

31 March 2021

Department of Home Affairs
Family Visas Branch
Email: correspondence.family.policy@homeaffairs.gov.au

FECCA submission: Reforms to Partner visa program

The Federation of Ethnic Communities' Councils of Australia (FECCA) is the national peak body representing Australia's culturally and linguistically diverse (CALD) communities and their organisations. FECCA develops policy and promotes issues on behalf of its constituency to government and the broader community. FECCA strives to ensure that the needs and aspirations of Australians from cultural and linguistically diverse backgrounds are given proper recognition in public policy.

FECCA supports multiculturalism, community harmony, social justice, and the rejection of all forms of discrimination and racism so as to build a productive and culturally rich Australian society. FECCA's policies are developed around the concepts of empowerment and inclusion and are formulated with the common good of all Australians in mind.

FECCA welcomes the invitation from the Department of Home Affairs to make a submission responding to the Reforms to Partner visa program announced in the 2020-21 Federal budget. Specifically:

- Introducing an English language requirement for permanent resident sponsors and Partner visa applicants; and
- Applying the sponsorship framework set out in the *Migration Amendment (Family Violence and Other Measures) Act 2018* to the Partner visa program.

We would welcome the opportunity to provide further comment and encourage you to contact FECCA CEO Mohammad Al-Khafaji at ceo@fecca.org.au or on (02) 6282 5755.

Recommendations

1. Reconsider English language requirements for permanent resident sponsors and Partner visa applicants with particular focus on the devastating effects for humanitarian entrants and people experiencing violence.
2. Commence, communicate, and evaluate the effect of the positive reforms to the AMEP program to form an evidence base before English language requirements are considered for permanent resident sponsors and Partner visa applicants.
3. If this policy change is enacted, incorporate appropriate exemptions to limit discrimination against groups and individuals who will face additional barriers in meeting the proposed English language requirements.

Key Message

FECCA strongly opposes the introduction of this policy that will dramatically change the rules determining partner visa sponsors and applicant eligibility.

FECCA acknowledges that developing English language capacity is an important part of settlement. However, language learning is a lifelong process and throughout Australia's history, extraordinary contributions have been made by those who may not have achieved a high level of English language proficiency. Many people in Australia including citizens who have low levels of English contribute enormously to this country's economy, culture, and society. Projects such as the Snowy Mountain hydroelectric scheme were built by such people. There are people working on our farms and in our factories, creating enterprises, raising a new generation of citizens, and building our nation who may not acquire English. The Partner program is the largest component within the Family migration stream. A stream intended to reunite family members from overseas and provide them with pathways to citizenship¹. FECCA believes that the proposed policy will create a permanent underclass of Australian residents, citizens and their partners who will be denied the rights and opportunities of permanent family reunion.

For new migrants, English language ability has been identified as a priority by the Government along with employment, caring for children and dependants, and integration into the community. With this policy, the Government has identified how a new migrant should prioritise these undertakings, with English to take precedence, for a person to access their internationally recognised human right of family reunion to live with their family members. The English requirement reform is most likely to disadvantage people from refugee backgrounds, who are the most likely not to speak English upon arrival. For some, achieving English is extremely challenging if not impossible, which will now effectively deny them family reunification no matter how much they contribute to Australian life or however long they live here.

FECCA is concerned that the proposed changes to the partner visa program are not based in empirical evidence. In the consultation paper provided, the Department has not provided evidence of the size, nature, and cause of the problem to justify the policy change. No evidence has been provided linking English proficiency or attempts to learn English to integration outcomes. Additionally, whilst stating the importance of functional English, the consultation paper does not explain how this measure will assist those with low English

¹ <https://immi.homeaffairs.gov.au/what-we-do/migration-program-planning-levels>

literacy or how it will protect already vulnerable people from further systematic vulnerability. The adverse effects of this policy will be presented throughout this submission. FECCA recommends research into the problem described and the effectiveness of the intervention presented before implementing any changes.

While we strongly endorse measures to support people to learn English, in our view *de facto* exclusion from family reunification is not a path to integration. Indeed, it is fundamentally counterproductive to integration because it increases people's vulnerability. For refugees and other migrants who have already overcome significant hurdles to reach Australia, the denial of family reunification will only undermine their efforts to rebuild their lives and to connect with the wider community.

Putting additional hurdles in the way of people seeking partner visas, and especially those targeted at people who do not come from an English-speaking background, will merely increase the feelings of isolation that many migrants can experience. It will also increase the emotional and financial hardship of families that already face extended separation or uncertainty. The proposed policy threatens to undermine the decades of successful migration, community harmony and cultural diversity that Australia has worked so hard to build. In the best interests of the broader Australian community, as well as the many migrants that have contributed so much to the social, economic, and cultural fabric of this nation, FECCA strongly opposes this policy.

Family Reunion Obligation

The availability of family reunion is important for successful settlement as it allows migrants to maintain family ties and connections. Family reunion also relates to the internationally recognised human right of people to live with their family members. Access to appropriate, fair, and transparent family reunion processes is strongly connected to people's experiences of safety, belonging, and a secure future. The benefits of family reunification for refugees and migrants cannot be underestimated. Family reunion plays an essential role in helping people rebuild their lives and can provide critical support when adapting to new and challenging circumstances. Families are also better equipped to build new social networks, reduce isolation, and navigate new social systems. FECCA believes that family migration is integral to successful settlement of migrants in Australia and contributes to social cohesion and the wellbeing of the whole community.

The introduction of an English language requirement for permanent resident sponsors and Partner visa applicants will restrict the human right of family reunification on the basis of English proficiency. This is discriminatory toward Australians who choose a partner who may not have what the Government deems 'functional English'.

Permanency

Over the past two decades there has been a significant change in the balance between temporary and permanent immigration in Australia.² Temporary migration has changed the nature of Australia's migration program away from nation building and towards economic utility. With the introduction of 'two-steps' towards permanent residency people are 'temporary' for longer. During community consultations, FECCA has heard of the many ways

² https://parlinfo.aph.gov.au/parlInfo/download/publications/taledpapers/b0cec7ab-9765-4628-92b7-ea741b27aa6c/upload_pdf/migrant-intake-report.pdf;fileType=application%2Fpdf#search=%22publications/taledpapers/b0cec7ab-9765-4628-92b7-ea741b27aa6c%22

the wait for permanency affects individuals, their wellbeing, and their hope for the future hearing '...there is no permanency or stability. Choosing a school for our children or buying a house will be delayed. People will not settle if there is no certainty.'³ Australia's migration program must ensure fairness and equity for existing Australian citizens and permanent residents who wish to be reunited with partners from overseas and address the current wait time of approximately two years.⁴

As part of Australia's multicultural policy, the Government focuses on integration and social cohesion where the goal is to help all communities become actively part of, and benefit from, Australia's economic and social development.⁵ The goal of many temporary migrants is achieving permanency for themselves and their families. During consultations, FECCA learned that many people want to be Australian and would be proud to be Australian with participants saying, 'Australia is a dream country'.

People's experiences of belonging in a new country and their ability to participate and contribute, as demonstrated by the Scanlon Foundation⁶, form part of a strong socially cohesive nation. The development of a sense of belonging and social cohesion is dependent on a person's feeling of safety, the ability to plan a secure future in a new country and, as explored by the Scanlon Foundation, ones' feeling of worth in the new society through life satisfaction, happiness and future expectations.⁷ Research has shown that whilst social relationships, shared cultural affiliations, and efforts from local stakeholders can promote feelings of belonging, restrictive visas also limit feelings of belonging.⁸ By restricting belonging, these visa conditions, extended and complicated processes and ever-changing policy, disrupt all efforts towards social cohesion.

The introduction of an English language requirement for Partner visas will prolong the already over two-year period that applicants must remain temporary whilst they prove their English ability, prove their efforts to attain English or prove their reasons for exemption. This process will be the most difficult for those who have low levels of English, who the Government has identified as 'vulnerable'. This policy will ensure this vulnerable group will be kept temporary for longer ensuring they remain vulnerable for longer.

Family and Domestic Violence

Family and domestic violence (FDV) in Australia is a significant ongoing issue, with enormous social and economic costs. Research has repeatedly shown that women are disproportionately more likely to suffer from FDV and sexual violence than men. Women from CALD backgrounds can face additional and specific challenges based on a range of factors. The government has claimed that the introduction of this English language requirement will reduce women's risk of domestic violence and other vulnerabilities. FECCA believes that addressing the occurrences of FDV within the partner visa program must be done directly through targeted, evidence-based policies, and not through policies that increase the burden on potential victims.

As such, any attempt to delay or increase barriers to a person's access to permanency and associated eligibility to domestic and family violence support should be abandoned.

³ <https://fecca.org.au/wp-content/uploads/2020/02/FECCA-Consultation-Report-2019.pdf>

⁴ <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/partner-onshore>

⁵ <https://www.homeaffairs.gov.au/about-us/our-portfolios/multicultural-affairs>

⁶ <https://scanlonfoundation.org.au/social-cohesion-pillars/>

⁷ Ibid.

⁸ Boese, Martina & Philips, Melissa. (2017). 'Half of Myself Belongs to this Town': Conditional Belongings of Temporary Migrants in Regional Australia. Migration, Mobility, & Displacement

It is widely reported that women on temporary visas are vulnerable to FDV due to their visa status, associated restrictions, and ineligibility for services as a barrier to safety, not inherent factors.⁹¹⁰¹¹ Women on temporary visas are not eligible for many support services, such as crisis or social housing, depending on the policies of the relevant State or Territory, as well as of the individual crisis services. Even in circumstances where women on temporary visas with no income can access crisis support services, they have limited pathways to re-establish independence, and often require prolonged assistance from crisis support services. This puts heavy pressure on already under-resourced support services.

It must be acknowledged that perpetrators already use visa status to control their victims with 55% of women experiencing violence being threatened with deportation in a Segrave study.¹² For a woman on a temporary Partner visa with limited English who is experiencing violence this policy serves only to increase her vulnerability. To become permanent and access pathways out of this situation she must prove her English ability, her 'reasonable effort' to learn or a reason she should be exempt from this reform. Her partner and sponsor is the perpetrator. If he is exercising coercion and control, she will have no access to English tuition or other avenues to prove her English level resulting in an indefinite temporary visa and no path to safety. During a consultation on this reform FECCA heard from a victim/survivor '*They are handing perpetrators a tool for further control*'.

Rather than protect migrants from FDV, this reform will ensure women on temporary visas experiencing violence are locked out of support services.

Seeking Community Views

The Department of Home Affairs is seeking community views to inform the development of settings and the implementation of the new English language requirement. Best practice community engagement must include information gathered from those people who have interacted with or affected by a policy change. Recognising lived experience as expertise and prioritising their input will ensure a balanced evidence base to inform decision making.

The current process has presented multiple barriers to the public providing input into this consultation including factors like timeframe, guidance, available method, and language. As a member based peak body, the timeframe allowed hindered FECCA making an effective and informed submission by preventing in depth consultation with our members and their networks.

FECCA has been in contact with multiple individuals and organisations/associations who wished to make a written submission to this consultation but were unable due to the short timeframe and lack of clear guidance.

To obtain the benefits of broader participation in this process, FECCA suggests as a minimum following the recommendations set out in the *2017 Report on Access and Equity to*

⁹ https://intouch.org.au/wp-content/uploads/2020/03/inTouchPositionPaper_WomenOnTemporaryVisasExperiencingViolenceInAustralia_March2020_website.pdf

¹⁰ <https://awava.org.au/wp-content/uploads/2018/12/National-Report-on-Women-on-Tempo...3-compressed.pdf>

¹¹ https://www.monash.edu/__data/assets/pdf_file/0003/1532307/temporary-migration-and-family-violence-an-analysis-of-victimisation-vulnerability-and-support.pdf

¹²

https://bridges.monash.edu/articles/online_resource/Family_violence_and_temporary_visa_holders_during_COVI

Some of the most relevant recommendations are outlined below:

Recommendation	Implication for this consultation
Clear guidance To successfully interact with feedback mechanisms, a person must be aware of the available mechanism, process and expectations.	The information provided in the consultation paper is technical. Guidance should be provided in plain English especially where the people impacted by this policy are known to possess low levels of English. An optional response template removes some uncertainty around public submission for those unfamiliar with the process
Appropriate timeframe Longer timeframes can ensure the public have an opportunity to make a written submission	A longer timeframe for public submissions is required given the importance and impact of this reform. This benefits submission from representative organisations like FECCA who require time to consult with their members. This will also benefit other submissions from the public that may be completed by volunteers or those without experience completing submissions to Government
Increased knowledge of feedback opportunity To successfully interact with feedback mechanisms, a person must know that they can provide feedback.	If the Department is seeking community views on this reform, this opportunity should have been communicated through targeted channels for maximum reach. This includes the use of multicultural, ethno-specific and religious based organisations. Hosting the consultation information on the Home Affairs website on a page previously used only for industry consultation on topics such as alcohol and tobacco does not ensure that effected people and representative organisations see the opportunity.

AMEP Reforms

Based on multiple reports and large-scale reviews completed by FECCA¹³, Scanlon Foundation¹⁴ and Social Compass¹⁵ outlining issues and solutions to increase flexibility and accessibility of the Adult Migrant English Program (AMEP), the AMEP is currently undergoing large changes. These reports detail the challenges faced by new migrants in accessing the AMEP considering the competing priorities involved with settlement. Barriers to accessing AMEP have included:

- Caring responsibilities
- Lack of childcare
- Employment
- Transport availability
- Not being able to read or write well in own language

¹³ https://fecca.org.au/wp-content/uploads/2019/10/FECCA-Community-Driven-English_WEB.pdf

¹⁴ https://scanloninstitute.org.au/sites/default/files/2020-01/June2019_Scanlon-Institute_Narrative-3.pdf

¹⁵ <https://immi.homeaffairs.gov.au/amep-subsite/Files/amep-evaluation-new-business-model.pdf>

- Being at moderate or high risk of psychological distress
- Older age on arrival
- Never having attended school

Respondents to FECCA's survey stated:

It is hard to learn English speaking from AMEP because there is not enough time to practice. Also, students who are in the same class have different level of learning. For example young people are learning English quickly than old people. So, this makes old people feel the complex of inferiority in front of young people. - Participant survey

We need to make it not so school teaching formal ... people who have not gone to school will not go to English classes especially women — need to make it more informal and like home and not call them classes. - Participant survey

The reports clearly show a willingness of new migrants and refugees to learn English for a range of reasons from communicating at the grocery store to employment or volunteering activity. FECCA heard:

Learning to speak English is so important. For some it can mean mental issues and isolation if they don't speak English. English language is a key factor to settlement. Without English some might even decide to go back to their home country as they don't have any connections here. English opens the world and build people's confidence. - Participant Consultation

I like to support my English to communicate with my classmates, to take part in social life. Classes are conversational, topical, flexible, and accessible, covering topics like living in Australia or current events...Fun lessons can include Australian movies and cartoons as well as playing games. - Participant survey

Beginning 19 April 2021, the changes to the AMEP will ensure people who previously became ineligible for the program based on their time spend in Australia or the time already spent in the program will now be eligible. These changes also include increased accessibility for those with caring responsibilities or full-time work including increased digital and after-hours delivery of the program, as well as provisions for childcare. These changes will change the lives of many and support those with low levels on English to achieve their goals and better participate in society.

FECCA's expects that with increased accessibility to the AMEP, the English proficiency of new migrants will increase in accordance with the proven understanding of a widespread willingness to learn English. FECCA believe it sensible for these positive and supportive changes to the AMEP program to commence, be effectively communicated with relevant people, and the results to be evaluated prior to further intervention like the policy reforms described in the consultation paper.

FECCA responses to consultation paper

Consultation question 1: English language proficiency level

As the Partner program is a stream intended to reunite family members from overseas and provide them with pathways to citizenship¹⁶ the English language proficiency level must be considered accordingly. The existing language tests, such as IELTS and other tests, are not fit for the purpose of the requirement outlined in the consultation paper as they were

¹⁶ <https://immi.homeaffairs.gov.au/what-we-do/migration-program-planning-levels>

designed for employment and study. One stream the AMEP currently offers is the Social English stream for clients wanting to improve their competence in conversational English to help them participate socially.¹⁷ Conversational English is often tested using one-on-one verbal testing methods.

Consultation question 2: Reasonable effort to learn English

English can be acquired in a range of different ways including through the AMEP, community-based English language programs, on the job or while volunteering. All these ways of learning are effective, but some are more difficult to demonstrate than others. These different ways of learning and how this can be measured against reasonable effort must be considered in the implementation on this policy. Community language programs have been shown to be important to English language acquisition.¹⁸ With increased availability and flexibility of the AMEP, FECCA expects that more people will have the opportunity to access English tuition however accessibility of this service must always be considered when assessing if someone has made a reasonable effort to learn English.

Consultation question 3: Other means of meeting the requirement and supporting evidence

The Department should consider a larger list of English-speaking countries exempt from this requirement. This should include:

- Antigua and Barbuda
- the Bahamas
- Barbados
- Belize
- Dominica
- Grenada
- Guyana
- Jamaica
- Malta
- St Kitts and Nevis
- St Lucia
- St Vincent and the Grenadines
- Trinidad and Tobago

The Department must consider that many partner visa applicants will have a reasonable level of English but will have difficulty proving this due to their method of learning. For example, English is the main language in education and workplaces in Singapore however this country has not been included on the list. In many countries, students learn English throughout their education system however they have not had this language formally recognised as they intend to be sponsored through the family not the skilled stream. Further, many individuals have learned English through other means outside of school and have no formal recognition for this. The Department must consider how people in these circumstances can prove their English level considering currently there is no standardised

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https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Migration/settlementoutcomes/Report/section?id=committees%2Freportjnt%2F024098%2F25143#footnote6target

¹⁸ Federation of Ethnic Communities Councils of Australia and Settlement Council of Australia (2019), Community Driven English Language Programs, available online at: http://scoa.org.au/wp-content/uploads/2019/10/FECCACommnuity-Driven-English_WEB.pdf.

test for the level of English described in the consultation paper. Conversational English is often tested using one-on-one verbal testing methods.

If a new test is to be developed, FECCA would welcome the opportunity to contribute expertise along with other relevant organisations, associations, and community members.

Consultation question 4: Exemptions

The proposed English language requirement will have a disproportionate effect on women and more vulnerable migrants. People come to Australia with a range of pre-migration, migration and personal experiences which will impact their ability to meet the requirements. Exemptions must include:

- Permanent resident sponsors
- Humanitarian entrants
- People who have experienced trauma
- Anyone with a physical, mental, intellectual or sensory impairment
- A person experiencing a mental illness
- People completing other shared priorities such as:
 - employment
 - caring commitments
 - contributing through voluntary community work
- Those experiencing domestic and/or family violence
- People who have a child in Australia

Humanitarian entrants

Several studies have demonstrated the effect of trauma on adults learning English. This is particularly relevant for humanitarian entrants though may be relevant to other new migrants. A study of one cohort of refugees in Australia indicated the presence of Post-Traumatic Stress Disorder in more than 90% of that cohort and detailed the negative effects upon learning.¹⁹ Interruptions to education as a result of moving frequently because of unstable security situations or missing school to work in times of economic hardship mean that some migrants and refugees may have low levels of literacy in their own languages making the study of English a particular challenge.

The Australian institute of family studies found that in the first 3-6 months since arrival the most common reasons for not having undertaken English language classes were: poor health, childcare and other family caring responsibilities, and employment.²⁰

According to the Department of Social Services, factors associated with lower levels of English proficiency are:

- Not being able to read or write well in own language
- Being at moderate or high risk of psychological distress
- Older age on arrival
- Never having attended school.²¹

¹⁹ Stevens, A. Perspectives on the Meanings of Symptoms among Cambodian Refugees *Journal of Sociology* 37(1):81-98 2001

²⁰ <https://aifs.gov.au/publications/english-skills-engagement-education-and-entrance-employment-recent/>

²¹

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Migration/settlementoutcomes/Report/section?id=committees%2Freportjnt%2F024098%2F25143#footnote9target

To prevent applicants who have entered Australia as humanitarian entrants from becoming permanent resident sponsors because they experience difficulties with language is to effectively penalise them because of their traumatic experiences. The experience of humanitarian entrants must be considered an exemption. Without this, the Department must decide how a person can prove their level of trauma, school level of attendance, ability to read or write in their own language and mental illness and effect on learning.

Physical, mental, intellectual and sensory impairment

FECCA believes that people who have a physical, mental, intellectual or sensory impairment should be exempt from the English language reforms as these impairments can hinder efforts to acquire English. Some of these conditions can be exceptionally difficult to test due to factors of culture, language and other factors like stigma. We know that many tools for diagnosis are not developed for culturally and/or linguistically diverse people. For some people there is a high level of stigma and misconceptions around disability, especially in relation to mental illness, making diagnosis very difficult. The combination of inappropriate diagnosis and high stigma already leads to underdiagnosis and underutilisation of health, mental health and NDIS services.

These factors must be considered in both making an exemption for people in these situations but also for considering the burden of proof these people must supply to be reunited with their families.

Competing priorities

For new migrants, English has been identified as a priority by the Government along with employment, caring for children and dependants and integration into the community. With this policy, the Government has identified how a new migrant should prioritise these undertakings, with English to take precedence, for a person to access family reunion. Employment, caring and voluntary community work must be considered as exemptions as these tasks are essential to a person's settlement into Australia and sense of belonging. To ask a person to give up paid employment to undertake English tuition to access family reunion would go against the justification of this reform of encouraging integration and increased employment. The Department must also consider how a person would provide proof of their caring responsibilities or voluntary community work as many of the activities exist undocumented.

International exemptions

Internationally, the United Kingdom **does not require permanent resident sponsors to prove their English level for eligibility**. The United Kingdom also exempts:

- people who have a child in the UK who is a British or Irish citizen or has lived in the UK for 7 years and it would be unreasonable for them to leave the UK
- those in situations where there would be very significant difficulties for the applicant and their partner if they lived together as a couple outside the UK that could not be overcome
- those in situations where these requirements would breach the applicant's human rights to stop them coming to the UK or make them leave
- applicants applying as an adult coming to be cared for by a relative
- applicants who have been in the UK on a family visa for 5 years and they are extending it as a partner or parent
- people over 65

- applicants who have a physical or mental condition that prevents them from meeting the requirement.²²²³

FECCA supports the implementation of these exemptions.

Consultation question 5: Implementation

FECCA strongly opposes the introduction of this policy that will dramatically change the rules determining partner visa sponsors and applicant eligibility. The policy reform has been introduced without adequate consultation or justification. Without adequate and accessible evidence and justification for this measure, no implementation strategy will overcome the detriment to social cohesion this policy will cause.

²² <https://www.gov.uk/uk-family-visa/partner-spouse>

²³ <https://www.gov.uk/uk-family-visa/knowledge-of-english>