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Federal Litigation and Dispute Resolution Section

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Dear Ms Whitehead

Consultation into the Migration Amendment (New Skilled Regional Visas) Regulations 2019

1. This submission has been prepared by the Migration Law Committee of the Law Council's Federal Litigation and Dispute Resolution Section (**the Committee**).[1] The Committee welcomes the opportunity to provide input in relation to the Migration Amendment (New Skilled Regional Visas) Regulations 2019 (**the NSRV Regulations**) and the policy and instructions that may follow from the Regulations being introduced.

2. The Committee also takes this opportunity to include potential future changes to the NSRV Regulations pertaining to Safe Haven Enterprise Visa holders (**SHEV**) for consideration by the Department of Home Affairs (**the Department**) and the Government.

3. The Committee is broadly supportive of the new visa categories and refund provisions for the Skilling Australians Fund (**SAF**), however it:

   - seeks further information in regard to some provisions and particular legislative instruments;
   - raises concerns about some aspects of the NSRV Regulations which impose onerous requirements on visa applicants and employers, and which may deter skilled migrants from moving to regional areas rather than act as an incentive (including the increased risk of the exploitation of these visa holders);

[1] The Law Council of Australia is a peak national representative body of the Australian legal profession. It represents the Australian legal profession on national and international issues, on federal law and the operation of federal courts and tribunals. The Law Council represents more than 60,000 Australian lawyers through state and territory bar associations and law societies, as well as Law Firms Australia.

- raises concerns about the introduction of new Schedule 8 visa conditions[2] which may be inflexible and expose visa holders to unnecessary risk of visa cancellation;

- proposes amendments to the NSRV Regulations to accommodate a transitional pathway for SHEV holders who have completed the SHEV 'Pathway Requirements' as per regulation 2.06AAB of the Migration Regulations 1994 (Cth) (**the Regulations**);

- seeks further information on whether or not there have been amendments to the *Health Insurance Act 1973* (Cth) to allow access to Medicare by holders of subclass 491 and 494 visas;

- seeks clarification on what will be the requirements for doctors who wish to access the program, and ensure this is clearly outlined in policy and on the Department's website; and

- seeks clarification as to why the labour market testing (**LMT**) outlined for this visa does not have international trade obligation exemptions, and the lawfulness of this position.

4. These submissions are structured and provide comments and recommendation under each of the following topics:

   (a) Skilled Work Regional (Provisional) visa – Subclass 491;

   (b) amendments to Schedule 6D;

   (c) Skilled Employer Sponsored Regional (Provisional) Visa – Subclass 494 (nomination regulations and visa regulations);

   (d) Permanent Residence (Skilled Regional) – Subclass 191;

   (e) introduction of new mandatory visa conditions in Schedule 8

   (f) restrictions on applying for other visas, substantial compliance and other cancellation issues;

   (g) other issues; and

   (h) proposal for a direct 191 pathway for SHEV holders.

Skilled Work Regional (Provisional) Visa – Subclass 491

Schedule 2

5. **491.211** – the Committee considers that the Public Interest Criteria (**PIC**) health criterion should be 4007 as it at least allows for a waiver, unlike PIC 4005. The justification for this is the regional location, which requires greater flexibility, and the fact that the subclass 191 visa is subject to PIC 4007.

[2] Migration Regulations 1994 (Cth), Schedule 8 'Visa Conditions'.

Amendments to Schedule 6D

Part 6D.11 of Schedule 6D

6. **6D101** – the policy and website guidance for potential applicants would benefit from explaining what type of evidence is needed to confirm that a person lives in a designated regional area, and confirmation that it is for the full period of meeting the Australian study requirement. For example, this might include rental agreements, bank statements for the full period, third party correspondence, or driver's licence.

7. **6D112 and 6D113** – the Committee supports the introduction of partner points for 6D113 but is uncertain as to the rationale behind awarding more points for single applicants (see 6D1129 (a)). It notes that there is no reason given for this in the Explanatory Statement at page 29.

8. The Committee would recommend that 6D113 and 6D112 (a) be the same.

Skilled Employer Sponsored Regional (Provisional) Visa – Subclass 494

Schedule 1

9. **1242 Item 1 ($9800)** – it is unclear to whom this will apply (the Committee assumes it may be for the Labour Agreement stream), but the charge seems excessive if a person is considered skilled enough to be sponsored by an employer in a regional designated area. The Committee recommends the sum be amended to $3755.

10. The Committee is also concerned that this could apply to a SHEV holder who does not have functional English, in which case it would be an excessive additional cost for applicants.

11. **1242 Item 3 (Nil)** – add (c) the holder of a SHEV Visa.

Schedule 2

12. **491.211** – the Committee considers that the health criterion should be PIC 4007 as this allows for a waiver, unlike PIC 4005.

13. **Regulation 2.27C** – the Committee has a number of concerns with regard to this regulation, as follows.

14. **Full-time position (2.27C(12)(b))** – the requirement for a 'full time position' should be clarified. Is the requirement for 20, 35 or 38-40 hours per week? For skilled points test visas, employment that counts towards points is at least 20 hours. The subclass 482 visa allows for fractional appointments where it is reasonable to disregard a full-time appointment or contract. Should the same provisions apply to subclass 494?

15. **Five year Appointment (2.27C(12)(c))** – the proposed five year appointment under 2.72C(12)(c) may act as a disincentive rather than an incentive for employers. Further, it is not clear what will be required in terms of evidence by employers to meet this requirement. For example, will a permanent appointment contract suffice to meet this criterion, or will a five year fixed term contract be required to demonstrate that the

position is 'likely to exist for at least 5 years'?[3] If the contract is fixed at five years, this may cause employment law (fair work) concerns for employers should they wish to terminate within the five years. Any proposed employment contract terms must be consistent with employment law and fair work laws. The Committee asks whether the Department has considered these impacts.

16. A related issue will be whether the Department will also seek financial evidence sufficient to demonstrate that a business will be training for the coming five year period. To do so would set a very high evidentiary bar and may lead to a high number of refusals on this basis.

17. **Australian Market Salary Rate (ASMR) and Temporary Skilled Migration Income Threshold (TSMIT) (2.27C(15) and (16))** – the Committee appreciates that the Regulations mostly replicate what is currently in the Temporary Skills Shortage (**TSS**) visa nomination criteria, and that there need to be safeguards to protect Australians' jobs and create jobs for Australians. However, there are clearly differences between wages across Australia in the same occupation, and applying TSMIT will put an unnecessary burden on employers in regional areas and, in particular, in states where across-the-board wages are lower. The intention as highlighted in the Explanatory Statement (page 40) is to ensure that the recruitment of overseas workers does not undercut Australian salaries. Whilst this may be appropriate in non-designated regional areas, it simply is not the case in regional areas where wages are uniformly lower and, in some states/territories, considerably lower.

18. In relation to AMSR, there is a stated reliance on Regional Certifying Boards (**RCB**) to provide market rates for the position. Is the RCB advice binding, and what sort of timeframes will be in place for the RCB to provide that advice? Must the advice be obtained at time of nomination lodgement, or can it be obtained during the nomination process? What if the ASMR advice from the RCB is below TSMIT? Does this not undermine the intention of the program if employers are unable to access the additional occupations on the new regional list, if they would then be required to pay an artificially high salary to employ those workers if the AMSR as determined would otherwise in fact be below TSMIT? The Department should consider extending salary concessions similar to the ten per cent salary concessions available under certain designated area migration agreements (**DAMA**) in regional areas.

19. **2.73B Process for Nomination** – the Committee notes that the SAF levy required at 2.73B is a training contribution charge to be made at the nomination stage, and its refund is available in certain circumstances similar to 482/186 SAF refunds. There is provision for refund (2.73C) if the employee ceases to be employed within the first year of commencing employment (less $600 or $1000). The Committee commends the Department for offering the SAF refund, however it has concerns with the SAF more broadly, as set out below.

20. **Expense (SAF levy)** – the Committee is concerned about the implementation of the SAF levy, particularly given the subclass 187 visa did not have the same training requirement as the subclass 186 visa, prior to the introduction of the SAF levy.

21. The Committee is concerned that this additional expense will act as a disincentive for employers, despite the well-documented skill shortages in regional areas. It notes that, since the changes to the subclass 187 visa, introducing the requirement for applicants to have three years of full-time employment in their occupation, there has

[3] Migration Amendment (New Skilled Regional Visas) Regulations 2019 (Cth), 'Explanatory Statement', 39.

been a significant reduction in applicants applying. If regional employers are already avoiding attempting to sponsor skilled workers due to the high benchmark, the Committee is concerned that this new subclass adds an additional requirement on top of the three years full time work experience, being the introduction of the SAF levy.

22. The Committee notes, based on discussions with the Department, that the SAF levy is to be set, not per year of the subclass 494 visa, but via a set fee, namely $3000 for a small business and $5000 for larger businesses. The Committee assumes that this is to be set in a legislative instrument, as this is not clear from the Regulations or Explanatory Statement.

23. The Committee would not support the SAF levy being set at a rate per year of the term of the visa, and it remains concerned about the levy being applied to this visa, noting that the TSMIT also applies.

24. It is presently unclear regarding the SAF levy as to what period of time the levy will need to be paid by employers. 2.73B(6) states that nomination must be accompanied by the charge liable to be paid, but how or where is this stipulated?

25. **Nomination 2.73 ((12)(ii) and (iii)** – for occupations where no ANZSCO code exists, is it expected that the instrument will specify the tasks for the occupation? The Committee is concerned that, otherwise, 12(a)(ii) may not make sense. The same applies in regard to (b)(ii): will the instrument specify the required qualifications and experience for the no-ANZCO code occupation?

26. Regarding DAMA and Labour Agreement applications, in situations where there is no ANZSCO code, the DAMA presently specifies a code for the occupation. Does the Department intend a similar process in this context?

27. **Nomination 2.73C refunds** – the Committee notes this is not presently set out in the same way as the subclass 482 visa, for obvious reasons. The Committee is supportive of the same provisions being put into the subclass 482 visa regulations as mentioned above.

28. **Period of Approval of Nomination 2.75B** – the Committee notes this is for the same period as for the 482 Visa and is supportive of this.

29. **Obligation to ensure equivalent terms and conditions of employment (2.79A)** – the Committee notes that the Australian Market Salary requirements are substantially the same as the Subclass 482 Visa.

1242 Skilled Employer Sponsored Regional (Provisional) Class PE

Subclass 494 – Skilled Employer Sponsored Regional (Provisional) Visa primary criteria

Employer Sponsored Stream

30. **Reg 494.225** – the Committee suggests that the work experience requirement should only be two years, and not full-time, to act as an incentive to applicants and employers. Further, there appears to be no justification for increasing it to three years when the TSS visa requirements (which the Committee considers fairer) allow for two

years at the time of decision, not application as required under the subclass 494 visa. The Committee refers to its earlier comments about the large reduction in subclass 187 applications since the work experience requirement was introduced, and it submits that mirroring that requirement for this visa will neither see a substantial increase in applications nor people choosing to move regionally.

31. **Reg 494.224** – the skill assessment requirements seem to mirror the present requirements for the 187 visa and the Committee repeats is concerns in that regard.

32. **Reg 484.226** – the Committee supports the competent English exemption and submits that it would be preferable if the exemptions available were to go beyond those offered for the 186 and 187 subclasses, to encourage uptake of the visa.

Labour Agreement Stream

33. **Reg 494.231** – the Committee submits that PIC 4005 should be replaced with 4007 for the same reasons discussed above in relation to the subclass 491 visa.

34. **Reg 494.234** – the Committee queries what is intended by the phrase 'has English language skills that are suitable to perform the nominated occupation'? It assumes that this will refer back to the specific Labour Agreement requirements, but this is not clear.

Permanent Residence (Skilled Regional) – Subclass 191

Subclass 191 – Permanent Residence (Skilled Regional)

35. **Reg 191.213** – the substantial compliance requirement, given that this is discretionary, will lead to visa refusals. Will there be policy guidelines released on what will constitute substantial compliance, particularly in the context of the new condition 8579? The Committee considers that the details pertaining to the guidelines need to be set now, prior to the commencement of the subclass 491 and 494 visas, and cannot simply be left for the commencement of the subclass 191 visa.

36. **Reg 191.214** – the requirement is intended to be based on taxable income as with the current 189 stream for 444 holders. The income levels need to be publicised and the meaning of 'taxable income' fully explained. The Committee queries whether this will be the same level as the 186 NZ Stream, or whether it will be lower given the regional location.

37. The Committee's view is that it is important to publicise widely that this will be assessed on taxable income, not the amount submitted for PAYG. This needs to be made explicit, along with how the amount should be calculated, upon grant of the provisional visas to ensure that applicants will be eligible for the permanent stage.

38. The Committee recommends that exemptions be provided, similar to those listed in the subclass 189 (New Zealand Stream) instrument 'LIN 18/138: 'Specification of Income Threshold and Exemptions for Subclass 189 (Skilled – Independent) Visa (New Zealand Stream) Instrument 2018' (at section 7). That instrument provides exemptions to visa applicants who have been unable to work due to childcare responsibilities, a workplace injury or on parental leave.

39. **Reg 191.314** – secondary applicants will also be required to have complied substantially with the conditions of either a bridging visa or substantive visa. The requirement for secondary applicants to live or study in a regional area will act as a significant disincentive for families with children studying in non-regional areas, as this effectively consigns these applicants to having significantly reduced educational opportunities if they cannot access universities in, for example, Melbourne or Sydney.

40. The Committee submits that families in such circumstances will not consider this visa if their children cannot continue to study at these non-regional universities. While there may be a benefit for regional TAFEs and universities, not all educational institutions offer the same courses and, if families have to move to regional institutions, the choice of courses available to students may be limited. This could be viewed as anti-competitive conduct. The Department should consider how this may impact on international student numbers and the income it receives from international fees as part of its economic revenue, as well as the risk of losing the best and the brightest students. There is also a genuine argument that this amounts effectively to discrimination and opens the Department to claims that it is creating 'second-class citizens' in regional areas.

41. **Reg 2.08 (Schedule 1)** – with regard to the requirement that all members be included at the same time, this means that applicants could not add a partner to their application. The Committee queries the rationale for this position, when, for example, the subclass 186 and 187 visas presently permit the addition of partners post lodgement of the application?

Introduction of new mandatory visa conditions within Schedule 8

42. The Committee expresses its concern and seeks clarification in relation to the new mandatory visa conditions 8578, 8579, 8580, 8581 and 8608, and regarding the consequences for non-compliance with those conditions. In summary, the Committee is concerned that the conditions impose onerous obligations on the visa holder and—when combined with the 'substantial compliance' criteria in other visa categories and broad cancellation powers contained in section 116 of the *Migration Act 1958* (Cth) (**the Act**)—it submits that there is an unreasonable burden placed on the visa holder which exposes him or her to high risk of visa cancellation or refusal.

New conditions

43. The Committee notes that regulation 491.612 requires that conditions 8578, 8579, 8580 and 8581 must be imposed on the subclass 491 visa.

Condition	Comments and recommendations
8578 - The holder must notify Immigration of a change to any of the following within 14 days after the change occurs: (a) the holder's residential address; (b) an email address of the holder; (c) a phone number of the holder; (d) the holder's passport details; (e) the address of an employer of the holder;	The Committee has concerns that a 14-day period to notify the Department of changes in details is too short. For example, if an applicant is on holidays overseas when his or her employer moves address, he or she may not become aware of that change until returning from holidays, which may be more than 14 days from the date of change. This would cause the visa holder to be in breach of condition 8578 due to factors beyond their control.

	Recommendation: The Committee recommends amending this either to a 'reasonable time' or '28 days'. The Committee also recommends that 8578(e) be removed from the condition and the phrase 'unless compelling or compassionate circumstances exist' be inserted after sub-clause 8578(d).
8579 - Live, Work and Study Condition	The Committee refers to its comments made under regulation 191.314 pertaining to this condition and, in particular, to dependents studying. The current condition also fails to take into account the potential situation of children with learning difficulties or medical issues that may require special support that is not available in a designated regional area and would result in direct discrimination. **Recommendation:** Allow for an exception for study by dependent visa holders.
8580 - If requested, in writing, by the Minister to do so, the holder must provide evidence of any or all of the following within 28 days after the date of the request: (a) the holder's residential address; (b) the address of each employer of the holder; (c) the address of each location of each position in which the holder is employed; (d) the address of an educational institution attended by the holder.	**Clarification sought:** On the meaning of 'evidence'. **Recommendation:** The phrase 'if the visa holder contacts the Minister in writing within those 28 days requesting an extension, the time period to respond becomes a further 28 days'.
8581 - If requested, in writing, by the Minister to do so, the holder must attend an interview: (a) at a place and time specified in the request; or (b) in a manner, and at a time, specified in the request.	The Committee recommends that this condition be amended to ensure visa holders have a reasonable opportunity to arrange to attend interviews (whether in person, via telephone or Skype). This is particularly important for people residing in regional areas where access to transport, internet and phone reception may be less reliable than in metropolitan areas. **Recommendation** Therefore, the Committee supports inserting the phrase 'unless compelling or compassionate circumstances exist' after sub-clause 8581(b). An alternate suggestion would be, at the least, that 'compassionate and compelling' should apply to secondary applicants.

8608	The Committee supports visa holders being afforded 90 days to commence work, and 90 days to find a new employer if their employment ceases.

Restrictions on other visas, substantial compliance and other cancellation issues

Paragraph 116(1)(b) – visa cancellation for non-compliance with visa condition

44. Paragraph 116(1)(b) of the Act empowers the Minister to cancel a visa if he or she is satisfied that its holder has not complied with a condition of the visa. Therefore, the Committee is concerned that the combined effect of the restrictive schedule 8 conditions and this broad, discretionary cancellation power could expose visa holders to a heightened risk of visa cancellation.

45. Accordingly, the Committee recommends the amendments to the conditions listed above, to allow a more flexible and reasonable approach to be taken, to ensure visa holders can comply with the conditions of their visas, and that the expectation of compliance is reasonable.

Section 116 and regulation 2.43(1)(kd) – visa cancellation for no 'genuine intention'

46. The Committee is concerned about the introduction of sub-regulation 2.43(1)(kd) which, in combination with paragraph 116(1)(g), introduces a cancellation power in circumstances in which:

> *in the case of the holder of Subclass 494 (Skilled Employer Sponsored Regional (Provisional)) visa—that, despite the grant of the visa, the Minister is satisfied that:*
>
> *(i) the holder did not have a genuine intention at the time of grant of the visa to perform the occupation mentioned in subclause 494.213(2) of Schedule 2; or*
> *(ii) the holder has ceased to have a genuine intention to perform that occupation; or*
> *(iii) the position associated with that occupation is not genuine;*

47. The Committee acknowledges that this sub-regulation mirrors the current sub-regulation 2.43(1)(kb) and (kc) which applies to 457 and 482 visa holders. It seeks clarification from the Department that the policy in relation to cancellation under this ground will also reflect that which applies to 2.43(1)(kb) and (kc).

Substantial Compliance Requirements

48. 'Substantial compliance' criteria exist in schedule 2 of a large number of existing visa subclasses, including subclasses 482 (regulation 482.211), and Sponsored Parent (Temporary) subclass 870 (regulation 870.225). These require that the 'applicant has complied substantially with the conditions to which the last of any substantive visa held by the applicant, and any subsequent bridging visa held by the applicant were subject'.

49. Compliance with previous visa conditions is also considered within the context of a 'genuine temporary entrant' test which is included in the Temporary Work (Short Stay Activity) subclass 400 (regulation 400.213), Temporary Work (International Relations) subclass 403 (regulation 403.212), Training subclass 407 (regulation 407.217), Temporary Activity subclass 408 (regulation 408.213), Visitor subclass 600 visa (regulation 600.211) and Medical Treatment subclass 602 (regulation 602.215) visas.

50. The NSRV Regulations propose to introduce substantial compliance requirements into the Border subclass 773 and Partner (Temporary) subclass 820 visas, which require that a holder or former holder of a subclass 491 or 494 visa is required to have substantially complied with the conditions of that visa in order to meet the criteria for either the subclass 773 or 820.

51. Given the serious ramifications for visa applicants who wish to satisfy substantial compliance requirements, the Committee recommends that the amendments to the conditions listed above be made to ensure a more flexible and reasonable approach can be taken to ensure visa holders can comply with the conditions of their visas.

Restricted from applying for other visas

52. Holders of subclass 491 and 494 visas are restricted from applying from the following visas, unless they have held a subclass 491 or 494 visa for at least three years at the time of application, 'unless circumstances specified in an instrument' exist.

- Subclass 124/858 - Distinguished Talent
- Subclass 132 - Business Talent
- Subclass 186 - Employer Nomination Scheme
- Subclass 188 - Business Innovation and Investment
- Subclass 189 - Skilled - Independent
- Subclass 190 - Skilled – Nominated

Clarification sought / recommendation

53. The Committee seeks clarification on the whether these regulations will require that person must have completed three years of employment, or simply *held* the visa for a minimum of three years.

54. Additionally, the Committee queries what the 'circumstances' are that will be specified in the instrument?

Other Matters

55. **8503 /8504** – the Committee agrees with these conditions having the waiver provisions.

56. **Refunds (2.12F(3B))** – the Committee submits that the visa refund provisions for the 494 visa should extend to where the nomination has been refused, and the basis of the refusal is not limited to just the circumstances set out in regulation 2.12F (3B). The visa application fees are significant and, where the nomination is refused for

whatever reason, there should be provisions allowing refunds for the visa application charge. Otherwise, the Committee submits that the provisions should allow for new 494 visa nominations to be 'linked' to pending 494 visas (similar to the old 457 framework) to at least afford the employer and/or applicants the opportunity to remedy the issue with the refused nomination, or for the visa applicant potentially to find a new employer.

57. The Committee recommends the removal of regulation 2.43(1)(kc)(i).

58. **Reg 858.213** – the Committee queries what will be circumstances specified in an instrument. It submits that the legislative instruments or, at the very least an indication of what will be contained in them, should be made clear and available well before 16 November 2019.

59. As set out in its policy on human rights, 'the Law Council also confirms that every treaty to which Australia is party is binding upon it, and must be performed by it in good faith'.[4] This includes the principle of *non-refoulement*[5] and other relevant obligations in these treaties and conventions which apply to people seeking asylum in Australia, regardless of their mode of arrival. This includes providing durable (rather than temporary) protection outcomes for those found to invoke Australia's protection obligations, and a visa system which promotes the right for those who invoke Australia's protection obligations to be reunited with close family members.[6]

60. Therefore, the Committee continues to support the abolition of temporary protection visas (including subclass 790 and 785 visas). However, in the event that the Government intends to continue the temporary protection scheme, the Committee proposes the following amendments to the NSRV Regulations to accommodate a more direct and accessible pathway for SHEV holders who have met the criterion in regulation 2.06AAB(2) of the Regulations (**the SHEV Pathway**).

61. The Committee supports the proposed amendments to regulation 2.06AAB(1), including the subclass 491 and 494 visas as prescribed visa subclasses for the purpose of paragraph 46A(1A)(b) of the Act.

Proposal for direct 191 pathway for SHEV holders

62. The Committee proposes the introduction of a simplified pathway to permanent residency for SHEV holders who have satisfied the criterion in regulation 2.06AAB(2), meaning that for a period of at least three and a half years (42 months) the person has either:

- not received any social security benefits and engaged in employment in a regional area; or
- was enrolled in full time study at an educational institution that was located in a regional area; or

[4] Law Council of Australia, *Policy Statement on Human Rights and the Legal Profession* (May 2017), [10], <https://www.lawcouncil.asn.au/docs/bdc8f95f-eca0-e811-93fc-005056be13b5/Human%20Rights%20Policy.pdf>.
[5] Law Council of Australia, *Asylum Seeker Policy* (2014), [6], <https://www.lawcouncil.asn.au/docs/b8ae4569-ae36-e711-93fb-005056be13b5/Policy-Statement-Asylum-Seeker-Policy.pdf>.
[6] Ibid, [7(a) and (f)].

- achieved a combination of both of the above requirements.

63. SHEV holders who have satisfied the above criterion are people who have been found by the Australian Government to be owed protection under Australia's international obligations. They have also demonstrated a commitment to regional Australia by working and/or studying in the area for three and a half years. Many SHEV holders have started their own businesses, settled or started families and been involved in their community over this period.

64. The Committee therefore supports a pathway to permanent residency for refugees and others in this category, to encourage sustainable and long-term growth of regional Australia. The Committee notes that humanitarian entrants' contribution to the labour force is not insignificant in some regional areas and in lower skilled jobs.[7] Further, humanitarian entrants 'display greater entrepreneurial qualities compared with other migrant groups',[8] with contributions to the economy extending beyond labour force participation.[9]

65. Members of the Committee have been approached by employers and community organisations in regional areas of Australia who have expressed a desire to assist SHEV holders to obtain permanent residency. Therefore, the Committee suggests that the Minister consider introducing exemptions to the 491 visa criteria, to allow for a simplified stream for SHEV-holders to access these visas. The suggestion below is a way to introduce a long-term solution that also will meet Australian community expectations and protect Australia's borders.

Proposed amendments to the Regulations

66. **Subclass 491 SHEV stream** – the Committee proposes the introduction of a pathway or stream within the subclass 491 visa for SHEV holders be considered. This would require the Minister to make the following amendments.

67. In relation to **Schedule 1, 1241 Skilled Work Regional (Provisional) (Class PS)**:

- at the end of sub-regulation 1241(4) insert 'unless sub-regulation 4A applies'; and

- insert sub-regulation 4A which reads: 'If the applicant is the holder of a subclass 790 Safe Haven Enterprise Visa at the time of application, and has met the criteria within regulation 2.06AAB(2), the applicant is not required to satisfy items 1 to 6 of regulation 1241(4). Rather, the applicant must satisfy item 7 of regulation 1241(4).

68. This amendment will exempt SHEV holders from being required to meet the relevant skills assessment and points test, however it will ensure that they declare a genuine

[7] Department of Immigration and Citizenship, Australian Government, A Significant Contribution: The Economic, Social and Civic Contributions of First and Second Generation Humanitarian Entrants – Summary of Findings (2011) at 42
[8] Ibid at 38
[9] Ibid at 42

intention to live, work and study in a designated regional area for both themselves and any family members included in the application.

69. In relation to **Schedule 2**, the Committee proposes that the Minister introduce, by way of legislative instrument or regulation, an exemption to the current schedule 2 criterion for the 491 visa which sets out that:

- where the applicant is the holder of a subclass 790 Safe Haven Enterprise Visa, and they have been found to have met the criterion in regulation 2.06AAB(2), the visa holder is exempt from satisfying sub-regulations 491.214, 491.215, 491.216 and 491.217; and

- instead, the applicant must satisfy the Minister that he or she has met regulation 2.06AAB(2) and has a genuine intention to live and work or study in a designated regional area.

70. The Committee understands that when the NSRV Regulations were initially drafted the above may not have been contemplated. However, it believes it would allow for benefits to Australia both economically and give a permanent pathway to those who have been found to be a refugee and committed to being part of the Australian regional community.

Contact

71. For further comment or clarification on any of the matters raised in this submission please contact Georgina Costello, Chair, Migration Law Committee at costello@vicbar.com.au