

Partner and child visas – planning levels and capping.

The Government implements a variety of mechanisms to control the flow of visa applications under the Migration Programme. This includes the 'cap and queue', 'cap and cease', and priority processing measures under the *Migration Act 1958* (the Act).

The Minister has the power to limit the number of visas in particular visa subclasses and classes in a programme under section 85 of the Act. This is administered by a legislative instrument. Section 86 provides that once the limit (cap) is reached no further applications can be granted in that programme year. Although a visa can no longer be granted until the start of the new programme year, processing of applications continues and applicants who meet the requirements then wait in a queue for visa grant consideration in a following year, subject to places becoming available. In family visa programs that are subject to capping, such as Parent and Other Family programmes, applicants can be allocated a queue date if the application is found to meet the initial criteria for the grant of the visa.

Section 87 of the *Migration Act* (1958) prevents 'capping' of visas to Partner and Child visas.

Each year the Government announce Migration Programme planning levels as part of the Budget. Planning levels are not a 'cap'. They are indicative and subject to review throughout the programme year to reflect changes in economic conditions and the demand for places.

There is scope for decision makers to take planning levels into account when considering visa applications. A decision maker can still grant a visa to a person who applied for it on the ground that he or she was the spouse, de facto partner or dependent child of an Australian Citizen or permanent resident, even if planning levels for the relevant visa category would be exceeded.

Child visas are no longer part of the managed Migration Programme. From 2019-20 Child visas will be fully demand driven and not receive a planning level. Orphan relative visas are now part of the Other Family category for planning purposes only. They continue to be exempt from capping.

Prepared by Family Policy section

17 October 2016.

Partner and child visas – planning levels and capping.

The Government implements a variety of mechanisms to control the flow of visa applications under the Migration Programme. This includes the 'cap and queue', 'cap and cease', and priority processing measures under the *Migration Act 1958* (the Act).

Section 85 provides the Minister with the power to limit (cap) the number of visas in particular visa subclasses and classes in a programme. This is given effect through a legislative instrument signed by the Minister. Section 86 provides that once the limit (cap) is reached no further applications can be granted in that programme year. Although a visa can no longer be granted until the start of the next programme year, processing of applications continues and applicants who meet the requirements are allocated a place in the queue for visa grant consideration in a subsequent year, subject to places becoming available. In family visa programs that are subject to capping, such as the Parent and Other Family categories, applicants can be allocated a queue date if the application is found to meet the initial criteria for the grant of the visa.

Section 87 of the *Migration Act* (1958) prevents 'capping' of visas to Partner and Child visas.

Each year the Government announces Migration Programme planning levels as part of the Budget. Planning levels are not a 'cap'. They are indicative and subject to review throughout the programme year to reflect changes in economic conditions and the demand for places.

There is scope for decision makers to take planning levels into account when considering visa applications. A decision maker can still grant a visa to a person who applied for it on the ground that he or she was the spouse, de facto partner or dependent child of an Australian citizen or permanent resident, even if planning levels for the relevant visa category would be exceeded.

Child visas (excluding Orphan Relative visas, which are reported against the Other Family category) are no longer part of the managed Migration Programme. From 2019-20 Child visas will be fully demand-driven and not subject to a planning level.

Prepared by Family Policy section

17 October 2016.



Australian Government
Department of Home Affairs

Parliamentary Question on Notice

For decision

PDMS Ref. Number PQ19-000036

To **Minister for Immigration, Citizenship, Migrant Services and
Multicultural Affairs**

Number **Parliamentary Question on Notice 383**

Asked by **Kristina Keneally**

Date asked **12 August 2019**

Timing *Tabling due by 11 September 2019 – if the response is overdue for tabling, explain why the preparation of the response was delayed.*

Recommendation

That you:

1. Approve the response at Attachment A for tabling

approved / not approved /
please discuss

**Minister for Immigration, Citizenship, Migrant Services and
Multicultural Affairs**

Date:...../...../2019

Signature.....

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Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Purpose

To seek your approval to table the response to the Parliamentary Question on Notice asked by Senator Kristina Keneally concerning Partner Visas Applications.

Consultation – internal/external (Mandatory Field)

1. List the division and/or agency consulted here (including a contact officer), along with a brief summary of issues discussed.

Attachments

Attachment A Response

Authorising Officer Cleared by: Name Here Position Division/Branch Date: Enter date cleared Ph: XX XXXX XXXX

Contact Officer Name, Position, Section/Branch, Ph: XX XXXX XXXX.

Home Affairs Portfolio

SENATE QUESTION

(Question No. 383)

Senator Kristina Keneally asked the Minister representing the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, upon notice, on 12 August 2019:

With reference to visa applications:

1. Can details be provided as to application numbers, planning levels, visa grants, refusals and withdrawals for each sub-category of Partner visa (i.e. spouses [first and second stage], prospective spouses, etc.) over the past five years, including 2018-19.
2. Can details be provided as to the size of the backlog of Partner applications (by applications and by persons) at the end of each program year, starting with 2013-14, for each sub-category of Partner visa.
3. Can details be provided as to processing times for the 90th percentile of Partner applications in each year since 2010.
4. Can details be provided as to application fees for each sub-category of Partner visa for each year since 2010.
5. Can details be provided as to estimated aggregate costs and ASL allocated to Partner visa processing in each year since 2010, including on a unit cost and ASL application finalised basis, and can details be provided as to revenue collected from Partner visa applications in each year since 2010.
6. Can details be provided as to the average length of time between lodgement of Partner visa applications by sub-category and the allocation of the application to a processing officer for each year since 2010.
7. Given a Migration Program ceiling of 160,000 visas per annum, can details be provided as to planning levels for each sub-category of Partner visas in 2019-20, and the three subsequent program years.
8. Can details be provided as to the forecast for Partner visa applications for 2019-20, and the three subsequent program years.
9. Can details be provided as to the forecast size of the backlog at the end of 2019-20, and each subsequent program year; do these forecasts take into account the number of Australians and their partners who decide not to apply for a Partner visa due to the lengthening processing times and backlogs, and does the Government consider the decline in Partner application rates to reflect such discouragement and, ultimately, the decision of Australians and their Partners to choose to live outside of Australia; and does the Government consider this to be a positive outcome for Australia.
10. Given the growing backlog of Partner visas, can details be provided as to the approach to be taken to limiting Partner visas granted in 2019-20.
11. Has the Government sought advice on the legal acceptability of this approach to restricting the grant of Partner visas, particularly spouse visas; if so, can a copy be provided of such advice.

Senator Cash – The Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, has provided the following answer to the honourable senator's question:

[insert answer here]

From: s. 22(1)(a)(ii)
To: s. 22(1)(a)(ii)
Subject: FW: Capping/Suspension documents [DLM=For-Official-Use-Only]
Date: Wednesday, 13 November 2019 11:11:14 AM
Attachments: [Preliminary FAQ Document - Capping and suspension bill.docx](#)
[Capping and suspension diagram.docx](#)

~~For Official Use Only~~

Kind regards,

s. 22(1)(a)(ii)

Acting Director | Status Resolution, Returns and Removals Policy Section
Compliance and Community Protection Policy | Immigration and Community Protection Policy
Division
Immigration and Settlement Services Group
Department of Home Affairs
P: s. 22(1)(a)(ii)
E: s. 22(1)(a)(ii)

~~For Official Use Only~~

From: s. 22(1)(a)(ii)
Sent: Thursday, 21 December 2017 12:58 PM
To: s. 22(1)(a)(ii)
Subject: Capping/Suspension documents [DLM=For-Official-Use-Only]

~~For Official Use Only~~

s. 22(1)(a)(ii)

Attached is some of the stuff I put together late last year on capping / suspension ahead of a potential bill.

Kind regards,

s. 22(1)(a)(ii)

Assistant Director | Visa Framework Section
Migration Planning and Design Branch | Immigration and Citizenship Policy Division
Policy Group
Department of Home Affairs
P: s. 22(1)(a)(ii)
E: s. 22(1)(a)(ii)

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Australian Government
Department of Home Affairs

Parliamentary Question on Notice

For decision

PDMS Ref. Number PQ19-000036

To Minister for Immigration, Citizenship, Migrant Services and
Multicultural Affairs

Number Parliamentary Question on Notice 383

Asked by Senator Kristina Keneally

Date asked 12 August 2019

Timing *Tabling due by 11 September 2019.*

Recommendation

That you:

1. Approve the response at Attachment A for tabling

☒ approved / not approved /
please discuss

Minister for Immigration, Citizenship, Migrant Services and
Multicultural Affairs

Signature.....

Date: 12 / 9 / 2019

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Home Affairs Portfolio

SENATE QUESTION

(Question No. 383)

Senator Kristina Keneally asked the Minister representing the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, upon notice, on 12 August 2019:

With reference to visa applications:

1. Can details be provided as to application numbers, planning levels, visa grants, refusals and withdrawals for each sub-category of Partner visa (i.e. spouses [first and second stage], prospective spouses, etc.) over the past five years, including 2018-19.
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3. Can details be provided as to processing times for the 90th percentile of Partner applications in each year since 2010.
4. Can details be provided as to application fees for each sub-category of Partner visa for each year since 2010.
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11. Has the Government sought advice on the legal acceptability of this approach to restricting the grant of Partner visas, particularly spouse visas; if so, can a copy be provided of such advice.

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Minister's Comments				
Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Purpose

To seek your approval to table the response to the Parliamentary Question on Notice asked by Senator Kristina Keneally concerning processing of Partner visa applications.

Consultation – internal

1. Immigration and Community Protection Policy Division provided input on Migration Program planning levels, and consulted Legal Division in preparation of their input.
2. Finance Division provided the information in relation to Partner visa pricing information.
3. All statistics have been cleared by Data Division.

Attachments

Attachment A Response

Authorising Officer Cleared by: Peta Dunn First Assistant Secretary Immigration Programs Division Date: Ph: s. 22(1)(a)(ii)
--

Contact Officer s. 22(1)(a)(ii) Director Family Migration Program Management, Ph: s. 22(1)(a)(ii)

Through: Assistant Secretary, Skilled & Family Visa Program Branch

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CC

Secretary
Deputy Secretary, Immigration and Settlement Services Group
Deputy Secretary, Corporate and Enabling Group
First Assistant Secretary, Immigration and Community Protection Policy Division
Chief Financial Officer, Finance Division

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Senator Cash – The Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, has provided the following answer to the honourable senator's question:

1. Can details be provided as to application numbers, planning levels, visa grants, refusals and withdrawals for each sub-category of Partner visa (i.e. spouses [first and second stage], prospective spouses, etc.) over the past five years, including 2018-19.

		2014-15	2015-16	2016-17	2017-18	2018-19
Partner visa category planning levels		47,825	47,825	47,825	47,825	47,825
Partner visa activity						
Prospective Marriage (subclass 300) visa	Lodgements	7,070	4,519	4,659	3,975	3,982
	Grants	4,816	4,675	4,001	3,130	2,587
	Refusals	825	851	803	714	638
	Withdrawals	878	905	632	538	577
Partner (Provisional) (subclass 309) visa	Lodgements	30,353	21,360	22,889	20,885	19,694
	Grants	22,222	24,145	22,029	17,446	15,991
	Refusals	1,607	1,717	1,998	1,870	1,934
	Withdrawals	1,316	1,128	822	561	465
Partner (Migrant) (subclass 100) visa*	Lodgements	30,134	20,733	22,704	20,760	19,708
	Grants	23,095	18,476	20,757	24,846	26,705
	Refusals	1,392	1,732	2,052	2,559	2,867
	Withdrawals	721	760	757	702	795
Partner (Temporary) (subclass 820) visa	Lodgements	31,240	30,838	33,203	32,284	38,208
	Grants	24,980	23,029	26,541	23,439	26,475
	Refusals	2,209	1,724	2,172	2,285	2,116
	Withdrawals	863	827	868	836	834
Partner (Residence) (subclass 801) visa*	Lodgements	31,240	30,838	33,203	32,284	38,208
	Grants	20,002	18,593	20,164	26,894	26,312
	Refusals	2,814	2,344	2,853	3,531	2,751
	Withdrawals	1,378	1,389	1,473	1,491	1,520
Activity Totals	Lodgements	130,037	108,288	116,658	110,188	119,800
	Grants	95,115	88,918	93,492	95,755	98,070
	Refusals	8,847	8,368	9,878	10,959	10,306
	Withdrawals	5,156	5,009	4,552	4,128	4,191
	Application Finalisations	109,118	102,295	107,922	110,842	112,567

Note: Partner visa applications involve a two stage process, and the two applications must be lodged together. That is, the offshore Partner (Provisional) (subclass 309) visa is lodged with the Partner (Migrant) (subclass 100) visa; and the onshore Partner (Temporary) (subclass 820) visa is lodged with the Partner (Residence) (subclass 801) visa. The two applications are counted separately, and in the majority of cases decided at different times. The activity total figures above therefore represent the total of visa activity, and not the total of individuals.

* Second stage Partner (subclasses 801 Partner (Residence) visa and 100 Partner (Migrant)) visa grants are not counted in planning levels.

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2. Can details be provided as to the size of the backlog of Partner applications (by applications and by persons) at the end of each program year, starting with 2013-14, for each sub-category of Partner visa.

Onhand Partner stream applications by date

		30/06/14	30/06/15	30/06/16	30/06/17	30/06/18	30/06/19
Prospective Marriage (subclass 300) visa	Primary applicants	4,759	5,360	3,922	3,497	3,458	3,764
	Total applicants	5,801	6,573	4,756	4,426	4,235	4,522
Partner (Provisional) (subclass 309) visa	Primary applicants	20,391	23,484	18,506	16,871	17,717	18,877
	Total applicants	32,876	37,267	30,996	26,235	26,974	28,122
Partner (Migrant) (subclass 100) visa*	Primary applicants	45,680	30,452	52,061	39,665	51,249	43,249
	Total applicants	55,432	59,863	43,365	71,094	65,762	55,106
Partner (Temporary) (subclass 820) visa	Primary applicants	27,097	28,605	32,448	36,550	43,713	52,348
	Total applicants	28,595	30,374	34,452	40,836	47,521	56,004
Partner (Residence) (subclass 801) visa*	Primary applicants	63,133	68,440	75,397	84,565	87,842	95,552
	Total applicants	66,951	72,806	80,023	92,746	94,201	101,850
Partner Total onhand	Primary applicants	161,060	156,341	182,334	181,148	203,979	213,790
	Total applicants	189,655	206,883	193,592	235,337	238,693	245,604

Note: Partner visa applications involve a two stage process, and the two applications must be lodged together. That is, the offshore Partner (Provisional) (subclass 309) visa is lodged with the Partner (Migrant) (subclass 100) visa; and the onshore Partner (Temporary) (subclass 820) visa is lodged with the Partner (Residence) (subclass 801) visa. The two applications are counted separately, and in the majority of cases decided at different times. The total onhand figures above therefore represent the total of onhand applications, and not the total of individuals.

* Second stage Partner applications (subclasses 801 Partner (Residence) visa and 100 Partner (Migrant) visa) generally become eligible for assessment two years after lodgement of the combined first/second stage application. Figures include onhand applications which are not yet eligible for assessment.

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3. Can details be provided as to processing times for the 90th percentile of Partner applications in each year since 2010.

Processing times for the 90 th Percentile of Partner visa applications since 2010-11 (calendar days)									
Visa Subclass	2010-2011	2011-2012	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019
Prospective Marriage (subclass 300) visa	334	360	351	412	463	470	482	491	547
Partner (Provisional) (subclass 309) visa	333	343	334	406	426	432	456	481	534
Partner (Migrant) (subclass 100) visa*	560	508	378	416	529	526	734	861	767
Partner (Temporary) (subclass 820) visa	372	443	576	638	612	563	637	723	784
Partner (Residence) (subclass 801) visa*	337	356	371	420	453	484	612	658	768

* For second stage Partner applications (subclasses 801 Partner (permanent) visa and 100 Partner (permanent) visa) processing times are generally calculated from date of eligibility for assessment (2 years after the combined 820/801 or 309/100 application is lodged).

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4. Can details be provided as to application fees for each sub-category of Partner visa for each year since 2010.

	Visa Application Charges - 2010 to 2019									
	Jul 2010	Jul 2011	Jul 2012	Jul 2013	Jul 2014	Jul 2015	Jul 2016	Jul 2017	Jul 2018	Jul 2019
Prospective Marriage subclass 300										
Primary Applicant	\$1,735	\$1,995	\$2,060	\$2,680	\$3,085	\$6,865	\$6,865	\$7,000	\$7,160	\$7,715
Adult Dependant	Nil	Nil	Nil	\$1,340	\$1,545	\$3,435	\$3,435	\$3,505	\$3,585	\$3,860
Child Dependant	Nil	Nil	Nil	\$670	\$770	\$1,720	\$1,720	\$1,755	\$1,795	\$1,935
Partner (offshore) subclass 309/100										
Primary Applicant	\$1,735	\$1,995	\$2,060	\$2,680	\$3,085	\$6,865	\$6,865	\$7,000	\$7,160	\$7,715
Adult Dependant	Nil	Nil	Nil	\$1,340	\$1,545	\$3,435	\$3,435	\$3,505	\$3,585	\$3,860
Child Dependant	Nil	Nil	Nil	\$670	\$770	\$1,720	\$1,720	\$1,755	\$1,795	\$1,935
Partner (onshore) subclass 820/801										
Primary Applicant	\$2,575	\$2,960	\$3,060	\$3,975	\$4,575	\$6,865	\$6,865	\$7,000	\$7,160	\$7,715
Adult Dependant	Nil	Nil	Nil	\$1,990	\$2,290	\$3,435	\$3,435	\$3,505	\$3,585	\$3,860
Child Dependant	Nil	Nil	Nil	\$995	\$1,145	\$1,720	\$1,720	\$1,755	\$1,795	\$1,935

Note: Visa application charges for additional applicants were introduced on 1 July 2013.

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5. Can details be provided as to estimated aggregate costs and ASL allocated to Partner visa processing in each year since 2010, including on a unit cost and ASL application finalised basis, and can details be provided as to revenue collected from Partner visa applications in each year since 2010.

Partner visa processing is undertaken both within Australia and at offshore posts. Offshore posts are responsible for processing a number of visa types including between 30 per cent to 40 per cent of all Partner visas. In offshore posts there is no demarcation or attribution of costs or staff to particular visa types. Resources are flexibly allocated to manage demand and onhand levels for all visa types processed.

The Department is not able to provide definitive overall costs or average staff levels undertaking Partner visa processing.

The Visa Application Charge (VAC) revenue collected is not available within the Department's financial system at the individual subclass level.

6. Can details be provided as to the average length of time between lodgement of Partner visa applications by sub-category and the allocation of the application to a processing officer for each year since 2010.

This information is not available.

7. Given a Migration Program ceiling of 160,000 visas per annum, can details be provided as to planning levels for each sub-category of Partner visas in 2019-20, and the three subsequent program years.

The 2019-20 Migration Program is set at a ceiling of 160,000 places. The size and composition of the permanent Migration Program is reviewed and set by the Government on an annual basis. The planning level for the Partner category is set at 39,799 places for 2019-20, and is not further broken down.

8. Can details be provided as to the forecast for Partner visa applications for 2019-20, and the three subsequent program years.

This information is not available.

9. Can details be provided as to the forecast size of the backlog at the end of 2019-20, and each subsequent program year; do these forecasts take into account the number of Australians and their partners who decide not to apply for a Partner visa due to the lengthening processing times and backlogs, and does the Government consider the decline in Partner application rates to reflect such discouragement and, ultimately, the decision of Australians and their Partners to choose to live outside of Australia; and does the Government consider this to be a positive outcome for Australia.

This information is not available.

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10. Given the growing backlog of Partner visas, can details be provided as to the approach to be taken to limiting Partner visas granted in 2019-20.

The Department manages Migration Program streams in line with the planning levels and priorities set by Government.

11. Has the Government sought advice on the legal acceptability of this approach to restricting the grant of Partner visas, particularly spouse visas; if so, can a copy be provided of such advice.

Due to legal professional privilege we cannot answer this question.

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