

Joint Response to the Department of Immigration and Border Protection's Policy Consultation Paper – Visa Simplification: Transforming Australia's Visa System

Executive Summary

The parties to this submission welcome the opportunity to contribute to shaping a modern visa system for Australia. Reforming the visa system so that it is fit-for-purpose into the future, competitive, flexible and transparent are intentions that the parties to this submission firmly support.

Three key drivers of Australia's future economic prosperity – international education, tourism and skilled migration (where required) – rely on having a visa framework that is seamless, smooth, efficient and effective for all users of the system. Australia needs a modern visa system to support both temporary stays in Australia for tourism, study and work, as well as longer term permanent migration.

The suggestions in this paper are informed by the series of reforms to the student visa program and our experience of other temporary visa subclasses including visitors, working holidaymakers, post-study work and skilled migration. Our feedback excludes detailed comments on the student visa program. They will be provided via the review of 12 months' operation of the Simplified Student Visa Framework (SSVF).

A simplified visa framework for temporary visas

There is merit in reducing the current 99 visa subclasses down to a smaller, more manageable and more easily understood set of visas. A truly simplified visa system could have only one temporary visa that would allow the visa holder to visit, study and work or any combination of the three for a specified period of time. Such an approach is interesting to keep in mind, if only to free our thinking in terms of what might be possible for a visa system that needs to serve Australia well in 10, 20, even 30 years' time.

That said, it is important that a reformed system includes a visa with the primary purpose of allowing the visa holder to study in Australia. This temporary visa must also allow the visa holder to work during their studies and apply for post-study work rights. The system must also facilitate other temporary visa holders – visitors and workers – to be able to study.

Characteristics of a simplified visa system

In undertaking full-scale reform of Australia's visa system, it is important to consider what the 'end-state' would look like. This submission asserts the following points to describe the characteristics of the desired system. Australia's visa system:

- furthers our economic, social and security interests;
- is 'invisible', in that it operates smoothly, seamlessly and transparently for all users of the system; and
- is flexible enough to accommodate and facilitate current and future models of cross-border movements of people for all purposes. These will be brought about by, for example, changes in the future of work and learning.

Factors to consider when designing a modern and simplified system

In designing a system that has the above characteristics, there are a number of factors to take into consideration. These key factors are:

- risk – particularly what the most appropriate balance is in terms of where the burden and costs of managing immigration risk should reside;
- data – how to best leverage data in a modern visa system;
- decision-making – visa assessments being based on 'objective risk';
- partnership – beneficiaries of the system working in concert with the Government to create and maintain a system that will facilitate the full range of activities that Australia requires of it in the decades to come; and

- informed consumers – people who plan to visit, study, work and migrate to Australia are well-informed, engaged and connected. The Government and other users must work together to ensure prospective visa holders understand how valued they are by the Australian economy and society.

Distinctions between temporary and permanent visas / Factors to be considered in assessing eligibility for permanent residence

There is support for the notion that temporary visas are for specific, short-term activities, and that temporary visa holders should not have an automatic right to permanent residence. The proposal that applicants for permanent residency should generally have to spend some time in Australia as an eligibility requirement also has merit (although a potential exception may involve cases, for instance, of an individual with a rare or unique talent, or with a proven business idea).

A visa system that underpins Australia's attractiveness

There is no question that a more efficient visa system which is simple to understand and can quickly assess risk would make Australia a more attractive study, tourism and work destination. We should also be prepared to move beyond the simplistic notion of attracting the 'best and brightest'. This is a potentially meaningless concept in a diverse and complex world. Instead, we should be aiming to attract those who can make a strong and effective contribution to the Australian economy and society.

Collection and use of biometric data from visa applicants

The collection and use of biometric data from visa applicants is supported, on the proviso that it is only one of a raft of measures aligned with the feedback above that ensures Australia remains a competitive destination for international visitors, students, workers and residents. Its collection should enable, and not hinder, very swift assessments of visa applications. We also caution that all technology-enabled analysis requires human intervention and intuition, and that the highest levels of data security would need to be upheld.

Context

The parties to this submission – the Australian Council for Private Education and Training (ACPET), the Council of Private Higher Education (COPHE), English Australia (EA) and Navitas – welcome the opportunity to contribute to shaping a modern visa system for Australia. Reforming the visa system so that it is fit-for-purpose into the future, competitive, flexible and transparent are intentions that the parties to this submission firmly support.

Modernising Australia’s visa system is imperative to our nation’s long-term economic prosperity. International education has cemented itself as Australia’s third largest export sector, worth \$22 billion annually. However, it is still only half as valuable as our second biggest export – coal.¹ An industry that is closely related to ours – tourism – is Australia’s sixth largest, worth \$17 billion last year.² To successfully transition to a knowledge-based economy built on the services sector Australia has to supercharge these two industries (education and tourism). In the globally competitive market for visitors and students, we rely on having a visa framework that is seamless, smooth, efficient and effective for all users of the system. International graduates are also valued as a source of talent to drive the Australian economy and are well placed to be strong and engaged contributors to our communities.

The suggestions and ideas proffered in this paper are informed by our experiences as users of the student visa program and related visa subclasses such as visitors, working holidaymakers, post-study work and skilled migration. Our reflections on what would make for a high-functioning, competitive and simplified visa system are also informed by a series of reforms to the student visa program over the past few years that have sought similar objectives.

In the near future the Department of Immigration and Border Protection (DIBP) intends to undertake an evaluation of the first 12 months of the Simplified Student Visa Framework (SSVF). As such, this submission excludes detailed feedback on the policy settings and operation that underpins the SSVF and, instead focuses on higher-order issues that have relevance to systemic visa reforms.

We are pleased that the Government has chosen to engage with stakeholders at such an early stage of the reform process. Moreover, we look forward to working as constructive partners with the Government in the months ahead to design and implement a modern visa system for Australia.

¹ <http://dfat.gov.au/trade/resources/trade-at-a-glance/Pages/top-goods-services.aspx>

² <http://dfat.gov.au/trade/resources/trade-at-a-glance/Pages/top-goods-services.aspx>

Simplifying our visa arrangements

A simplified visa framework for temporary visas

There is considerable merit in reducing the current 99 visa subclasses to a smaller, more manageable and more easily understood set of visas. If Australia was to adopt a truly simplified visa system it may only have one temporary visa. This would be a visa that once granted, would allow the visa holder (VH) to visit, study and work – or any combination of the three – for a specified period of time. While it is unlikely that the Government or the public would wish to have such an open approach, it is instructive in this process of visa reform to hold that in mind as a point on the continuum of control.

That said, in the temporary visa space – the sphere of most relevance to the international education sector – it seems logical to define a set of visas around the purpose of stay in Australia, for example to visit, study or work. In an optimal system, one of the temporary visas would have as its primary purpose to enable the visa holder (VH) to undertake study in Australia. However, the process of simplification and modernising of such a set of visas calls for flexibility beyond the core reason for the stay. As the diagram below depicts, there are areas of overlap where each of these three purposes of stay – visit, study, work – cross over. In a reformed system, VHs should be able to move far more easily and seamlessly between the different categories once they are in Australia than they can today.



This goes to the important point of the conditions, including the length of stay, that are attached to a particular visa or the cluster of temporary visas for tourism, study or work. For example, in the current system students can work (during and post-study), visitors can study, some visitors (working holidaymakers) can work and study, and workers (such as the training visa 407) can study. Reforms would see a system that sets conditions for the primary purpose visa – such as English language requirements for workers and students – which is augmented by a flexible, minimal set of conditions that allows VHs to undertake activities beyond their primary purpose with very few, if any, limitations.

Put simply, a reformed visa system must not increase requirements of any current visa. In fact, there is a well-founded case for some current limitations to be removed. Three current examples include:

- Harmonising the English language requirements for a packaged student visa with those of a standalone ELICOS visa – that is, removing the mandated maximum time a student on a packaged study visa can study English;
- A streamlining of the application and assessment process for the current training visa, making it more attractive, for example, for international companies to send their staff to Australia for professional and executive training; and
- Extending post-study work rights to all non-minor students, based on a period equal to their study.

It should be noted, that if the approach proposed in this section were to be adopted these three examples would become redundant.

Notwithstanding any other measures or policy options flagged in this section, it is our strong view that in any reformed visa system, there must remain a visa primarily for study. This visa must enable the VH to work unrestricted for at least 40 hours per fortnight during study (as per current arrangements) and allow them to apply for post-study work after their studies. It must not place additional or higher requirements on an applicant above those which currently exist and it must not place any further limitations on the VH once they are in Australia. In fact, as noted above, there are a number of areas (including the specific instances already cited) that should be simplified beyond the current settings. We would be happy to work with DIBP to identify further areas of potential simplification.

Characteristics of a simplified visa system and factors to consider to achieve this goal

Characteristics of a simplified visa system

In undertaking a full-scale reform to Australia's visa system, it is important to consider what the 'end-state' would look like. This submission asserts the following points to describe that vision. Australia's visa system:

- furthers Australia's:
 - economic interests – supporting key industries (for example, education and tourism) and providing access to skilled workers;
 - social interests – through re-uniting families and supporting the world's most vulnerable people; and
 - security interests – ensuring only those who wish no harm to Australia or its people enter our borders.
- is 'invisible', in that it operates smoothly, seamlessly and transparently for all users of the system by:
 - exploiting technology throughout the visa life-cycle to ensure the highest user experience (both of applicants/visa holders and providers/sponsors, etc.);
 - integrating data to inform and develop risk profiles, to monitor compliance and regularly report on and inform stakeholders of the trends in various visa cohorts, allowing them to access data directly to inform the selection of workers / students, and strategic business decisions;
 - providing easy and ready access to information that is written in clear and unambiguous language;
 - assessing visa applications based on 'objective risk'; and
 - ensuring that visa assessment turnaround times – for all but the riskiest top five to 10 per cent of applications – are immediate.
- is flexible enough to accommodate and facilitate current and future models of cross-border movements of people for all purposes. These will be brought about by, for example, changes in:
 - employment – such as the 'gig economy' where global workers move for work constantly, international entrepreneurs being attracted to start new businesses, and the scarcity of enterprise and technical skills locally; and
 - education – where people of all ages need to re-skill, gain new knowledge and require short periods of study coupled with work experience, etc.

Factors to consider

In designing a system that has the above characteristics, there are a number of factors to take into consideration. The key factors are identified below and are informed by our experiences, principally the reforms to the student visa program, but they are directly applicable at the systemic visa reform level.

Risk

The series of reforms in moving the student visa system from the Assessment Level Framework (AL), to Streamlined Visa Processing (SVP) and now the current Simplified Student Visa Framework (SSVF) have seen a gradual, but sustained shifting of immigration risk from the Government to education providers. The shifting of risk to providers has come at great cost as we invest in systems and resources to manage that risk, throughout the student lifecycle – from recruitment to beyond VHS time in our programs.

Education providers acknowledge that with the cost of bearing this risk has come some benefits in terms of facilitating greater numbers of students entering Australia.³ However, the Government too must acknowledge that providers are carrying a high degree of public risk that is only partially offset by the individual benefit accruing to providers. Some demonstrable and concrete ways to acknowledge and ameliorate this risk burden include DIBP:

- providing education providers with access to DIBP's data and risk profiles via an online portal so that we can better assess a potential student's genuineness, make better assessments of fraudulent documentation, etc.;
- establishing a fast, well-resourced referral service for providers to refer difficult cases to for pre-application assessment;

³ On 31 December 2016 there were more student visas holders in Australia than ever before <https://www.border.gov.au/ReportsandPublications/Documents/statistics/student-temp-grad-programme-report-dec-2016.pdf>

- re-assessing the measures that inform a provider risk rating. It is more accurate to view a visa rejection as the visa system functioning well, particularly when providers do not have the analytics and insights at the disposal of DIBP and are instead supporting an application without access to all the available information;
- establishing an interim solution for DIBP assessors to work with providers (sponsors, etc.) to give early advice if it is likely an application will be rejected so that the Confirmation of Enrolment (nomination, etc.) can be withdrawn. This recognises the fact that notwithstanding how much providers invest in ensuring our applicants are genuine, we currently do not have access to the depth and breadth of analytical insights that DIBP does to inform our determinations. The ultimate objective is achieved – a non-genuine student is prevented from entering the country – and providers are supported in managing the risk they carry on behalf of the Government; and
- on an interim basis, allow assessment decisions that providers consider (on the basis of evidence provided) to be unfounded – to be reviewed and (if justified) overturned by a central DIBP review team onshore. This measure would support natural justice in a system that is currently subjective and opaque.

Data

In today's world, there is a vast amount of data collected and held on all individuals and this will only increase. The 'internet of things', soft and hard sensors, GPS, demographics and biodata, etc. all build a picture of an individual, or cohorts of individuals. One of the biggest challenges for the reforms of our visa system is setting up systems of data collection, analytics and distribution that will be flexible enough to incorporate technological advances while maintaining appropriate safe-guards around the use and management of that data.

There are two key ways that data can be used in a modernised visa system. The first is in managing immigration risk. This means, having technology-enabled mechanisms in place so that all available data is accessible to all those who bear risk in the system (not just the Government) so the ultimate goal of a safe and prosperous Australia can be achieved.

The second is in illuminating the key characteristics and nature of Australia's visa program and its component parts. For example, visa applications and grants by regions within countries, by education sector and provider type and by location within Australia. Data must be made freely and openly available. The data should be granular, accurate and timely. In terms of timeliness, data on visa applications and grants in the student visa program should align with the monthly releases of enrolment and commencement data from Austrade and the Department of Education and Training. It should also be easy to manipulate and integrate into users' own data sets. This would allow not only a transparent picture of the whole visa program, its different clusters and categories, but would also enable governments, providers / employers and others to use the data to inform policy, business and market decisions.

Decision-making

The experience of education providers, not unlike that of sponsoring employers, is that the outcome of a visa application is often too unpredictable and the decision-making guidance is too opaque. Providers are investing heavily in ensuring that only those applications that we believe to be genuine are submitted for assessment. Yet, invariably, we see visas rejected for wholly subjective – and often contradictory – reasons.

A key factor for consideration in these reforms to Australia's visa system is how to ensure assessments are based on 'objective risk'. It is also critical that assessment staff – both onshore and offshore – are consistent in their application and interpretation of objective risk. This requires ongoing investment in training, professional development and briefings to staff.

Partnership

The third major consideration in designing a future-focussed, competitive and transparent visa system is to move to a true partnership model. Beneficiaries of the visa system – particularly education providers, sponsoring employers and tourism operators – would welcome the opportunity to work in partnership with the Government to ensure Australia's visa system remains robust, while still facilitating the diversity of activities that will be required of it 10, 20 or 30 years from now.

Informed consumers

The final factor to be cognisant of in the process of designing a modern and future-focussed visa system is that perceptions matter. Today's global tourists, students and workers are some of the most well-informed, engaged and connected consumers you will find. A decision about where to study or work, is

one that is taken years in advance of actually arriving in that country. It is imperative that the Government continues this reform process as it has begun, with:

- openness and good will;
- a recognition of the critical importance of facilitating the smooth and seamless movement of many more people across Australia's borders; and
- the full appreciation of the value that visitors, students, workers and permanent residents bring to Australia's economy and society.

Finally, the parties to this submission wish to highlight that false perceptions, or views that are formed without a full understanding of the issues, can be damaging. One current example in the student visa program is a widespread perception in the international student market that Australia's provider risk rating is a rating of education quality as opposed to immigration risk. It is important that the Government and providers (and other stakeholders in other spheres) work together to communicate the reality of issues and correct misguided perceptions.

Temporary and permanent residence

Distinctions between temporary and permanent visas / Factors to be considered in assessing eligibility for permanent residence

The statements in the Policy Consultation Paper ('the Paper') that temporary visas are for specific, short-term activities, and that temporary visa holders should not have an automatic right to permanent residence, are supported. The proposal that applicants for permanent residency should generally have to spend some time in Australia as an eligibility requirement also has merit. With the potential exception to this being cases of an individual with a rare or unique talent, or a proven business idea.

If reforms are enacted to require prospective migrants to spend time in Australia before being eligible for permanent residency, it is appropriate that any time spent studying on a student visa and/or working on a temporary visa should count towards that time requirement. In fact, all other things being equal, people who have spent time in Australia as a student or a temporary worker should be given priority for permanent residency places. This supports the Paper's statement, that 'the settlement prospects of temporary residents are also strengthened by the experience they have already gained in Australia, and their familiarity with Australian customs, culture and laws'.

Modernising Australia's visa arrangements

Role of the visa system in attracting strong and effective contributors to the Australian economy and society

On this point, a change in nomenclature is suggested – from 'best and brightest', which is essentially meaningless – to language describing those who can make a strong and effective contribution to Australia's economy and society.

Australia's visa system plays a critical role in our relative attractiveness to those who can make a constructive contribution to our country. Uncertainty in visa application processes, lengthy delays in visa processing, subjective judgements on visa applications and higher fees than those charged by our competitors for global talent – all serve to make Australia a less attractive destination.

As Innovation and Science Australia (ISA) notes in their issues paper on a *2030 Strategic Plan for the Australian Innovation, Science and Research System*, higher levels of global engagement correlate with higher levels of innovation, and Australia now has the opportunity to be a preferred destination of choice for international talent.⁴ We strongly agree with ISA's aim to grow Australia's domestic talent *and* to attract and retain international talent.

A modern visa system, which includes an explicit 'future-focus' in the skilled migration program will be central to achieving the Government's aim of being a leading innovation nation. We acknowledge the difficulties in moving beyond the current occupational forecasting model to identify the skills and occupations Australia needs. However, retaining the existing forecasting system merely because it is built

⁴ <https://industry.gov.au/Innovation-and-Science-Australia/Pages/2030-Strategic-Plan.aspx>

upon easily accessible data will not keep Australia ahead in the race to attract the skilled people we need. Australia's temporary and permanent migration programs would be strengthened by a less retrospective approach to the identification of skills and occupations in demand. We would be pleased to assist the Government in examining additional data sources and information on global workforce trends to supplement the current datasets.

A visa system that is efficient, easy to understand and swift to make assessments – a boost to Australia's attractiveness

There is no question that a more efficient visa system which is simple to understand and can quickly assess risk would make Australia a more attractive study, tourism and work destination. The reason for our confidence is because we have first-hand experience of the impact of the delays and uncertainty on prospective students and on graduates who lodge applications for subsequent visas and, while they are under processing by the DIBP, accept offers from other countries to take up employment and residency opportunities there.

The timeliness and efficiency of the visa systems in operation in other countries is already costing Australia. The following improvements to Australia's visa system will increase the numbers of genuine entrants to Australia allowing us to attract much needed visitors, students, workers and permanent residents:

- streamline our processes;
- offer applicants greater clarity and certainty of decision-making; and
- process applications in a more timely manner.

Collection and use of biometric data from visa applicants

The collection and use of biometric data from visa applicants is supported, only if it is one of a raft of measures – aligned with the feedback above – that ensures Australia remains a competitive destination for international visitors, students, workers and residents. Its collection should enable, and not hinder, very swift assessments of visa applications.

We would however make the following two cautionary statements:

- any technology, including the machine intelligence that underpins effective biometric data analysis, is only fully effective and accurate when coupled with human intervention and intuition; and
- like all data that is increasingly collected and stored about individuals, the highest levels of data security need to be upheld.