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Submission to the Department of Home Affairs Discussion Paper: Managing Australia's Migrant Intake

Australian Lawyers for Human Rights (ALHR) welcomes the opportunity to provide this submission to the Department of Home Affairs' discussion paper entitled Managing Australia's Migrant Intake.

ALHR was established in 1993 and is a national association of Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory committees and specialist thematic committees. Through advocacy, media engagement, education, networking, research and training, ALHR promotes, practises and protects universally accepted standards of human rights throughout Australia and overseas.

Overview

The contents of our submission are most relevant to the following questions posed in the Discussion Paper:

- What factors are important to consider in planning the Migration Program over the next five years? Would those factors change over the next 10 or 15 years? If so, how?
- How could the permanent Migration Program be more responsive to global migration trends, including the rise of temporary migration?
- How can we ensure family migration best enables Australians to reunite with overseas family members, while supporting the Australian community?

ALHR recognises the importance of a well-managed Migration Program and the social and economic benefits that migration brings to Australia. While economic and social benefits are important considerations, Australia's interests would also benefit from innovative and inclusive approaches to its humanitarian contribution through the Migration Program.

While the Discussion Paper notes that the Humanitarian Program is managed separately and not as part of the permanent Migration Program, it does not follow that refugees or other people with humanitarian needs should be precluded from, or discriminated against, in accessing ordinary migration pathways.¹ Indeed, ALHR considers that the planning and implementation of a well-managed Migration Program should maximise opportunities for refugees to access skilled, student and family reunion pathways. ALHR notes that there is ample evidence that refugees bring significant economic, social and cultural benefits to Australia consistent with the objectives of the Migration Program.² For this reason, and others addressed below, ALHR considers that the Migration Program and the Humanitarian Program should operate in a way that is integrated and complementary.

ALHR endorses the submissions made by the Refugee Council of Australia, Talent Beyond Boundaries, and the Settlement Council of Australia. The points raised in our submission are also addressed by these organisations.

Discussion Paper questions:

What factors are important to consider in planning the Migration Program over the next five years? Would those factors change over the next 10 or 15 years? If so, how?

How could the permanent Migration Program be more responsive to global migration trends, including the rise of temporary migration?

Refugee access to skilled migration pathways

Harnessing the benefits of skilled and family migration is a challenge for many governments around the world. In light of the scale of global refugee movements, the need for international solidarity and innovative responses to refugee flows is critical for Australia and the international community. One appropriate policy response is to enhance access to complementary migration pathways for refugees. This is consistent with the *New York Declaration for Refugees and Migrants*, which foreshadowed the Global Compacts on refugees and migration.³

As a starting point, we urge the Australian government to consider and implement the recommendations in the Australian Human Rights Commission's *Pathways to Protection* report.⁴ In particular, ALHR supports the introduction of protection-sensitive migration pathways for refugees. These are non-humanitarian pathways with the desirable side-effect of allowing refugees to achieve a durable solution to their refugee problem. The humanitarian predicament faced by refugees generates significant barriers to refugees accessing existing migration pathways. These barriers can be alleviated through the introduction of flexible visa processes and

¹ While this submission employs the term *refugee* for ease of reference, this usage should not be taken to call for the application of a strict or technical definition of refugeehood in relation to the submission's recommendations. Rather, these recommendations should be taken to extend to existing, non-refugee categories under the Humanitarian Program, such as women at risk and those eligible for in-country special humanitarian visas, as well as those in need of complementary or subsidiary forms of protection.

² For an overview of the economic impact that refugees make to Australia see Jock Collins, *Private And Community Sector Initiatives In Employment and Entrepreneurship* (2017), Lowy Institute Working Paper No 6. See also Graham Hugo, *A Significant Contribution: The Economic, Social and Civic Contributions of First and Second Generation Humanitarian Entrants* (2011), Paper prepared for the Department of Immigration and Citizenship.

³ UN General Assembly, *New York Declaration for Refugees and Migrants: Resolution adopted by the General Assembly on 19 September 2016*, 3 October 2016, A/RES/71/1, 19-20.

⁴ Australian Human Rights Commission, *Pathways to Protection: A human rights-based response to the flight of asylum seekers by sea* (2016).

criteria which may include reducing or waiving visa application fees, and greater flexibility around language requirements and skills documentation for skilled migration.⁵

In relation to opportunities for skilled migration, ALHR endorses the submission of Talent Beyond Boundaries. We would encourage the government to work with the business sector to refine and enhance the opportunities for refugees to access skilled migration through the Community Support Program or other mechanisms.⁶

ALHR would support the creation of an additional number of places within Australia's Migration Program for eligible refugees and their families to access skilled or family reunion visas. While approaches of this kind may enhance Australia's contribution to solutions for refugees, it is critical they are understood as *additional* to – and not a substitute for – a robust, needs-based Humanitarian Program.

A visa system with appropriate access to permanent residency and citizenship

ALHR notes with concern the trend in favour of long-term temporary status rather than permanent residency for many non-citizens in Australia.⁷ Temporary visa holders are more at risk of exploitation than other non-citizens, giving rise to a range of human rights concerns.⁸ Temporary status is also a particularly inappropriate policy measure for refugees. Their predicament may be different to other categories of migrants such as students, visitors or short-term temporary workers, for whom a temporary visa is generally appropriate. In contrast, the circumstances that give rise to the need for international protection are rarely short-term in nature. In such circumstances it is essential that refugees have meaningful access to permanent residency, and appropriate pathways to Australian citizenship.⁹

Discussion Paper question:

How can we ensure family migration best enables Australians to reunite with overseas family members, while supporting the Australian community?

The family is a fundamental unit of society and subject to protection under multiple international treaties to which Australia is a party. The right to family life is set out in the International Covenant on Civil and Political Rights (art 17), the Universal Declaration of Human Rights (art 12) and the International Covenant on Economic, Social and Cultural Rights (art 10).

⁵ Ibid 34-44. A range of mechanisms are outlined in the Human Rights Commission's report, including measures to increase opportunities for safe departure from countries of first asylum, addressing barriers to skilled and family migration and enhancing opportunities to access student visas.

⁶ Skilled pathways for refugees are addressed in detail by Talent Beyond Boundaries.

⁷ See eg, Peter Mares, *Not Quite Australian: How Temporary Migration is Unsettling the Settler Society* (2016), The Text Publishing Co.

⁸ Australian Government, *Productivity Commission Inquiry Report: Migrant Intake into Australia* (2016), 29-30.

⁹ Temporary protection is an exceptional measure that is commonly used in situations of mass influx and in cases where it is not possible to conduct individual refugee status determinations. Further, Article 34 of the Refugee Convention provides that States should:

“as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings”.

See eg: UN High Commissioner for Refugees (UNHCR), *Roundtable on Temporary Protection: 19-20 July 2012. International Institute of Humanitarian Law, San Remo, Italy: Summary Conclusions on Temporary Protection*, 20 July 2012; UN High Commissioner for Refugees (UNHCR), Submission to the Senate Legal and Constitutional Affairs Committee's Inquiry into the Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017 (21 July 2017).

The permanent separation of refugees from their spouses and children overseas is in the interests of neither the individuals concerned nor the Australian community. For refugees, separation from their families compounds mental anguish that often results from persecution and separation from loved ones. Family dislocation has a negative impact on social cohesion.

In a paper recently co-authored with the Refugee Council of Australia¹⁰ we make several recommendations for strengthening access to family reunification for refugees in Australia. In short, our organisations recommend that access to family reunification through the Migration Program should not operate in a manner that discriminates against refugees and should be sensitive to their predicament. If the government wishes refugees to make use of the Migration Program to facilitate family reunion, flexible processes and criteria need to be applied.

For example, the application fee for a partner visa is approximately \$7,000, excluding additional costs such as legal advice, health assessments, police checks and airfares.¹¹ This is out of step with many other comparable jurisdictions, including Canada and the United Kingdom. The equivalent fee for the partners of Canadian residents is only C\$1,040.¹² The UK, whose standard fees are also much less than Australian fees, operates a system for fee waivers on human rights grounds.¹³ ALHR recommends that the application fees be considerably reduced.

Under the 'balance of family test', parents can only be sponsored for a parent visa if at least half of their children live permanently in Australia, or more of their children live in Australia permanently than in any other country.¹⁴ This means that those on temporary protection visas and those who are in Australia permanently cannot sponsor their parents if more of their siblings are overseas. Further, the 'balance of family' test is less justifiable when the parent of the Australian resident is in need of international protection. Applicants for an aged parent on a 'non-contributory parent visa' (and their Australian children) face a 30-year waiting period.¹⁵ A 'contributory aged parent' has a shorter waiting period, but visa fees may cost up to \$100,000 for two parents. These visas are also capped in number. In the year 2017–18, only 1,500 places were allocated to non-contributory parent visas and 7,175 places were offered to contributory parent visas.¹⁶ There is no specific allocation for refugees and humanitarian entrants within these visa caps.

Even where family members of refugees are able to apply for family stream visas, the family members of those who arrived in Australia by boat are given the lowest processing priority.¹⁷ In addition to already lengthy processing times for family visa applications,¹⁸ this prolongs

¹⁰ Sahar Okhovat, Asher Hirsch, Khanh Hoang & Rebecca Dowd, 'Rethinking Resettlement and Family Reunion in Australia' (2017) 42(4) *Alternative Law Journal* 273.

¹¹ See Department of Home Affairs, Fees and Charges for Visas <<https://www.homeaffairs.gov.au/trav/visa/fees#tab-content-3>>.

¹² Government of Canada, Guide 5525 – Basic guide: Sponsor your spouse, partner or child <https://www.canada.ca/en/immigration-refugees-citizenship/services/application/application-forms-guides/guide-5525-basic-guide-sponsor-your-spouse-partner-child.html#fees> (at 31 January 2017)

¹³ UK Home Office, Fee waiver: Human Rights-Based and other specified applications, 30 August 2017., <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/672083/fee-waiver-guidancev2_0.pdf>

¹⁴ Department of Home Affairs, Balance of Family Test <<https://www.homeaffairs.gov.au/trav/brin/pare/balance-of-family-test>>

¹⁵ Department of Home Affairs, Parent Visa Queue <<https://www.homeaffairs.gov.au/trav/brin/fami/capping-and-queuing/parent-visa-queue>>.

¹⁶ Ibid.

¹⁷ Ministerial Direction No 72 – Order for considering and disposing of Family Visa applications (Direction under s 499 of the Migration Act 1958), 13 September 2016.

¹⁸ Department of Home Affairs, Global visa and citizenship processing times <<https://www.homeaffairs.gov.au/about/access-accountability/service-standards/global-visa-citizenship-processing-times>>

separation of the family, with damaging impacts on both the refugee (who will continue to live in Australia) and their immediate family members (who are very often living in dangerous conditions themselves).

To restructure the Migration Program to facilitate family reunification, ALHR recommends that the Department give consideration to the following:

- Allocating at least 5,000 visas annually under the family stream of the Migration Program specifically to the family members of refugee and humanitarian entrants.
- Removing family reunion restrictions for refugees who did not have a visa when they arrived in Australia.
- Providing concessions to refugees and humanitarian entrants sponsoring applicants for visas under the Migration Program. Such concessions could include: visa application fee reduction or waivers; prioritised processing for family members at immediate risk; and quick access to settlement services.

Policy initiatives of this kind should be developed in consultation with relevant stakeholders, including community and civil society organisations.

If you would like to discuss any aspect of this submission, please email me at: president@alhr.org.au

Yours faithfully

Benedict Coyne

President

Australian Lawyers for Human Rights

