

# Simple, Equitable and Beyond Abuse

## **Migrant Intake into Australia**

Submission to the Productivity Commission inquiry into the greater use of charges relative to quotas and qualitative criteria to determine the intake of temporary and permanent entrants into Australia.

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## **Executive Summary**

*Take the influence of the abuse of process out of immigration selection and leave it with the Australian people and interested applicants to decide in an open and non-subjective manner via the market.*

### **Permanent Migrants**

#### **Problems with current system**

- a) Window of opportunity for abuse of process. Entry can be attained by:
  - a. Marriage of convenience to an Australian.
  - b. Questionable professional qualifications.
  - c. Questionable family reunions where identification papers are of dubious authenticity or have been lost in transit.
  - d. Impossible system of confidently differentiating between persecuted applicants and economic applicants.
  - e. Subjective decisions made by Courts and Panels.
  - f. Overriding of Federal Court's decisions made by politicians.
- b) Cost to taxpayers of those migrants living off benefits.
- c) General public's long term resentment due to their inability to have an input in deciding intake.

#### **Suggested Solutions**

- a) Apart from health, character and security checks (HC&S), there should be no criterion restricting applications.
- b) An entry charge (tariff) common to **all** classifications of immigrants.
- c) Tariff charge calculated by auction of the number of visas granted per year (or even quarterly) as decided by government, taking into account job vacancies and the general health of the economy.
- d) Tariffs to go into general revenue for the benefit of all Australians.
- e) So as to make the process user friendly:
  - a. (HC&S) checks and any other documentation to be undertaken after an applicant wins a bid (obviously tariff refunded for failed applicants).
  - b. Bids can be made from on shore or overseas.
  - c. Bids can be made and paid for by proxy to accommodate:
    - i. charitable non-government agencies involved in humanitarian immigration
    - ii. employers seeking specialist off-shore labour
    - iii. greater family members seeking to sponsor a loved relative
  - d. New immigrants who decide to return to their home country shall be granted a full refund upon departure.
- f) Applicants who are unsuccessful due to false application testimony should forfeit part of their tariff refund.
- g) Successful immigrants who subsequently commit serious crimes shall forfeit part, if not all, of their tariff refund upon deportation.
- h) New immigrants shall be limited on the types of government benefits they may receive for a set number of years.

### **Benefits of Suggestions**

- a) All applications would be treated equally. Immigration acceptance criteria, apart from (HC&S) checks, would finally be nondiscriminatory.
- b) Bribery, dishonesty or offering false affection would no longer be pathways to gaining permanent residence.
- c) Subject to (HC&S) checks, no absolute refusal as exists now for those (not unique nor exceptional cases) who can never garner the 60 points.
- d) By the fact they won their bid, successful applicants would either be more productive people, or connected to and perhaps supported by productive people, and thus would be less likely to end up on welfare.
- e) By the fact that manipulation of the system as in 'Problems with Current System: a)' above, could no longer occur, successful applicants would be more likely to be honest people, and thus less likely to end up within the criminal justice system.
- f) Humanitarian immigration would solely be based upon the willingness and desire of those concerned Australians, rather than by politicians or senior public servants.
- g) Whereas the current immigration system cannot placate both those who believe in more immigrants and those who believe in less, at least with this system, those who believe in less are financially compensated, albeit to a small degree, by those who succeed in facilitating more.

### **Temporary Migrants**

As above but with an entry tariff of a refundable 10% of whatever the current tariff is, as set by the market, and an additional non-refundable 5% to be paid every year or part thereof, after the first year. Those temporary migrants who attempt to disappear within the Australian community and evade paying annual payments would be subject to deportation and forfeiture of original tariff.

## **Supporting Arguments**

### **The Tariff**

#### **Cost to the taxpayer**

Costs cannot obviously be the paramount importance in deciding who should be allowed to permanently settle in Australia. That should be both character of applicants and needed skills they bring with them. Compassionate and humanitarian grounds should also be of some relevance.

However where all things remain equal, it would be highly negligent of the government not to take into account the financial burden upon the Australian taxpayer of the current system. Australia is not a country where the government has more money than it needs. Health, education and infrastructure development are merely three areas where there are requests for further investment. Any possibility where

expenditure can be saved or indeed revenue can in fact be made, should be given serious consideration.

### Setting the Tariff

Let the market decide:

- Rather than letting the market set the fee, for the government to do that would seem to be extremely short sighted. Unless legislators or senior public servants had the expert prescience to determine the optimum value, then a figure too low would cause more immigrants than Australia could handle with all its associated problems, and a figure too high would leave the country in a position with unfulfilled labour shortages as well as higher than necessary tariffs for family reunion and humanitarian immigrants.

Technicalities

- The technicalities might best be decided by professionals, but as a suggestion, begin by allowing parliament, or the relevant minister, to decide what the quarterly intake of immigrants (x) shall be due to economic conditions. After that the Department of Immigration would hold weekly internet based auctions for that period's quota (y) of provisional visas (PV), ie,  $y = x/13$ .
- The department would then gazette that (for example) every Monday morning at 10 am, y PVs would be up for internet auction, facilitated with one single auction. Once bidding had begun, the auction's web page would reveal the value of the y (th) highest bid, allowing individual bidders to realise if they were above or below that figure and thus if they were so far successful or not. Upon the hammer falling, the makers of the final y highest bids would win, upon payment of the lowest winning bid, their PVs.

### Miscellaneous

So as to make the system as open and efficient as possible, the following procedures in purchasing provisional visas (PVs), on or off shore, are suggested:

1. The first step for an applicant would be to win a bid and pay the full tariff amount to receive a PV.
2. Only then do they go to the trouble of submitting (HC&S) checks and whatever other documentation.
3. Subject to article #4, failed applicants would obviously have their full tariff returned to them.
4. Applicants who are unsuccessful due to false application testimony would forfeit part of their tariff refund.
5. Apart from actually operating the system, government departments should not in any way be involved financially: no loans, discounts, grants, etcetera, where *some* applicants may be looked upon favourably.
6. Blank PVs could be won by proxy to accommodate:
  - a. Charitable non-government agencies involved in humanitarian immigration.
  - b. Employers seeking specialist off-shore labour.
  - c. Migration agencies facilitating local or overseas applications.
  - d. Greater family members seeking to sponsor a loved relative.
7. New immigrants who violate any of their conditions of entry such as earning criminal convictions, shall forfeit part, if not all, of their tariff refund upon deportation.

## 8. Tariffs to go into general revenue.

### Greater Control of Applicants

Under the current system an otherwise ineligible applicant who might attempt to “chance” an application via forged documents, withholding criminal history or a sham marriage, etcetera, will not be deterred in his/her attempt as the worse that can happen to him/her is to be denied success, and deported if application undertaken on shore.

However with a tariff system the full amount must be submitted before (HC&S) checks will be performed. In situations where false testimony has been identified or where the applicant has committed a serious crime within a moderately short period after gaining residence, not only will the person be deported but they will forfeit all or part of their tariff refund.

### Placating (to some degree) both sides

For approximately the last half century immigration has been a perennial divisive issue in Australian politics. There are those against maintaining the current level, such as Australian entrepreneur Dick Smith who has claimed in his well-researched book ‘Population Crises’ that our net immigration / emigration should remain even, while others, also supported by a large segment of the Australian population, who believe we must ‘populate or perish’.

No immigration policy can obviously cater to both sides and all previous government immigration decisions have left at least some Australians resentful over either the high amount of immigrants allowed in or the types. However under the tariff system, to at least a small degree, all sides benefit. Those who think not enough immigrants of specific categories are allowed in can do something about it by donating to respective NGOs who would aid such immigration, while those who are against most immigration, but not of a majority to have an effect in parliament, would at least be financially compensated by having General Revenue being supplemented by tariffs rather than extra contributions from them.

### User Friendly Immigration

With the tariff system the whole process for the potential new immigrant would be more open, less time consuming and less stressful.

- a) No 60 points documentation of employment and support to submit.
  - a. As applicants will understand that they will be limited to various types of government services, such as unemployment benefits, for a period of time after successful attainment of residence, it will not be cause of concern for the government if new immigrants are not working upon arrival. Considering they would have already paid an (estimated)<sup>1</sup> large tariff and would have no other means of support, applicants would in all probability have already ascertained prospects for employment or other support prior to arrival.
- b) Tariff bids can be made by proxy.
- c) ‘No questions asked’ refund.

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<sup>1</sup> The actual amount is obviously unknown at this stage, but some public comments have suggested in the vicinity of or higher than \$50,000.

- a. So as to take the stress out of the decision of investing a large amount of money in a new life in a foreign country, new immigrants who later have a change of mind and wish to return home would be allowed a full refund, although without interest accrued<sup>2</sup>.
- d) Still a glimmer of hope.
  - a. For someone who possessed an extremely strong desire to immigrate to Australia, passing (HC&S) checks yet still not having the funds to pay the tariff amount, and not being an applicant in a “unique or exceptional circumstance”, would not be an absolute, irrevocable refusal for them, as now exists under the current system. They could console themselves by knowing that there was still a chance if in the future they were to come into more funds or be able to beg or borrow such.
- e) Bureaucratic Decision Making Process
  - a. The current system of over one hundred different visa sub-classes - most requiring decision makers in the courts and Immigration Department to consider a mind-bending array of criteria - is cumbersome, complicated, often subjective and subject to a Sisyphean progress of appeals through the courts. For the applicant who ultimately fails it will also be an expensive and time consuming futile exercise.
  - b. A tariff system would eradicate practically all of these problems (appeals through the courts would still be permissible for those denied on [HC&S] grounds).
  - c. Even for those who cannot raise the money to purchase a visa, that knowledge would be possessed immediately, instead of wasting eight months, or longer, of their life in the vain hope of success.

## Skilled Entrants

*“Australia has long been a prized destination for people wishing to emigrate. The United States and Canada might outrank us, but few others. Achieving permanent residence in Australia...promises peace, order and prosperity at levels often far exceeding those of their own societies.”<sup>3</sup>*

Due to the bidding process where highly productive professionals would find it more feasible to outbid professionals or tradespeople of medium to low productivity, the average skills of new immigrants would be of a higher level than now exists. As this would lead to more top level professionals in the market place, the cost of their services would, due to supply and demand, decrease. Thus a follow on from this would be lower costs to the consumer for the services of doctors, dentists, vets, IT professionals, architects, engineers, etcetera.

Whereas the corollary of this would also have an effect whereby the costs of low level services would increase, a (for example) 15% increase in the costs of lower income trades people would be palatable knowing there was also a more beneficial 15% decrease in the costs of higher income professionals.

<sup>2</sup> Australia would still be profiting in earning interest on tariff before refunded.

<sup>3</sup> John Stone, ‘Immigration Policy’ *Quadrant Magazine*, September 2010.

## Existing Avenues for Abuse of Process

### Spouse, fiancé and partner category

Most adult Australians not living in remote areas would surely be aware of at least one person in their circle of acquaintances who was involved in what appeared to be a marriage of immigration convenience.

The incidences of students or backpackers or others temporarily working in Australia requesting a ‘special favour’ from an Australian acquaintance is hardly rare.

According to a statement by Monash University migration expert Dr Bob Birrell in 2011, 45,000 applications under the partnership category were expected in that year. He continued that most partner visa applications did not involve “boy meets girl” romances while travelling, but first or second generation Australians returning to their ethnic homeland in search of a spouse<sup>4</sup>.

### Family Reunion / Professional Qualifications

The nature of people being displaced from their home country is that very often it is done in exigent circumstances where it is impracticable to gather birth certificates or other documents such as trade qualifications. Thus when applications are made under the Family Reunion or a needed profession category there is often no certifiable proof of claim. To quote former Treasury head, John Stone, ‘How is ASIO to “screen” effectively people from countries where either the regime itself may be hostile (such as Iran) or where a suitable bribe can secure the would-be immigrant favourable [documents].’

So for every honest applicant there may well be another who abuses the system by offering benefits, here or in their home country, to others in return for false documentation or testimony.

Where a sincere family reunion is desired, the fact that the applicant is a loved one to the Australian or Australians would be motivation for them to grant, or lend, the tariff amount to the applicant. Unlike the current system, this would also be feasible in situations where the applicant was considered part of the family in the home country even though he/she was no blood relative, perhaps due to being taken in at an early age as a war orphan.

### Genuine Refugees or Economic Migrants?

As mentioned above in ‘Family Reunion / Professional Qualifications’, it is almost impossible to be confident in the judgement of the situation from whatever information gathered of a person from a country that is in a far from stable situation where the government may also be hostile to Australia’s interests. Assuming all Australian immigration and judicial officers are immune to bribery and free from any bias relating to the levels of immigration or the nationality of the applicant before them, there may still be problems in their decision making process. In declaring who are genuine refugees, the officers, who themselves have nothing to lose by which way they decide, may be tempted in many situations to ‘play it safe’ and always grant the benefit of the doubt when there is even a hint that the applicant is telling the truth.

Placing that decision in the hands of non-government charitable organisations would be more efficient for three reasons:

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<sup>4</sup> ‘Unions faked to get visas’, The Herald Sun, 17/5/2011.

- a) Many of those organisations would be ethnic, nationality, or otherwise based upon some specific human demographic, and thus be staffed by personnel who would have more acquired information and understanding on the type of applicant they were considering helping.
- b) As they **had** everything to lose by granting the possible \$50,000 to an undeserving recipient of their generosity, they would be engaging full and careful scrutiny in their screening.
- c) Currently our politicians seem to be influenced by strident calls from editorials or media commentators declaring our refugee/displaced persons intake is either too high or too low or directed towards the wrong type of displaced persons. However, Australians ‘speaking with their wallets’ by donating however much to whichever of the various above mentioned charitable organisations that they should so choose, and knowing that their donations would be partly coming back to them through general revenue anyway, would be a much better indicator of the public’s attitude to the humanitarian intake.

### Ministerial Power to intervene in granting visas

Under section 417 of the Migration Act 1958, the Minister for Immigration and Border Protection can, in most circumstances, intervene and grant a visa where an applicant has received a negative decision by a review tribunal.

In the nine months from September 2011 to June 2011 the then Immigration Minister granted 437 visas.<sup>5</sup>

Between 1996 and 2003 the Immigration Minister for that period intervened and granted over 1,900 visas.<sup>6</sup> Extrapolating those figures, it would appear that the number of interventions by politicians into the deliberative administrative and judicial appeal process every decade is approaching three thousand.

The wording of the Migration Act declares that, “The Minister will only consider cases that have unique or exceptional circumstances.” If we first look at the word ‘unique’, the meaning refers to a situation that happens only once, or at most once in a generation. Adding the words ‘exceptional circumstances’ would broaden the concept a few degrees. However are we really expected to believe that, 300 times a year, every year, some collection of circumstances relating to immigration can be described as *unique or exceptional*?

A 2003 Senate Inquiry (see Appendix below) into possible abuse of the immigration system revealed migration agents declaring that cash paid to obtain visas was not rare.

### Health, Character and Security Checks

With tariffs, the ability to corrupt (HC&S) checks would be similar to the present system, even though the threat of loss of the submitted tariff amount would have some effect on deterring corruption.

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<sup>5</sup>AustraliaForum.Com <http://www.australiaforum.com/information/immigration/figures-on-ministerial-visa-interventions-published-for-first-time.html>

<sup>6</sup> ‘Immigration Department releases list of visas issued through personal intervention’ *PM*, ABC Radio, 5<sup>th</sup> Sep 2003.



## Character of Successful Applicants

It is an unquestionable fact that there are many wishing to immigrate to Australia but are thwarted because they fail, or know they would fail, the 60 points criteria test. From doing the minimum of research they would become aware that there were “other avenues” to permanent residence, as mentioned above, if one lacked scruples and possessed sufficient funds or charm. One would have to be a total misanthropic cynic to claim that all wishing to immigrate would be prepared to engage in bribery and / or subterfuge to facilitate success. It therefore follows that a by-product of our existing immigration system is that there a many circumstances where applicants, because of their honesty, fail, while others, because of their mendacity, succeed.

## UNHCR Refugee Convention

An untainted, non-discriminatory tariff system where all applicants are treated with equal respect cannot obviously work while Australia remains a signatory to the UN Convention relating to the Status of Refugees. If Australia is obligated to take, without charge, applicants who fall within the certain criteria, and even as many as apply, then this would hamper the efficiency and morality of the simple system where we declare how many we can afford to take and then allow everyone an equal chance to be part of that quota.

Not only would the UNHCR Convention be an obstacle to efficiency, but the Convention is, in itself, an impractical apparatus when one makes an analysis of how it would operate. Australia is obliged under Article 1 of the Convention to take anyone and everyone who possess “...*a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion...*”

According to *The Australian* newspaper of October 5<sup>th</sup> 2013, there are approximately 40 million displaced persons in the world. The fact that they are displaced must mean there is either a war in progress or they fear some persecution if returning to their home countries, or both. If only 15% of them fitted into the above Article 1 category and if, hypothetically 15% of that percentage all arrived on Australia’s doorstep, does it really mean Australia would accept over two million new migrants at once? If such a situation were developing, it would be quite obvious that the government would hurriedly withdraw itself from the Convention or otherwise renege on any previous undertaking of unreservedly accepting refugees. Bearing that in mind, one has to contemplate why Australia should remain a signatory to a convention it **knows** it will honour only while it is convenient to do so.

Withdrawing from the Convention does **not** mean we would no longer take persecuted refugees. All it would mean is that how many and what category of refugees would be decided by Australian citizens themselves, not their government and not foreign organisations.

## Concluding Summary

It might well be that a tariff based immigration system actually **is**, in fact, a panacea that cures (almost) all ills. While still having to deal with the administrative and appeals process of screening on (HC&S) grounds, the costs, subjective decision making and potential for abuse for all other grounds could be eradicated. The abolition of the stigma of discrimination, together with the openness of the system and

its ability to placate, albeit to a small degree, both *anti-* and *pro-* immigration voices in the community, continues the benefits this system offers.

That we might also make money out of it is no reason to deny an immigration selection system that is, more than any other, simple, equitable and beyond abuse.

## Appendix

### Cash for Visas

#### Senate Inquiry into possible ministerial abuse

Extracted from *PM* 22 Sep 2003 ABC Radio. Peta Donald reporting

On the 22<sup>nd</sup> September 2003 a Senate Inquiry was in progress in Sydney looking into the immigration system as to if it was being abused.

A Sydney migration solicitor, David Prince, took the stand to be questioned by Senators Nick Sherry and Penny Wong.

He described the system as cumbersome and frustrating, with many of his clients waiting more than six months to hear if the Minister would use his discretion to grant a visa. Then Mr Prince told the inquiry about migration agents and community members charging up to \$50,000 on the promise of securing a visa.

NICK SHERRY: And the range of payments in your experience?

DAVID PRINCE: Anything from \$2,000 to \$50,000.

PENNY WONG: Fifty?

DAVID PRINCE: 50. Five, zero.

NICK SHERRY: Does that seem extraordinary to you? It does to me.

DAVID PRINCE: Member, of course it's extraordinary. It's outrageous.

PENNY WONG: You have knowledge of payments of \$50,000 being made?

DAVID PRINCE: Yes. Now, that's a high figure and that's not terribly common, but \$20,000... some figures are regularly bandied around by my clients as what they've paid in the past.

PENNY WONG: But do you have knowledge of \$50,000... have you been told that someone has paid \$50,000 in order to get a community person to make a representation to the Minister?

DAVID PRINCE: I've got knowledge that people have paid \$50,000 for the process. Now, that's a slightly different answer. It goes back to, I'm freshly arrived in the country, you pay me \$50,000, I can secure you an outcome. And what happens is that a \$30 refugee application's made for protection visa, and the person signs a blank form.

PETA DONALD: Mr Prince said applicants were unlikely to complain, out of fear it would affect their chances of getting a visa, and he spoke of the nature of the payments.

DAVID PRINCE: Almost always cash, Senator.

NICK SHERRY: Why would that be?

DAVID PRINCE: Well, the obvious one so it's not accounted for through the taxation system, it's just not trackable. And keeping in mind that a lot of these individuals are coming from countries where cash is king, that is the norms of doing business, and so they're not surprised by a request for money to be given in cash.

PETA DONALD: Another submission this afternoon came from a former President of Mr Ruddock's local branch of the Liberal Party, a man named Clive Troy. He told the inquiry that in the early 90s, at each election, \$100,000 would appear and he didn't know where it came from.

PENNY WONG: What sort of amounts of money are we talking about?

CLIVE TROY: I had been told and I had heard at each election about \$100,000, little more, little less.

PENNY WONG: And do you have any knowledge of where that money came from?

CLIVE TROY: Well, it certainly didn't come from the various branches.

PENNY WONG: Should I repeat my question, Mr Troy? Do you have any knowledge apart from... given that it didn't come from the branches, of where that money came from?

CLIVE TROY: No, I had no... I had no knowledge, it was never discussed.

## Donations to political parties from people granted visas or their associates

### *Ruddock opens heart, Liberals fill wallet*

By Margo Kingston *Sydney Morning Herald*, June 5, 2003

Below are extracts from above article.

“The bombshell in question time today concerned Mr Dante Tan, to whom Mr Ruddock granted citizenship despite the cancellation of his business visa by the immigration department for failing to comply with its conditions. Mr Tan's good luck occurred after he donated \$10,000 to the Liberal Party and representations from Mr Karim Ksirwani, Mr Ruddock's long-time friend and a routine - and very successful - lobbyist for people wanting Ruddock's intervention on visa applications. The *Herald* revealed on Tuesday that Mr Dante is wanted by the Philippines government for allegedly committing the biggest corporate fraud in that nation's history, yet Mr Ruddock revealed today that Mr Dante skipped the country yesterday and that the government did nothing to try to stop him. The *Herald* has learned that the government also did nothing to alert the Philippine's government.”

Romeo's restaurant (see federal court judgement.)

1. **April 1996:** Mr Bedweny Chawki Hbeiche arrived in Australia from Lebanon.
2. **July 1996:** He applied for a Protection Visa from the Department of Immigration.
3. **March 1997:** The immigration department rejected his application.
4. **April 1997:** He applied to Refugee Review Tribunal for Department of Immigration's decision to be reviewed.
5. **January 1998:** The Refugee Review Tribunal rejected his appeal.
6. **June 1998:** The Federal Court rejected his claim that an error in law has been made.

Mr Hbeiche then made his first application to Minister Ruddock to exercise his discretion to give him a protection visa, which Ruddock rejected. He applied again, and Ruddock wrote to the Liberal MP for Paramatta, Ross Cameron, advising he'd rejected it again. Ruddock wrote: "I do not wish it to be brought to my attention again".

In September 2001, Ruddock, Tony Abbott and other MPs attended a Liberal Party function at Romeo's restaurant, Cowper St, Parramatta and Karim Ksirwani made a \$10,000 donation to Ross Cameron. This donation was disclosed in an amended Liberal Party return of 31 May 2003. In January, 2002, Ruddock granted Mr Hbeiche's third application for a temporary visa.

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