



Julian Hill MP FEDERAL MEMBER FOR BRUCE



Mr Grant Hehir
Auditor-General
Australian National Audit Office
GPO Box 707
CANBERRA ACT 2601

Dear Mr Hehir

Further to my letter of 3 September 2019 regarding the family migration programme, I write to again raise my concerns with you in relation to the efficiency, effectiveness, quality and integrity of partner visa processing by the Department of Home Affairs. I note your response of 20 September 2019, and seek your further consideration of an examination of this matter by the Australian National Audit Office.

Since my previous correspondence, the situation has deteriorated for applicants of subclass 309 and 820 Provisional partner visas and subclass 300 Prospective Marriage visas and their Australian partners. While the global pandemic has undoubtedly contributed to challenges in application processing, evidence has emerged of starkly different relative processing times for partner visa applications between offices, and also for applicants of different nationalities.

Significantly, these differences pre-date COVID-19 by many years so cannot be ascribed to the pandemic, just as they cannot be explained by 'security concerns', individual variation in meeting legislative requirements, or outlier cases where confirming an individual's identity may be complex or challenging.

The department maintains that family visas are processed largely in the order in which they are received, with regard to the government's processing priorities. Those processing priorities hold that applications made by the partner or dependent child of an Australian citizen or permanent resident are second only to applications subject to ministerial intervention, except where the proposed sponsor is a permanent resident who arrived in Australia as an '*illegal maritime arrival*'. It is noted that this priority order itself, as informed by Ministerial Direction 80, is one of many issues of significant concern to the UNHCR in terms of the Australian government's approach to family reunification for asylum seekers and refugees (see attached).

A [document released recently](#) under the *Freedom of Information Act 1982* however, indicates that the processing of partner visa applications is in practice blatantly discriminatory, to the detriment of applicants who are citizens of non-English speaking countries, and certain middle-Eastern and African nations in particular.

The department's website shows that the processing timeframe for 75% and 90% of subclass 820 visas currently stands at 20 months and 27 months respectively, with subclass 309 visas at 16 months and 23 months. These timeframes are almost unchanged from when I wrote to you on 3 September 2019, despite following a period of presumably concerted processing of partner visas.

As you may be aware, the Government submitted to public pressure and almost doubled the total number of places allocated for partner visas in the 2020-21 migration program planning levels, from 39,799 to 72,300. Onshore applicants and those applications where the sponsor resides in a designated regional area, were to be given priority in decision-making.

While the standard processing timeframes are disturbing enough, close consideration of the department's data regarding processing times points to alternate realities for applicants from different parts of the world. **In 2021, the average processing time for subclass 309 applications lodged by citizens of Afghanistan is 43.6 months; for citizens of the United States of America, it is just 7.3 months.**

Similarly, the DHA website shows that prospective marriage visas currently take between 23-27 months to process, three times as long as they did ten years ago. For Afghan citizens however, 300 visa applications currently take 34.3 months on average, versus 15.3 months for US citizens.

Confirming applicant identity and the bona fides of a relationship are critical to partner visa processing. Importantly however, the delay in processing times is not a matter of integrity – the department's primary refusal rate for partner visa applications has hovered around 10% for many years, and in 2020-21 year, [decreased to 3%](#). The set aside rate at the Administrative Appeals Tribunal is notable, having been maintained at around 50%, and [currently sitting at 58%](#).

There is a distinct but related issue of the unconscionably long times the department now appears to take when reconsidering cases remitted from (i.e. overturned by) the AAT. My office has seen numerous cases where the AAT has rejected the department's refusal and found that a visa should be granted, yet there seems to be no coherence or priority given to these cases which can then sit around for years longer, even when people have literally been separated from their families for nearly a decade. I have not been able to identify data to quantify these cases overall as yet.

The vastly different relative processing timeframes by citizenship country are also reflected in the processing office data. The visa processing caseload for a particular overseas post may be made up of a single nationality, or many source countries. For example, the High Commission in Washington manages visa processing for the USA, Puerto Rico and the US Virgin Islands, while the embassy in Dubai was until recently responsible for applications from a number of countries across the Middle East and northern Africa.

As discussed in my previous correspondence, overseas posts receive [high-level direction from Canberra](#) regarding how visa applications are processed, including when visas may and may not be processed, and *Agreed Indicative Planning Levels* for each region, or how many visas may be granted by each office.

A [document released under FOI](#) states that during 2020, the average processing time for subclass 309 visas at the Dubai office was between 30 and 42 months. It is difficult to extrapolate further, given the same figure is not available across offices, and the department recently refused access to more complete global data during the Senate Additional Estimates round (an *'unreasonable diversion of resources'*). Regardless, [point-in-time data](#) shows that for the Washington office, processing times for both partner and prospective marriage visa applications finalised this year show a 75th percentile figure of between 7-12 months, and a 90th percentile figure of 9-14 months.

The applications on-hand data appear to point to similar inconsistencies in processing across overseas posts. The department [revealed under FOI](#) that as at 30 October 2020, 6,784 subclass 309 visa applications were on hand at the Dubai office, including almost 2,200 which had been under consideration for over five, and up to 17 years. Given the [total number of 309 visa applications on-hand](#) across the world stood at 29,811 on 30 September 2020, this indicates that an extraordinary 23% of the entire subclass 309 backlog – and presumably many of the oldest cases within it – was held by just one of the then thirty plus visa processing offices.

With the Dubai office having ceased visa operations earlier this year, that backlog of cases – which included all Afghan applications submitted to that point - has now been distributed to other offices and so cannot be monitored further. As with processing time data, additional information regarding on-hand partner visas across processing offices was sought during Additional Estimates earlier this year, and denied.

There are growing community concerns regarding the integrity of the Government's processing of partner visas. A [website](#) has been established which uses departmental data to display the actual waiting times for applicants of different nationalities. Membership of Facebook groups set up to support applicants and their partners are many thousands-strong ([Grant Offshore Partner Visas Now](#); [Partners Apart](#)).

Senate inquiry

The Senate Standing Committee on Legal and Constitutional Affairs (the Committee) is also [undertaking an inquiry](#) into the *'efficacy, fairness, timeliness and costs of the processing and granting of visa classes which provide for or allow for family and partner reunions'*. The Committee is scheduled to report on the inquiry by 10 August 2021.

The Committee has received a considerable number of submissions slamming various aspects of the Department's processing of partner visa applications, from affected individuals, community organisations and legal professional peak bodies. The concerns relate to a broad range of factors, including the exorbitant visa application charges for Australian partner visas – the highest in the world, and four times more expensive than comparator countries; the impact of unreasonable processing delays; caseload equity issues; differential processing of both the partner visa caseload, and visitor visa applications where partner visa applications are under consideration; and the legality of artificial 'planning levels' or caps to the number of visas granted.

In its submission, the Human Rights Law Centre states that *"It is crucial to understand that these waiting times are not a result of the actual time cost to the Department of Home Affairs.*

This problem is not caused simply because the Department is lacking resources or is overwhelmed by demand. The backlog and waiting times are a result of the Australian Government's decision over several years to reduce the number of family visas available each year...The Australian Government has refused to grant more family visas in line with demand, despite the fact that s 87 of the Migration Act 1958 (Cth) (Act) makes it unlawful to impose a cap on the number of Partner or Child visas to be granted each year."

At the [Committee's first hearing](#) held on 25 June 2021, Ms Victoria Lenton, a member of the Access to Justice and Pro Bono Law Committee at the Queensland Law Society and formerly a public servant in the Department of Home Affairs, stated in relation to ongoing delays that *"in terms of prioritising onshore visa applications...the result of that is that you're delaying the processing times for people who are offshore. People who are in Australia already, typically on a bridging visa which allows them to remain in Australia, hopefully are able to work, and they're reunited with their family...it doesn't appear to me to be the best use of departmental resources"*.

Ms Lenton also indicated that 'cherry-picking' of the caseload is occurring, stating that *"new partner visa applications are being processed extremely quickly...If you are a new partner visa application, that may get finalised within six months. But applications that were lodged prior to that change are taking three years plus. So there is a difference: if you lodge more recently, you get very, very quick processing; but if you've been in the system for a really long time, you're going to remain in there for an unknown period of time. And these are not complex cases...This goes to a processing issue in the way the department is managing the backlog of cases. It's not being processed in an orderly way...I'm aware that how they [the department] deal with those backlogs can involve backlogging previously lodged applications and dealing with them as a cohort, then any new applications get processed a lot quicker"*.

Restrictions on international travel imposed as a result of the pandemic have meant that relationships have been irrevocably stressed; most couples awaiting the grant of a subclass 300 or 309 visa have been separated for over 18 months, and in some cases many years, at the same time as processing timeframes are increasing. Unless an outbound travel exemption request is approved, Australian citizens and permanent residents cannot leave the country to visit their partners during processing; similarly, unless an inbound travel exemption request is approved - and depending on the circumstances, a visitor visa application - the partners of Australian citizens and permanent residents cannot travel to Australia.

Ms Libby Hogarth, Director of Australian Migration Options gave evidence at the hearing that *"because of COVID, the numbers of partners who've been able to enter Australia and then have their cases processed here has changed. They've lodged applications overseas but they've been allowed to come in on visitor visas because they're immediate family members. Then the rules changed and they said, 'Now that you're here in Australia, we'll actually process the visa and allow it to be granted onshore rather than making you go overseas to have it granted'. That's been fabulous, but I don't think one of the Middle East clients I know of in our cohort have been granted a visitor visa. So I would ask the Senate to look at whether there's some sort of white Australia policy around those visitor visas. Certainly partners from central Africa we've had haven't been able to get those visas to come in. So why have some partners from some countries been allowed and others not?...There's a regional or racial bias"*.

The situation is particularly perverse for subclass 300 visa holders and applicants, who are ineligible for an exemption to travel restrictions as they are not married to their Australian partner. It is a requirement of the visa however, that they must not marry before travelling to Australia. For the most part, 300 visa holders and applicants are also unable to seek an exemption on the grounds of being an immediate family member of an Australian citizen or permanent resident, as without a marriage certificate they must prove a de facto relationship to the department, generally of at least 12 months' duration. This is extremely difficult for most couples who have been separated for much of their relationship, and impossible where for cultural or religious reasons, couples are unable to cohabit prior to their marriage. As a result, of the 2,011 inbound travel exemption requests from people who declared that they had applied for, or held, a subclass 300 visa, [over 90% were refused](#).

Despite the evidence heard so far, the Senate Inquiry is no substitute for an in-depth program audit.

Given the seriousness of these matters and the questions they raise about systemic issues affecting the processing of partner visa applications by the Department of Home Affairs, I seek an examination by the ANAO with regard to the programme's administration.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Julian Hill', written in a cursive style.

Julian Hill MP
Federal Member for Bruce

Date: 23 July 2021