attracts the young and educated, who it needs long term to contribute to the economy. It is

⁴⁸ See Law Council, 'COVID-19 concession proposals', letter to the Department (1 October 2021), <[link](#)>, [48]-[50].

⁴⁹ Subparagraph 5.19(5)(e)(ii) of the Migration Regulations.

⁵⁰ See definition in reg 1.03 of the Regulations.

recommended that the GSM program be reviewed so that post study work requirement thresholds are reduced from three years to 18 months.⁵¹

- Multinational companies operating in Australia move their employees around the world and into Australia to assist with expanding their business. It is recommended that consideration be given to establishing a separate visa category to enable intra-company transfers, noting that presently a person is required to work at a single employer for the period of holding their visa.
- The Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa and the Subclass 491 (Skilled Work Regional (Provisional)) visa programs require lengthier employment experience compared to the TSS 482 visa,⁵² and this is a significant issue when trying to attract workers to Australia's regions. The skills assessment process and the significant processing times are also a barrier. It is recommended that further concessions for temporary regional visas be implemented such as removing the skills assessment requirement, reducing the prior experience required in a person's occupation to two years, setting the English language requirement to vocational English, raising the age limit to 50 and providing priority processing for these applications.
- Applying the Labour Market Test (LMT) requirements for occupations on the Priority Migration Skilled Occupation List (PMSOL) is an unnecessary administrative hurdle considering the occupations on that list have been identified as occupations needed to fill critical skills needs to support Australia's economic recovery from COVID-19. It is recommended that the LMT requirement be removed for these occupations. In addition, it is recommended that the LMT be removed for existing Subclass 457 and TSS 482 visa holders if they have been in the role for twelve months or more prior to lodgement of their subsequent visa applications.
- Before any nomination for a temporary or provisional employer-sponsored visa can be approved, the nominator must demonstrate that the position will be paid at least the amount of the Temporary Skilled Migration Income Threshold (TSMIT) and that the market salary for the position is at least the TSMIT. The TSMIT is a blanket rate and for many regional businesses, the requirement to pay a base salary equal to TSMIT in order to sponsor a person on a temporary or provisional work visa prevents them from being able to sponsor workers and fill skill gaps, unless they are able to access a Designated Area Migration Agreement (DAMA). The Law Council recommends that a separate income threshold be determined to apply to positions in regional locations. Alternatively, it recommends that the TSMIT be abolished, and that salary is evaluated based only on the market salary for the region for that position.

Recommendation

- **ANZSCO be replaced with a new system that is agile and adapts to emerging labour needs.**

⁵¹ Items 6D31 and 6D42 in the table in Schedule 6D to the Regulations.

⁵² The criteria for a TSS 482 visa ordinarily require applicants to have been employed in a nominated occupation or relevant field for 2 years: cl 482.221 of Sch 2, cl 482.231 and cl 482.242 of Sch 2. The criteria for a Subclass 494 visa ordinarily require applicants to have been employed in a nominated occupation or relevant field for 3 years: cl 494.225 of Sch 2 and cl 494.235 of Sch 2. While the Subclass 491 does not have a mandated employment period requirement, the points system allocates a minimal 5 points to a period of employment less than 3 years.

- **The MLTSSL and STSOL be reviewed and consolidated into one list that provides a pathway to permanent residence for all occupations on that SOL.**
- **The period of time a person must hold a TSS 482 visa to be eligible for permanent residency be reduced to two years.**
- **The post study work requirement thresholds in the GSM program be reduced from three years to 18 months.**
- **Consideration be given to establishing a separate visa category to enable intra-company transfers.**
- **The following concessions be introduced for temporary regional visas: the skills assessment requirement be removed; the prior experience required in occupation be reduced to two years, the English language requirement be set to vocational English; the age limit be raised to 50; and priority processing for these applications.**
- **The LMT be removed for existing Subclass 457 and TSS 482 visa holders if they have been in the role for twelve months or more prior to lodgement of their subsequent visa applications.**
- **A separate income threshold be determined to apply to positions in regional locations, or alternatively TSMIT be abolished and salary be evaluated based only on the market salary for the region for that position.**

Family stream

65. Since the Productivity Commission's statement in 2016 that 'the case for retaining parent visas in their current form is weak', the program allocation has almost halved (reduced from 8,625 in 2015-16⁵³ to 4,500 in 2020-21)⁵⁴ and the number of onhand applications has increased by 42 percent (80,135 in 2015-16⁵⁵ to 114,359 in 2020-21).⁵⁶
66. In the short-term the Law Council has recommended increasing the program allocation, but going forward, reform is required. The Law Council is of the view that the Department should reconsider the fairness and appropriateness of managing a visa program in which applicants are required to pay \$6,490 to apply for a visa which they need to wait over 30 years to receive.
67. The Productivity Commission suggested as possible reform solutions:
- considerably raising the visa charge for Contributory Parent visas; and
 - introduce a non-contributory Parent visa, which narrows eligibility to cases where there are strong compassionate grounds, offset by parents or sponsoring children meeting the costs of any income or health support during their period of residence.⁵⁷

⁵³ Department, '2015-16 Migration Program Report', <[link](#)>, 14.

⁵⁴ Department, '2020-21 Migration Program Report', <[link](#)>, 56.

⁵⁵ Above, n 53.

⁵⁶ Above, n 54.

⁵⁷ Productivity Commission, n 40, 27.

68. The Law Council suggests consideration be given to providing for a fast-track processing stream for non-contributory Parent visa where there are strong compassionate grounds (as opposed to limiting such visas to only those circumstances).
69. The Law Council notes that in the 2018-19 Budget, the Australian Government announced that it would quarantine a portion of the planned parent permanent migration places for holders of Retirement (subclass 410) and Investor Retirement (subclass 405) visas, which would cease to be offered to new applicants.⁵⁸ This was announced as a Budget saving.
70. This measure has further diluted the availability of Parent visas for applicants with family in Australia. Further, the Law Council suggests consideration be given to bringing back retirement visas or investor retirement visas, which would bolster the self-funded private health industry and provide a significant cash injection into the economy.

Recommendation

- **The Department consider reforms to the Parent visa program to increase their availability, such as introducing a temporary non-contributory Parent visa and providing a fast-track processing stream for non-contributory Parent visa where there are strong compassionate grounds.**
- **Consideration be given to reintroducing retirement visas or investor retirement visas.**

Supplementary questions

How can the Skill stream of the Migration Program effectively address workforce shortages while boosting efforts to upskill and reskill Australians?

71. The Global Talent Independent program is an excellent initiative in attracting the highly talented applicants, particularly in emerging and uniquely specialised occupations that may not be classified in the ANZSCO, or where there is no clear alignment with an ANZSCO classification. However, the program lacks certainty.
72. There are no publicly available legislative prescription or policy guidelines that inform or support decision-makers assessing Expression of Interest (**EOI**) applications on what profile or skills-set the Australian Government is seeking in the priority sectors of 'Resources, Agri-food and AgTech, Energy, Health industries, Digitech, Education'⁵⁹ etc. There is no legislative link between the EOI application, processing EOI application and issuance of an invitation to apply for a visa. Consistent with rule of law principles that the law be readily available and known, and certain and clear,⁶⁰ the Law Council considers that the matters which are relevant to the decision to invite a person to apply for these visas should be prescribed.

⁵⁸ Commonwealth, 'Budget Measures Budget Paper No. 2 2018-19', <link>, 14.

⁵⁹ Australian Government Department of Home Affairs, 'Visas for Innovation', [online](#) information, <link>.

⁶⁰ Law Council, Rule of Law Principles, Principle 1, <link>.

73. In addition, there is a risk that the Global Talent Independent program could become a de-facto employer nominated visa because of the limitations of the current ANZSCO classifications and their impact on pathways to permanent residence. As mentioned above, reliance on outdated ANZSCO classifications for the TSS and ENS programs is an issue that needs to be addressed.
74. A significant consequence of border closures has been the difficulty in filling labour shortages, often in semi-skilled positions, in the sectors of hospitality, logistics, aged care and disability care and agriculture. The Law Council recommends that additional allowances be made, outside of the DAMA framework or amendments to the Working Holiday Maker and seasonal worker arrangements, to accommodate lower skilled workers applying for these positions. The Subclass 408 program (Temporary Activity) could be a potential pathway and/or Industry Labour agreements be made more flexible.

Recommendation

- **Greater clarity be provided as to the matters relevant to an expression of interest for a Global talent visa application.**
- **Consideration be given to making additional allowances, outside of the DAMA framework or amendments to the Working Holiday Maker and seasonal worker arrangements, to accommodate lower skilled workers applying for semi-skilled positions, in the sectors of hospitality, logistics, aged care and disability care and agriculture.**

How can the Migration Program help address the challenge of uneven population growth and economic development between urban and regional Australia?

Temporary Safe Haven visas

75. The Law Council considers that reforms could be made to the SHEV so that it becomes a more realistic and functional pathway for temporary migrants living in regional areas to become permanent residents and settle in those areas.
76. In order to lodge a valid application for a SHEV, an applicant must indicate that either themselves or a family member intends to work or study while accessing minimum social security benefits in a regional area specified by the Minister.⁶¹
77. Unlike other unauthorised maritime arrivals who hold a temporary protection visa, a SHEV holder is able to make a valid application for the visa subclasses listed in the table in subregulation 2.06AAB(1) of the Regulations (which include a number of skilled and family visas) subject to a number of provisos.
78. Those provisos are that the applicant has been engaged in work and not receiving social security benefits or study (or a combination of both) in the regional area stipulated in their application for at least 42 months.
79. At Senate Estimates on 25 October 2021, the Department gave evidence that as at 31 August 2021, since the program began, there had been 12,880 SHEVs granted

⁶¹ Paragraph 1404(3)(e) of Schedule 1 to the Migration Regulations.

and 5,187 Subclass 785 (Temporary Protection) visas granted. Of those 26 applications have 'met pathway requirements', which is understood to mean that they were invited to apply for a visa. However, none have been granted.

80. A paper published by the Centre for Human Rights Education, Curtin University, '*Supporting economic growth in uncertain times – Permanent pathways for Temporary Protection visa and Safe Haven Enterprise visa holders*' (**Permanent Pathways paper**), contains data which shows that temporary protection visa holders have high labour force participation rates, high business ownership rates and work experience in areas of growing demand.⁶²
81. However, it also notes that SHEV holders are effectively prevented from buying their own homes, investing in their businesses and settling in Australian communities, which is exacerbated by the fact that they cannot sponsor family to join them and thus need to financially support their families living overseas.
82. The Law Council considers that legislative reform is required to provide a more realistic pathway for SHEV holders to permanent residency as holders of skilled visas working in regional areas.
83. A key issue with the current scheme is that SHEV holders need to satisfy the criteria for the skilled occupation visas without any allowance for their particular circumstances. The applicant permanent skilled occupation visas all require applicants to be under 45 years of age.⁶³ The points system which applies to applicants for a Subclass 189 (Skilled Independent) visa or a Subclass 190 (Skilled Nominated) visa, the applicant must have not turned 45 at the time of application requires both lengthy education and work experience, which may be difficult for persons in the situation of SHEV holders.
84. The Permanent Pathways paper recommends a SHEV stream (and a TPV stream) be established within the Subclass 189 visa, similar to the stream which applies to New Zealand citizens. Under this proposal, a SHEV stream would permit individuals to apply for permanent residence if they have worked and/or studied full-time in Australia without receiving the Special Benefit payment for a least three years in the five years immediately before applying for the visa.
85. The Law Council recommends consideration be given to this kind of approach, to provide SHEV holders who have developed community connections in regional areas have a realistic pathway to settle in that community and be joined there by their family.

Recommendation

- **Consideration be given to providing for a SHEV stream within the Subclass 189 visa to provide a more realistic pathway to settlement for holders.**

⁶² John van Kooy, *Supporting economic growth in uncertain times – Permanent pathways for Temporary Protection visa and Safe Haven Enterprise visa holders*, Centre for Human Rights Education, Curtin University <[link](#)> (14 September 2021).

⁶³ Migration Regulations: item 3 of the table in cl 1137(4B) of Schedule 1; item 3 of the table in cl 1138(4); cl 186.221 of Schedule 2.

How can migration policy settings better support economic security of women in Australia overall, and migrant women in particular?

86. The Law Council notes that this question is pitched more broadly than the Migration Program, and thus it has taken the opportunity to raise ways in which migration policy settings more generally can better support the economic security of migrant women.
87. The following submissions focus on the effect of domestic and family violence (**DFV**) on migrant women, particularly those on temporary visas. Studies have found that women affected by violence experience a greater level of financial hardship.⁶⁴

Family violence and temporary migration

88. Visa status and deportation threats by a perpetrator represent acts of violence. Temporary migration status creates significant leverage for control and intimidation by an abusive partner.
89. A recent study conducted by the Monash University Migration and Inclusion Centre (**the Monash Study**), surveyed 1392 migrant and refugee women in Australia before and during the March-September 2020 COVID-19 lockdown, on life and security issues, with a focus on DFV.⁶⁵
90. The Monash Study found, relevantly, that temporary visa holders consistently reported proportionately high levels of DFV,⁶⁶ including controlling behaviours,⁶⁷ and much high levels of migration-related abuse and threats.⁶⁸
91. These controlling behaviours include, in order of frequency:⁶⁹
 - ‘Threatens to report you to Immigration or have you deported’.
 - ‘Threatens to withdraw sponsorship’.
 - ‘Threatens to prevent other family members from accessing visas or travelling to Australia.’
 - ‘Threatens to have you deported while your child/ren would remain in Australia.’
 - ‘Threatens to send your children to another country to be cared for by extended family.’
 - ‘Threatens your children in some other way in relation to their visa or your visa and where they will live and grow up.’
 - ‘Tricks or coerces you to return to your country of origin.’
92. Only 22 per cent of survey participants who were temporary visa holders and/or who had indicated that they had experienced migration-related controlling behaviours were

⁶⁴ Cortis, N., & Bullen, J. (2016). *Domestic violence and women’s economic security: Building Australia’s capacity for prevention and redress: Final report* (ANROWS Horizons, 05/2016). Sydney: ANROWS, <[link](#)>, and Corrie, T (2016), *Economic Security for Survivors of Domestic and Family Violence: Understanding and Measuring the Impact*, Good Shepherd Australia New Zealand, <[link](#)>.

⁶⁵ Segrave, Marie; Wickes, Rebecca; Keel, Chloe (2021): *Migrant and refugee women in Australia: The safety and security study*. Monash University. Report. <https://doi.org/10.26180/14863872>.

⁶⁶ Ibid, 31.

⁶⁷ Ibid, 40.

⁶⁸ Ibid, 41.

⁶⁹ Ibid.

confident in relation to knowing the visa they held and their rights connected to that visa in Australia.⁷⁰

93. In the experience of members of the Law Council's constituent bodies and section committees, visa dependence is a key barrier to accessing legal support for domestic and family violence. Where a victim of domestic and family violence holds a visa that is conditional upon the existence of the relationship with their perpetrator, the capacity for the victim to access support and escape the violence is limited.
94. The Law Council proposes a number of amendments to the Regulations to assist to relieve migrant women of the prevalence and impact of migration-related abuse and threats, by increasing the availability of family violence provisions and reduce the burden of proving them.

Expansion of family violence provisions

95. The Law Council acknowledges the family violence provisions under the Migration Regulations, which were introduced to avoid circumstances where visa applicants and holders are compelled to remain in violent relationships for migration reasons. While accessing these provisions involves a range of complexities and difficulties, the family violence provisions allow applicants or holders of some temporary partner visas and Global Talent visa applicants access to permanent residency if they can demonstrate that the relationship was genuine; that family violence occurred; and that the violence, or part of the violence, occurred during the course of the relationship.⁷¹
96. In contrast, dependent temporary visa holders, such as international students or skilled workers, cannot access the family violence provisions. Further, secondary applicants who qualified for a visa by virtue of being a spouse of a primary applicant are susceptible for cancellation of a visa if the spousal relationship ends under a power to cancel the visa which arises if a fact upon which a decision to grant the visa was based, wholly or partly, no longer exists.⁷² As a consequence, a dependent visa holder experiencing family violence may be or feel compelled to either remain in a violent relationship or leave Australia.⁷³ This gap empowers perpetrators by creating a tool for exercising coercive control. In the Law Council's view, this framework is inconsistent with the intention of the Australian Government to prevent family violence,⁷⁴ as it aims to do via the family violence provisions.
97. To ensure the safety of these visa holders and to ensure consistency of approach, it is recommended that the family violence provisions be expanded out to other

⁷⁰ Ibid, 42.

⁷¹ See subclauses 100.221(4), 801.221(6), 820.211(8) and (9), 820.221(3) and 858.321 (3) of Schedule 2 to the Regulations.

⁷² Paragraph 116(1)(a) of the Migration Act.

⁷³ The Law Council recognises that the Department of Home Affairs' policy in relation to the cancellation of visas under section 116 of the Migration Act requires that delegates consider the circumstances in which the ground for cancellation arose, including: 'whether there were any extenuating circumstances beyond the visa holder's control that led to the grounds existing. If cancellation is being considered because of a relationship breakdown, delegates should consider whether the relationship has broken down as a result of family violence. As a general rule, a visa should not be cancelled where the circumstances in which the ground for cancellation arose were beyond the control of the visa holder': Department of Home Affairs, *Procedures Advice Manual 3 (PAM 3) – Visa cancellation instructions* (1 July 2017). However, this is policy only, and should be included in the legislation to offer more substantial protection to temporary visa holders experiencing family violence.

⁷⁴ Council of Australian Governments, 'National Plan to Reduce Violence Against Women', <[link](#)>. Commonwealth of Australia (Department of Social Services), 'Fourth Action Plan 2019-2022 – National Plan to Reduce Violence Against Women' (2019), <[link](#)>, 2. See House of Representatives Standing Committee on Social Policy and Legal Affairs, 'Inquiry into family, domestic and sexual violence' (March 2021), <[link](#)>, Recommendation 4.

temporary visas to provide a pathway to permanent residency for those who have applied for permanent residency as dependents.

98. Separately, the Law Council recommends an amendment to address a gap in the family violence visas as they apply to a discrete cohort of partner visa holders.
99. Under the current drafting of the Regulations, Prospective Marriage (Subclass 300) visa holder who has been in a relationship with their violent partner, but has not yet formally married, is excluded from accessing the family violence provisions.⁷⁵ The Law Council recommends that the Regulations are amended to ensure that unmarried subclass 300 visa holders are also subject to the family violence provisions

Recommendation

- **The Regulations be amended to expand the family violence provisions:**
 - **beyond partner visas to other temporary visas (such as student and skilled visa holders) to provide a pathway to permanent residency for those who have applied for permanent residency as dependents but have experience family violence;**
 - **to ensure that unmarried subclass 300 visa holders are also subject to the family violence provisions.**

'Evidence' of family violence

100. In order to be eligible for the grant of a permanent visa under the current family violence exceptions in Division 1.5 of the Regulations, the applicant must provide evidence that the family violence occurred. This may be either through judicially determined evidence such as an injunction, court order or conviction, or 'non-judicially determined' evidence which includes either a joint undertaking made in court in relation to proceedings or a statutory declaration outlining the nature of the violence plus two items of evidence outlined in IMMI 12/116.⁷⁶
101. The items of evidence prescribed in that instrument include reports and/or statutory declarations issued by medical practitioners, police, welfare agencies, crisis centres, psychologists, social workers, family consultants or school counsellors or principals.
102. If an applicant provides evidence in line with the 'non-judicially determined' requirements and the decision-maker is not satisfied that the applicant suffered family violence, the decision-maker must seek the opinion of an independent expert as to whether the applicant has suffered family violence and take that opinion as correct.⁷⁷
103. Legal practitioners have reported examples in which genuine survivors of extreme forms of family violence have not been met due to the evidentiary requirements. This may be as a result of language barriers, fear of authorities, or an inability to access or afford medical assistance or legal advice.
104. The Law Council proposes amendments to the Regulations which would provide for a discretionary power for a decision-maker to refer an applicant to an independent expert where the documentary evidence has not been provided in strict compliance with

⁷⁵ See paragraphs 820.211(8)(b) and (9)(c) of Schedule 2 to the Regulations.

⁷⁶ Ibid, see regs 1.23 and 1.24.

⁷⁷ Ibid, reg 1.23(10).

IMM 12 /116, and where the decision-maker is satisfied that there are compelling and compassionate circumstances that warrant the referral to an independent expert.

Recommendation

- **The Regulations be amended to empower a decision-maker to refer an applicant to an independent expert where the documentary evidence has not been provided in strict compliance with IMM 12 /116, and where the decision-maker is satisfied that there are compelling and compassionate circumstances that warrant the referral to an independent expert.**

New Temporary Visa

105. It is proposed that a new temporary visa be available for temporary visa holders who have not lodged permanent residence applications, but who have experienced family violence and therefore:

- are unable to comply with their current visa conditions; or
- are at risk of or have had their visas cancelled.

106. The creation of a new temporary visa category would allow dependent temporary visa holders experiencing domestic and family violence, to remain in Australia for a minimum of one year or longer to access and consider legal advice including other possible visa options.

107. The availability of a further visa option for victims of family violence would limit the use of migration status as a means to coerce and control. The visa would allow dependent visa holders to take control of their own visa status and migration pathway and addresses the dangerous power imbalance that exists between primary and dependent visa holders.

108. Importantly, the visa would allow victims of family violence time to secure their own and their family members' safety and seek the support they need. Work and study rights would attach to the visa and holders would be entitled to Medicare benefits. The visa would not create a guaranteed pathway to permanent residency but would allow holders to apply for any further onshore visas they might be eligible to obtain.

109. The efficacy of this visa is dependent on it being accessible and this requires recognition that people fleeing relationships characterised by violence may not have access to documents commonly used to evidence strict visa criteria. This reality must be taken into account in developing eligibility criteria so that visa extensions are readily available to those who need them.

110. The Law Council would welcome the opportunity to work with the Department in its consideration of the above proposals, including more specific recommendations with regard to Schedule 1 and Schedule 2 eligibility criteria as well as the associated policy instructions guiding processing.

Recommendation

- **A new temporary visa be introduced for temporary visa holders who have not lodged permanent residence applications, but who have experienced family violence and therefore:**

- are unable to comply with their current visa conditions; or
- are at risk of or have had their visas cancelled.

How can migration policy settings better support social cohesion outcomes in Australia?

111. The Organisation for Economic Co-Operation and Development considers a cohesive society to be one which 'works towards the well-being of all its members, fights exclusion and marginalisation, creates a sense of belonging, promotes trust, and offers its members the opportunity of upward social mobility'.⁷⁸
112. The Law Council's view is that there are intrinsic social and cultural benefits to immigration; that communities and society in general is enriched by the proliferation of different cultural influences and customs.
113. These views are in keeping with the views of the general public. The Mapping Social Cohesion report from the Scanlon Institute recently found an increase in positive sentiment towards immigration, with the proposition that:⁷⁹
- 'immigrants improve Australian society by bringing new ideas and cultures' was endorsed by 82 per cent in 2019 and 84 per cent in July 2021;
 - 'immigrants are generally good for Australia's economy' was endorsed by 76 per cent in 2019 and 86 per cent in July 2021; and
 - 'multiculturalism has been good for Australia' was at 80 per cent in 2019 and 86 per cent in July 2021.
114. Further, social cohesion of migrants is enhanced by policies that facilitate family reunion. The availability of family reunion pathways not only attracts skilled migrants to Australia, but it assists them to settle into communities and retain their wealth in Australia.
115. For these reasons, the Law Council considers that it is important that the Family stream remains strong and that that the visa types within it remain accessible, with reasonable fees and wait times.
116. The Law Council considers that it is also important to ensure that immigration policy remains non-discriminatory. The Lowy Institute reports⁸⁰ that a contributor to a significant worsening in the view of Indians in Australia as an education destination is in the COVID-19 related prohibition on persons flying to Australia from India.⁸¹
117. Further, the Law Council considers policies which marginalise former boat arrivals recognised to be owed protection, and deny them the opportunity of upward social mobility, impair social cohesion. These policies include limiting some people in that cohort to TPVs and SHEVs, and then denying them the ability to sponsor a child, a

⁷⁸ OECD, 'Perspectives on Global Development 2012 – Social Cohesion in a Shifting World' (2011), <[link](#)>, 53.

⁷⁹ Andrew Markus, 'Mapping Social Cohesion', Scanlon Institute (November 2021) <[link](#)>.

⁸⁰ Anna Boucher and Elisa Choy, 'In 2021, interest in Australian education has waned for Indians' (7 December 2021), <[link](#)>.

⁸¹ Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements—High Risk Country Travel Pause) Determination 2021 (Cth).

parent or spouse to come to Australia⁸² or access social security payments such as Carer Payment,⁸³ Carer Allowance,⁸⁴ Parenting Payment,⁸⁵ Jobseeker⁸⁶ and Youth Allowance.⁸⁷

⁸² All applicants for a TPV or a SHEV must satisfy the primary criteria and there are no secondary criteria which permit members of a family unit to be granted a visa: see cl 785.3 and 790.3 of Sch 2 to the Migration Regulations. An applicant for a Subclass 101 (Child) visa must be the child of an Australian citizen, permanent visa holder or eligible New Zealand citizen: cl 101.211(1)(a) of Sch 2 to the Migration Regulations. An applicant for a Subclass 103 (Parent) visa must be the parent of a settled Australian citizen, permanent visa holder or eligible New Zealand citizen: cl 103.211(1) of Sch 2 to the Migration Regulations. The applicant for a Subclass 100 (Partner visa) must be sponsored by a person who is an Australian citizen, permanent visa holder or eligible New Zealand citizen: cl 100.111 of Sch 2 to the Migration Regulations.

⁸³ Subject to a very limited exception related to certain circumstances where there is a scheduled international social security agreement: *Social Security Act 1991* (Cth) (**Social Security Act**) ss 198(4), 198(6).

⁸⁴ Subdivision A of Division 2 of Part 2.19 of the Social Security Act.

⁸⁵ Paragraph 500(1)(b) of the Social Security Act.

⁸⁶ Subsection 623A(7) of the Social Security Act

⁸⁷ Subsection 549D(6) of the Social Security Act.