

ETHNIC COMMUNITIES COUNCIL OF WA (ECCWA) & ISHAR MULTICULTURAL  
WOMENS HEALTH SERVICES (ISHAR)

SUBMISSION

RE: Public Consultation on English language  
requirement and the new sponsorship  
framework for the partner visa program

31 MARCH 2021

**ABOUT ECCWA**

ECCWA is the state's peak ethnic umbrella organisation and its objectives include *inter alia*:

- To act as the peak body for ethnic communities in Western Australia, that shall advocate for the rights of ethnic communities in ensuring the protection of these rights.
- To ensure the rights of the ethnic communities including effective participation in decisions which affect them, and encourage the sharing of community resources.
- To do and to perform all acts, matter and things as are charitable and for benevolent purposes having public benefit in accordance with the law of the State of Western Australia and the law of the Commonwealth of Australia and to disseminate any information within a Social Justice framework that achieves the objectives of the Council in ensuring equity and access to and for ethnic communities.

In fulfilling these objectives ECCWA has responded to many inquiries, consultations etc. organised by State and Commonwealth government agencies. ECCWA places a strong emphasis on Human Rights and would strongly argue that a Human Rights framework is essential for the complex issues surrounding migration.

ECCWA has also established the Ethnic Advocacy and Support Team (EAST) which is a team of advocates and volunteers aiming to provide advocacy and support to CaLD persons facing challenging life events. While this service, was not set up to be a specific FDV service, since its commencement EAST has worked with a number of individuals and families impacted by FDV.

ECCWA (through EAST) also established and currently coordinates the CaLD Advocacy Network which includes a number of agencies such as Ishar, The Association for Services to Torture and Trauma Survivors, and Multicultural Women's.

Advocacy Service. As a result of this mechanism, the ECCWA has developed sound expertise on what is happening with regards to service system responses within CaLD communities.

**ABOUT ISHAR**

Ishar Multicultural Women's Health Services was officially opened on August 10th, 1992 and in 2020 celebrates 27 years of service. Ishar's Mission is *To provide inclusive, holistic and culturally sensitive services for women and their families promoting healthy communities.*

Ishar operate with a philosophy grounded in the 'Social Model of Health' and have adopted a style of service that focuses on the healing of lifestyle related problems that detrimentally affect the health and well-being of women of all ages, particularly those from culturally and linguistically diverse backgrounds. In other words, the 'medical' condition of women seeking the services of the centre is not separated from the real-life interconnections of personal, social, cultural, economic, race, age and gender related problems.

Ishar Multicultural Women's Health Services provides a range of holistic services to women from all walks of life and cultural backgrounds. Ishar is a LGBTQI friendly service and welcomes women of any sexual orientation, anyone who identifies as a woman and anyone who was assigned female identity at birth. Women are provided with information, advice, counselling, training and/or support so that they are empowered to deal with the problems themselves, or they are referred on to another agency for specialised assistance. We believe that women are the centre of the community, if the women are empowered this has a systemic effect on families and community. Ishar has provided vital services for approximately 4600 women from over 100 ethnicities making over 50,000 service contacts.

## INTRODUCTION

ECCWA and Ishar would like to thank the Department of Home Affairs for conducting this public consultation process on these important issues impacting CaLD communities.

There is general agreement from ECCWA and Ishar that having a basic level of proficiency with the English Language is important to assist migrants with understanding their rights and responsibilities within Australia. This is also important for gaining and maintaining employment, interacting with government and non-government agencies and developing relationships and networks with the broader community.

As organisations that have day-to-day contact with many people who may be directly impacted by these proposed changes, there are a number of issues and concerns that we believe need to be addressed by the Department as part of this process.

Please find below responses to the specific questions posed in the Consultation Paper, an outline of key issues relating to the proposed reforms and key recommendations for consideration by the Department of Home Affairs.

## RESPONSE TO SPECIFIC CONSULTATION QUESTIONS

### Part A – English Language Requirement

1. 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?

From the perspective of having a functional level of English, migrants should be able to effectively communicate with essential service agencies and with prospective and current employers. We believe it is important for anyone coming to Australia on the Partner visa to have a basic level of English i.e. ability to read, write and speak in English - approximately Level 5 IELTS so they can understand their rights and responsibilities in Australia, to communicate independently with people in the community and with service providers, and to receive education in matters regarding their health and safety.

We acknowledge that having the ability to speak English is important to enable people to integrate into Australian society, gain an education, find meaningful employment and make social connections. It is also a key part of feeling safe and being able to access support services in Australia across a range of agencies. We consider having attained a basic level of conversational English, after a two-year period to be a fair requirement and believe this will assist partners to maintain a level of autonomy in the community.

In practice, our agencies come across many clients who have come to Australia on a Partner visa, with minimal English proficiency and after a few years we have realised how the compatibility between the couple changes because they don't speak the same language.

Given the role of Permanent resident sponsors, it is reasonable to expect them to have a basic level of English proficiency that would allow them to undertake the following activities – self-advocacy to seek services, go about their lifestyles using transport, shopping, paying bills, getting driving lessons, enrolling children in school etc. Consideration needs to be given to the fact that the sponsor may be employed, has less time for English language classes and therefore may take a longer time to reach a basic level of English. In these cases, they should be afforded a longer time to acquire a higher level of English proficiency. The sponsor is responsible for supporting their partner and needs to have at least basic English requirements.

Our major concern is what exactly is considered a functional level of proficiency in the English language and how will this to be determined? There are layers of complexity that need to be acknowledged, before we can determine one's proficiency in the English language. For example, we have supported many domestic violence clients

whom we can easily understand without using interpreters, during face to face consultations, phone consultations, text/email and also in collaboration with legal services and partner agencies. These interactions have required clients to share their personal story, participate in complex risk assessments, apply for court orders, fill out forms etc. Yet these same clients struggle to order a coffee or speak over the phone because others in the wider community struggle to understand them during very basic conversations.

There are also cases where people who speak English fluently and have University level education yet have repeatedly failed English tests. A case we know of personally is a University Graduate Engineer who failed his English test 29 times before being granted Australian residency (<https://www.sbs.com.au/language/english/audio/testing-times-mohab-sat-english-test-29-times-before-achieving-australian-residency>). We need to avoid such situations from occurring.

The push towards a requirement to have a level of English which allows someone to 'function independently' in Australian society is complex. For example, how does this reflect on the countless people who for all practical purposes have a functional level of English that enables them to socialise, study, work and contribute to society but simply cannot score high enough on a formal English Language test? It is concerning to us "how many hoops they will have to jump through just to pass a test that people of other English-speaking foreign countries do not have to jump through?" This is clear discrimination and will have a major effect on families, communities and the potential social cohesion of our society as explained more later. It will also significantly, increase the cost and wait times for visa applicants when already there is significant wait times.

Also, what is the definition of "function independently" being applied in this context? For example even if their English is functional, interpreters for example should still be provided for medical, legal or other services that use specific jargon or technical terms that people might not be familiar with. There are many people in our community who from time to time need the support of external agencies to represent them or advocate on their behalf. In these circumstances will the person still be deemed to be functioning independently in the community?

We strongly believe, that the level of proficiency in English can be assessed in different ways other than the traditional English tests usually requested by the Department. These could take the form of verbal tests, multiple choice, short answer, assignment completion etc.

2.What should constitute a reasonable effort to learn English in the context of AMEP participation? What other types of evidence could be accepted for the purposes of assessing whether an applicant has made a reasonable effort to learn English?

There are many other activities, other than AMEP that help people to fully immerse themselves in the English language such as having employment, volunteering, studying and being part of various clubs and social groups. Evidence of participation.

in any of these activities, should be considered as part of the assessment process. Evidence could include support letters or statutory declarations from their employers or supervisors, church leaders, team captains etc. In the case they were undertaking other studies they could provide the enrolment confirmation, copies of assignments completed or a letter from the lecturer or educational institution.

The visa applicant can commence learning English as soon as they apply for the visa. As mentioned on page 2 of the public consultation paper – “Partner visa applications are processed in two stages and Partner visa applicants will only need to meet the English language requirement at the 2nd stage assessment which is often two years after the provisional Partner visa application is lodged”. If the Partner has travelled to Australia on the provisional Partner visa they can study English by attending the government-funded AMEP classes if they have not already done this in their country of origin. Evidence of regular class attendance and achieving appropriate scores should be ample evidence for demonstrating reasonable effort to learn English.

Before arrival in Australia (if possible), applicants should be offered free basic English classes via any of the approved testing agencies. The applicant may have completed a course in basic English (conversational ) in their country of origin. Undertaking these opportunities would demonstrate reasonable effort to learn English. The Sponsor applicant would then need to provide relevant documentation that they have completed a basic level of English through AMEP upon their arrival.

Partners should have to either attend AMEP classes in person or if not suitable due to having multiple children/transport issues/carer responsibilities etc, then online classes should be undertaken. Partner visa applicants would then have to produce evidence of completion via a certificate from AMEP. Letter of support from the teacher/instructor regarding their attitude and progress regarding the classes.

Similar to the recognition of prior learning process, if people were undertaking volunteer work, gainfully employed, linked in with early settlement services such as a SET program, attending faith-based groups that speak English, attending clubs and social events where English is spoken – this should contribute to demonstrating ‘a reasonable effort’. This also acknowledges that learning and acquiring language can occur in a variety of ways, not just through formal classes.

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

This proof of English language proficiency is normally provided by taking an English language test which assesses the applicant’s ability to read, listen, write, and speak English. It must be noted that English has been described as one of the hardest languages to learn and it takes time, which must be given with opportunities to learn through the AMEP. We have every confidence that new migrants will eventually learn English and contribute significantly to the Australian community.

Other evidence for demonstrating English language proficiency could include:

- documentation showing evidence of maintaining competence in English e.g. emails, forms, correspondence prepared by the Sponsor or applicant.
- having friends/social networks and speaking English with them
- seeking or having employment, earning income and paying tax
- supporting letters from employers, supervisors, educators etc
- providing copies of the assignments they have done for AMEP

At present the Department of Home Affairs recognises certain English language tests for Australian visa purposes. All of these English language tests can be taken at a variety of test centres worldwide. The various centres and test dates can be checked on the websites of the respective providers and examination dates can be booked online. These agencies, could be encouraged to in collaboration with the Australian Government, devise a more basic test for women who may not have high levels of education due to various factors. The Department should take into consideration if the applicant, particularly women who may have lived in refugee conditions for long periods or where formal education was curtailed due to war, traditions of younger marriages and childbearing and create and offer a more basic test (conversation) that may be considered reasonable. These women can still learn English although it may take a longer period than a woman who has higher education levels. We need to acknowledge that the ability to speak and listen to English comes first and more quickly and then writing, reading and comprehension take much longer to grasp.

Applicants should only need to demonstrate a basic level competency in English language listening, reading, writing and speaking skills. Applicants who do not meet this basic standard in the English language should be given more opportunities to learn the language and resit the test until they pass, rather than be failed after the current number of allowed attempts. A number of testing methods could be utilised by the Department including course-based tests/assignments, verbal test, multiple-choice tests, short-answer tests - dependant on the best way for each individual to demonstrate their proficiency.

4. 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?

We believe there are a number of circumstances or scenarios where exemptions to the English language requirement could be justified:

- Existence of intellectual or learning disabilities, some medical conditions (themselves or close family member), or age (extremely elderly persons). Documented evidence could be provided from appropriately certified medical and health professionals, e.g. GP, Geriatrician, OT, Speech Therapist etc
  - Where the person is illiterate in their own language and/or have had no or minimal formal education for various cultural or practical reasons. Evidence could be provided from family, health and social service providers where appropriate
  - Where domestic violence is occurring and the perpetrator is using coercive control. Evidence could be provided from family, health and social service providers where appropriate
  - Where someone has spent years in refugee camps and are suffering from the impacts of torture and trauma. Those experiencing mental health distress or suffering from PTSD, may need on-going psychological support before being expected to learn another language to the required level of proficiency within the required time
  - Possibly those who do not have long-term/stable accommodation – this might be relevant where someone finds it difficult to prioritise learning English if other basic needs such as stable housing are not being met
- Exemptions could also be considered for someone who is fluent in multiple languages and/or bilingual – demonstrating their ability to acquire new languages. They could be supported to learn English through a longer or more intensive process
  - Individual cases and situations must be considered when granting an exemption to the English language requirement. For example, consider a scenario where a mother comes to Australia without her partner, is the carer of a child with special needs and she is making all attempts to adapt to a new way a life and is focused on surviving. Learning and building a new language might be a lower priority for her compared to keeping her child safe and nourished
  - In considering exemptions to the English language requirement, the Department must acknowledge that for some people it can take longer as an adult to learn a second language.

5. What other strategies can the Department adopt to support prospective Partner visa applicants and permanent resident sponsors to prepare for the introduction of the English language requirement, both in the lead up to and after the implementation of the new requirement?

The Department needs to make clear statements about the requirements for both the sponsor and the partner, actively promote the new changes through various media channels, provide information to both applicant and sponsor on how to prepare adequately and to state clearly that approvals could take 2 years.

There needs to be an extensive promotional campaign educating all permanent resident sponsors, partner visa applicants, multicultural communities and the organisations that work directly with migrant populations. This should include a variety of culturally appropriate promotional messaging including through radio, print media, posters and social media platforms. Many organisations across Australia such as ECCWA and Ishar can, with appropriate resourcing play a key role in helping to educate the community regarding these potential changes.

The proposed changes should only be implemented after a considerable period of time where the information has been made widely available to the community and they have had time to understand the changes and can prepare themselves accordingly.

Once the changes have been implemented, English classes should be made available to everyone regardless of their location of residence. The current migration system encourages people to move to regional/rural areas where there are less support services available, compared to the main/major cities. The Department needs to acknowledge that many migrants could be struggling to access a range of services including support to learn English. It is common for new migrants to not have their own private transport when first arrived in Australia, so making the English classes available either face to face or online would increase access.

Should English tests such as the IELTS or TOEFL be the accepted way to demonstrate English language proficiency, then AMEP should be teaching students how to pass these specific tests. These tests do not accurately reflect how most people use the English language and communicate on a daily basis. For example, to pass the writing component of these tests, you need to have the ability to organise an idea and develop it into a short essay, which can be challenging for many people even in their own language. In fact there are many people who have been born and raised in Australia with English as their first language, who would struggle with this task.

Migration Embassies could offer a system of assistance via education agents who can assist applicants to learn English in their country of origin as a means of preparing and having a better outcome when their English proficiency is tested here in Australia. Participation in such opportunities would also demonstrate considerable effort to learn English even before applicants arrive in Australia.

In those cases where an applicant has a disability, or is unwell or is not literate in their own language, then additional support could be provided in the form of home/online tutors. This could be arranged through outsourcing this service to trusted and approved volunteer-based organisations. Willingly engaging in such a program would clearly demonstrate reasonable effort to learn English.

There needs to be consideration of the consequences if someone does not meet the English language requirement within the two-year period and having in place an appropriate appeals process.

## PART B – NEW SPONSORSHIP FRAMEWORK FOR THE PARTNER VISA PROGRAM

What types of adverse information should be subject to disclosure under the new sponsorship framework?

Any adverse information that reveals what would be considered unlawful behaviour in Australia should be subject to disclosure under the new sponsorship framework. This should be clearly communicated to both parties, to avoid there being any 'unpleasant' surprises further into the application process. This may include for example someone already having several existing wives and the array of other illegal activities that a person may be engaging in.

The Department already checks an applicant's criminal background to ensure the person's behaviour is consistent with Australian values. Issues such as domestic or family violence, procuring or facilitating female genital mutilation and involvement in gangs and organised crime will clearly be flagged. Any applicant who fails the integration requirements will have their application refused.

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

In our work, we see many women who arrive on Partner visas who have no English language skills and who are sometimes experiencing severe domestic violence from their partners. We believe some of this could be avoided if both sponsor and applicant are educated in what domestic violence looks like in all its aspects including financial, emotional, psychological, physical, spiritual, mental, sexual, social, moral, etc. and are given relationship counselling and other support whilst still being on the provisional partner visa.

In disclosing information to another party, the Department needs to consider issues around privacy and confidentiality and there may be situations where disclosing sensitive information to another party could lead to potential harm to either party or their family members. The safety of the Partner visa applicant must be paramount.

There could also be situations where some minor criminal offence has taken place, many years previously – how will this situation be addressed?

## PART C: OTHER ISSUES RELATED TO THE PROPOSED REFORMS

### Underlying discrimination

These proposed changes will discriminate against certain cultural groups, resulting in a negative impact on families, communities and social cohesion. The fact that only people from specific foreign countries will be affected by this policy change points to a sense of privilege and discrimination. The changes mean, that countries such as the USA, UK, Canada etc where English is the main language will get priority over people from other countries, where more will be required of them just to complete the application process.

There is concern about how a number of countries have been selected to meet the requirement only by applicants needing to hold a valid passport, which underlines discrimination towards other countries. It is also not clear how educational qualifications obtained in other countries, that are instructed in English will be assessed by the Department.

There is concern that the proposed changes represents what is a worldwide movement to erode and limit immigration from non-white non-English speaking countries. Conflating the ability to speak English with broad social cohesion is disingenuous, dangerous, and overly simplistic. This implies that people speaking different languages has a negative impact on our social cohesion across the Australian community. This nationalistic perspective appears to be the underlying driver towards targeting migration from English-speaking countries.

### Exacerbating existing barriers for Partner visa applicants

Given the significant barriers already facing Partner visa applicants such as cost, long waiting times, instability, and many other restrictions, we are concerned that this additional requirement will exacerbate their situation by increasing the time spent in Australia on temporary visas.

There are also concerns that the proposed changes to the Partner visa program will act as a barrier to people who wish to marry from within their own culture and country of origin, where English is not the first language. There is concern that the requirement for English proficiency will act as a barrier to people from non-English speaking countries from coming to Australia and will take away the freedom from multicultural communities to marry the person they love.

These changes will also impact all existing/long-term Australian citizens and restricts their choices for whom they can marry, based on the nationality of their partner and their level of proficiency in the English language?

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#### KEY RECOMMENDATIONS

We implore the Department for Home Affairs to seriously consider the following recommendations:

1. Provide further information and justification for these proposed changes to CaLD communities and organisations that work with them
2. Address the issues of access and equity to all services for CaLD communities across Australia
3. Provide further opportunity for the community to provide their views on these proposed changes
4. Consider other methods for assessing English language proficiency, as an alternative to the traditional English language test
5. AMEP to teach students how to pass the specific English Language tests utilised by the Department
  1. Obtain expert advice from language consultants in regards to the expected timeline for new language acquisition
  2. Consider and address the various barriers (as outlined in this submission) facing migrants in the process of learning English
8. Provide further opportunities to extend the learning period beyond the allocated AMEP hours
9. Consider the development of practical English language test that more accurately reflects day-to-day communication especially for Partner visa applicants
10. Clarify the process for appeal where there is a failure to meet the English language requirement within the 2-year period
11. Provide greater clarity on how the educational qualifications that are instructed in English will be assessed by the Department
12. Provide greater levels of FDV prevention and support services across all Australian communities – with a specific focus on improving culturally secure responses when working with CaLD communities
13. Provide assurance that English language requirements are not being considered for other visa types