Queensland Law Society

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Office of the President

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Our ref: [ML:HS]

Margery Nicoll
Acting Chief Executive Officer
Law Council of Australia
19 Torrens Street
Braddon ACT 2612

**By email:** [redacted]

Dear Ms Nicoll

**Management of Migration to Australia – Family Reunion and Partner Related Visas**

Thank you for the opportunity to provide feedback on the Australian National Audit Office's (**ANAO**) performance audit into the Department of Home Affairs (**Department**) titled Management of Migration to Australia – Family Reunion and Partner Related Visas. The Queensland Law Society (**QLS**) appreciates being consulted on this important issue.

As you know, QLS is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

This response has been compiled by QLS's new Migration Law Consulting Committee, whose members have substantial expertise in this area. QLS's responses to the criteria proposed by ANAO are as follows.

***1. Are partner and family reunion components of the Migration Program effectively planned?***

**Prohibitive costs**

There are two pathways to family unions for a person on a humanitarian visa. Permanent visas for family members are issued under two streams: the migration program and the Special Humanitarian Program. The migration program pathway affords access to partner, child, parent and aged dependent relative visas. The costs associated with migration program applications are likely to be prohibitive for many, with most visa application fees being many thousands of dollars per visa applicant. This process is often lengthy with timeframes of between 12 months and three years. Reduced fee applications and priority processing should be available where the sponsor is on a humanitarian or protection visa.

### Barriers faced by boat arrivals

People who arrive in Australia by boat face additional barriers to family reunions. Access to the migration program is only available once the visa holder is recognised as an Australian citizen.

### *2. Are visa lodgement and assessment processes effectively managed?*

### Assessing 'genuineness' in the context of partner visa applications involving claims of family violence

Applicants for a Partner visa must establish that they are in a 'genuine' relationship with their sponsoring partner. In this context, 'genuine' means a committed relationship. Where an application is refused on the 'genuine relationship' ground, this does not necessarily mean that the relationship is contrived or fraudulent. Rather, the application may have been refused because insufficient evidence has been provided to the Department to establish the committed relationship. This can arise in matters where, for example, there are unrepresented applicants who do not understand the process and the level of evidence required by the Department. Given this, it is inappropriate in our view to conflate refusals on the 'genuineness of the relationship' criterion with the incidence of fraudulent applications.

Further, some of the 10 percent of applications refused on the genuineness ground relate to relationships that involve claimed domestic and family violence. Applicants for Partner visas who have experienced family and domestic violence can apply for consideration under special provisions relating to family violence under the *Migration Regulations 1994*. This process requires the applicant to first establish that there was a genuine relationship and then the Department may consider whether they experienced family violence. In relationships involving violence, it can be difficult for applicants to meet the first threshold of genuineness because the dynamics of violence can interfere with the applicant's ability to provide evidence of the relationship.

We consider it consistent with the intention of the family violence provisions that the Department consider evidence of a genuine relationship in the context of the violence which occurred during the course of the relationship. Currently, it is difficult for people who have experienced family violence to meet the prescriptive criteria required to establish a genuine relationship, and flexibility needs to be afforded to this cohort, in acknowledgement of how the dynamics of domestic and family violence can affect an applicant's ability to obtain and produce evidence.

We also note that the establishment of the existence of family violence by its very nature is relevant to the consideration of whether or not a relationship existed between the visa applicant and sponsor. It is essential that these two issues be considered in context of each other.

Finally, we highlight that the Department has indicated there is a 90 percent grant rate for Partner visas. This indicates that the vast majority of applications of applications in this category are found to be genuine, yet they are still subject to lengthy processing times.

### *3. Are visa decisions and case load processes effectively managed?*

### Protracted processing

Current processing times for family visa applications are unreasonable and oppressive, particularly given the fact these caseloads are, by definition, made up of the immediate family members of Australian citizens and permanent residents.

We note that during the international border closure (March 2020 – February 2022), processing was naturally disrupted. The Department diverted resources to deal with the closed international borders and processing of travel exemption applications. Since the border reopening in February 2022, we have seen the Department now having to deal with a backlog of applications. Additionally, visa processing remains stalled at Australian embassies in cities that continue to experience COVID-19 related lockdowns.

Complex caseloads such as family violence affected partner visa applications are subject to significant and ongoing delays, which has a detrimental impact on this vulnerable client group.

Those who have not had their temporary partner visa decided are not eligible for any support from Services Australia other than Special Benefit. It can take a number of years for these partner visa applications to be processed and during this time applicants are ineligible for most support services, including housing and subsidised childcare. This can lead to a decision to remain in a violent relationship, particularly when there are children the applicant needs to support. Our members have also seen women get 'stuck' in refuges. This is because they are unable to transition from a refuge to Department of Housing accommodation. Similarly, they are unable to commence work because of the prohibitive costs of unsubsidised childcare. Refuges are designed as immediate crisis accommodation and are not suitable as medium to long term housing. Long term stays in refuges also put pressure on scarce refuge accommodation, which may then not be available to other women and children who seek to leave violent relationships.

While we acknowledge that these cases are more challenging to process, given the risks involved and the vulnerability of the client group, we submit that it would be more appropriate for applications relying on the family violence provisions to be given the highest priority.

In relation to other family visa categories, including child visas, and the other family visa categories that are subject to queuing arrangements (Parents, Carer, and Remaining Relative), our committee members' experience is that there has been a significant deterioration in processing times over the last few years. For example, for child visas lodged offshore, the processing time was previously significantly quicker than the current published processing time of 15 - 19 months. These cases used to be given the highest priority by processing posts in acknowledgement of the importance of a quick processing time for this visa category, given that this caseload are largely dependent minor children. This is no longer the case.

**Access to legal assistance**

Finally, adequate, ongoing funding for legal assistance providers must be prioritised to ensure applicants are provided with the advice and support necessary. Access to legal assistance can prevent or reduce the escalation of legal problems and reduce cost to the justice system overall. Self-represented visa applicants may be less familiar with proper evidence gathering and document drafting which, in itself, can contribute to a backlog of applications in the system. QLS strongly supports increased funding to these essential services.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [redacted].

Yours faithfully

[redacted]

Kara Thomson
**President**