



Immigration Advice
and Rights Centre

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Family and Permanent Resident Policy Section
Immigration Policy and Framework Branch
Department of Home Affairs

By email: correspondence.family.policy@homeaffairs.gov.au

Consultation on the English language requirement and the new sponsorship framework for the Partner visa program

The Immigration Advice and Rights Centre (IARC) is a specialist, not-for-profit community legal centre providing free immigration advice and assistance to people throughout New South Wales.

Our clients are financially disadvantaged, come from culturally and linguistically diverse backgrounds, and often speak little or no English. Many experience multiple layers of disadvantage including homelessness, low education levels and disability and have experienced torture and trauma. Nearly half our clients have experienced or are at risk of domestic and family violence (DFV).

In light of our experience working with the members of the community who will be most impacted by the proposed reforms, we bring an informed perspective to the issues raised in the consultation paper and welcome the opportunity to comment on the proposed reforms.

English language requirement

IARC acknowledges that proficiency in English can contribute to positive outcomes in employment, income and the ability of people to fully participate in the community. In that regard we welcome the reforms to the Australian Adult Migrant English Program (AMEP) announced in August 2020.

IARC does not, however, support the English language requirement for Partner visas because they:

- will result in the separation of families who do not satisfy the requirements;
- will result in worse outcomes for temporary visa holders experiencing DFV;
- are unnecessary; and
- are discriminatory and unfair.

The appropriate response by government to addressing the hardship faced by newly arrived migrants would be to offer greater levels of support.

English proficiency and DFV

We are not aware of any research which supports the proposition that people from culturally and linguistically diverse backgrounds are inherently at greater risk of DFV or that levels of DFV are higher in communities with lower levels of English. Such views are simplistic and disregard the drivers of DFV and the broad structural barriers that prevent people on temporary visas from seeking and receiving help.

We are concerned that the proposed English language requirement is being framed as a response to the serious and complex issue of DFV amongst women on temporary visas without consultation with those with lived experience or the community sector that supports them. We are not aware of any organisations or groups that have identified the proposed English language requirement as an appropriate tool to reduce the incidence or impact of DFV. We also note that DFV was not referenced as a driver to the reforms to AMEP in either the Minister's second reading speech or the explanatory memorandum to the amending legislation.

In our view, far from reducing the impact of DFV on temporary visa holders, the English language requirement will make it less likely that people experiencing DFV will seek help. Time and time again our clients have told us that the perpetrators of violence against them have used their visa status as a form of control and that fears of visa cancellation, removal from Australia and separation from their children stop them seeking help. Permanent residency is often seen as providing the security and access to services and support that visa holders experiencing DFV need to leave violent relationships. The proposed English language requirement will simply be another hurdle preventing that outcome.

The English language requirement is unnecessary

IARC believes that the available evidence does not demonstrate that the English language requirement is necessary or will result in improved outcomes for migrants from a CALD background.

As the Department of Home Affairs (**Department**) concedes in its own consultation paper, the majority of Partner visa holders and sponsors speak English, with 84.4% speaking English well or as their best or only language six months after settling in Australia.

The Department's Continuous Survey of Australia's Migrants also shows that Partner visa holders and their sponsors generally have comparable or higher levels of employment, labour force participation and full-time employment to the general population.¹ While unemployment amongst Partner visa holders is higher than the general population, the report acknowledges that a significant driver of this is the substantial amount of unpaid care that Partner visa holders provide to children and to relatives with an illness or disability.²

The implication of the consultation paper is that migrants with lower levels of English proficiency lack the motivation to learn English and must be compelled to do so through the withholding of permanent residency. This view is regrettable and disregards the existing incentives for people from CALD backgrounds to enhance their English proficiency including the requirement to demonstrate basic English in order to obtain citizenship.

The imposition of the English language requirement also ignores the complexity of language acquisition. The ability of a person to acquire English may be affected by multiple factors including age, literacy in the individual's own language, education levels and past experience of trauma. Imposing a language requirement to Partner visas without looking at the underlying reasons why some migrants might have lower levels of English proficiency will do nothing to improve English acquisition.

The English language requirement is discriminatory and unfair

The English language requirement effectively creates two classes of migrants and sponsors divided by country of origin or socio-economic background. Such a distinction is fundamentally at odds with the

¹ Department of Home Affairs, *Continuous Survey of Australia's Migrants - Cohort 6 Report, Introductory Survey*, <https://www.homeaffairs.gov.au/research-and-stats/files/csam-cohort6-report-introductory-survey-2018.pdf> (accessed 25 March 2021), page 16.

² Ibid, page 25.

Australian values of respect for all individuals regardless of their background and of equality of opportunity and a 'fair go'.³

The English language requirement will also disproportionately affect people from a refugee background, many of whom are already subject to discriminatory policies such as Direction 80 and excessive delays in citizenship processing. Many refugees have already faced years of separation from their families, something that has compounded the trauma they experienced in their country of origin. To impose an additional burden in the form of the English language requirement that may delay their ability to even lodge a Partner visa application is unfair and unnecessarily cruel.

In our view, the lack of evidence that the English requirement is necessary or will achieve the suggested outcomes and their discriminatory and unfair nature inevitably leads to the conclusion that their intent is punitive. For these reasons we reiterate our objection to them.

Partner visa sponsorship framework

IARC has outlined its concerns about the sponsorship framework in our submission to the Senate Legal and Constitutional Affairs Committee's inquiry into the *Migration Amendment (Family Violence and Other Measures Bill) 2016*.⁴ We reiterate here that the framework will not serve to protect visa applicants and is counterproductive to the National Plan to Reduce Violence against Women and Children.

Any framework for refusing sponsorship approval should be solely directed at the welfare and safety of a visa applicant and not involve a consideration of whether a person is deserving to be a sponsor based on their character (or English proficiency). The proposed framework fails that test and has the effect of punishing prospective visa applicants for the conduct of their sponsor and will deter victim-survivors from disclosing DFV and seeking assistance.

With respect to sanctions for failing to meet sponsorship obligations, in our experience failure to meet a sponsorship undertaking most commonly arises in the context of severe financial hardship or coercive and controlling conduct. In our view, it is inappropriate to impose sanctions in either circumstance as such sanctions can place the applicant at even greater risk of harm or contribute to even further hardship, providing another disincentive for victim-survivors to seek aid and assistance.

For those reasons, we believe the Partner visa sponsorship framework should not be adopted.

Consultation questions

It is disappointing that the Department has opted to engage the community and those with relevant expertise and experience only with respect to the implementation of the reforms and not the fundamental question about whether the reforms are appropriate and will achieve the stated objectives.

While we remain opposed to the reforms, we contribute the following responses to the questions raised in the consultation paper in the interests of mitigating some of the detrimental impact we believe they will have.

³ Australian Government, 'Australian Citizenship: Our Common Bond', <https://immi.homeaffairs.gov.au/citizenship-subsite/files/our-common-bond-testable.pdf> (accessed 25 March 2021) page 18-20.

⁴ IARC Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the Migration Amendment (Family Violence and Other Measures) Bill 2016, 13 April 2016 <https://www.aph.gov.au/DocumentStore.ashx?id=6f91326f-7659-4e46-897a-d5e3198fa820&subId=412274> [accessed 31 March 2021]

What level of English language proficiency and skills would Partner visa applicants and permanent resident sponsors need to function independently in Australian society, including to access essential services and employment?

It is our view that any English language proficiency level need not be higher than a “basic knowledge of English” being the required level for Australian citizenship by conferral.

What should constitute a reasonable effort to learn English in the context of AMEP participation?

It is our view that participation in or completion of a course in Preliminary Spoken and Written English should constitute a reasonable effort to learn English.

What evidence should be accepted to satisfy the English language proficiency requirement for Partner visa applicants and permanent resident sponsors?

It is our view that evidence of participation or completion of a course in Preliminary Spoken and Written English should satisfy the English language proficiency requirements.

In what circumstances should a person be exempt from needing to meet the English language requirement? What evidence should be accepted to support a claim for an exemption?

For applicants:

- where the relationship has ended and applicant is seeking grant of the visa under the family violence provisions, the death of the sponsor provisions, or on the basis that there is a child of the relationship;
- who are over the age of 60;
- who are working;
- who claim to have a learning disability; or
- where compelling or compassionate reasons exist for not applying the English language requirement.

For sponsors:

- who are holders (or former holders) of a Protection, Refugee or Humanitarian visa;
- who are over the age of 60;
- who are working;
- who claim to have a learning disability; or
- where compelling or compassionate reasons exist for not applying the English language requirement.

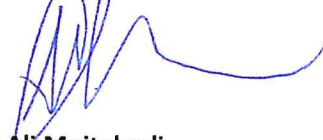
Partner visa sponsorship framework

Are there other issues that should be considered in the development and implementation of the new sponsorship framework for the Partner visa program?

- Explicit waiver to Schedule 3 requirements where a sponsorship application is lodged but not approved before a substantive visa ceases; and
- Provision for the grant of an associated bridging visa where a sponsorship application is lodged but not approved before a substantive visa ceases.

Yours sincerely,

IMMIGRATION ADVICE AND RIGHTS CENTRE, INC



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