

Government Response to Afghan Locally Engaged Employee (LEE) Program

The Australian Government welcomes Dr Vivienne Thom AM's final report on her review of the Afghan Locally Engaged Employee (LEE) Program.

The then Government introduced the program in 2012 to offer resettlement in Australia to eligible locally engaged Afghan employees, and their direct family members, at risk of harm due to their employment in support of Australia's mission in Afghanistan.

In 2021 the Senate Foreign Affairs, Defence and Trade References Committee conducted an inquiry into Australia's engagement in Afghanistan. The inquiry received submissions critical of the design and administration of the Afghan LEE program. The Committee recommended a full and thorough review of the Afghan LEE program. The review did not reassess individual cases.

The Government commissioned Dr Thom to undertake an independent review of the Afghan LEE program on 10 November 2022. Dr Thom made 8 recommendations to improve the design and delivery of the current Afghan LEE program, and future LEE programs. The Government agrees with all of Dr Thom's 8 recommendations.

The Government is committed to assisting Afghans who supported Australia's mission in Afghanistan. The Government is extending all available effort to finalising certifications and visa applications for Afghan LEE.

The Government thanks Dr Thom for her work in delivering this report and recommendations, including 40 separate discussions with public servants, and meetings with stakeholders, including former locally engaged employees.

Recommendations

Recommendation 1: The Department of Foreign Affairs and Trade, and the Department of Defence should consider greater legal oversight of the preparation of ministerial submissions relating to certification in the Afghan Locally Engaged Employee program.

The Government agrees with the recommendation and agencies have commenced implementation.

Recommendation 2: The Department of Foreign Affairs and Trade, and the Department of Defence should review previous ministerial submissions relating to certification in the Afghan Locally Engaged Employee program, to assess whether decisions relating to applicants found not eligible were properly made.

The Government agrees with the recommendation and agencies have commenced implementation.

Recommendation 3: When the Department of Foreign Affairs and Trade, the Department of Defence or the Australian Federal Police notifies an applicant that they have been found ineligible for certification by the relevant agency Minister under the Afghan Locally Engaged Employee program, it should:

- inform the applicant that external merits review is not available;

- offer the applicant a statement of reasons;
- offer the applicant an opportunity to request a re-assessment, setting out any conditions that need to be satisfied, for example, requiring new information. It should be made clear that this re-assessment will be conducted by the same team and is not an independent internal review;
- advise applicants they can complain to the Office of the Commonwealth Ombudsman; and
- advise applicants that an unsuccessful application for certification does not preclude them from applying for a humanitarian visa.

The Government agrees with the recommendation and agencies have commenced implementation.

Recommendation 4: The Department of Foreign Affairs and Trade, the Department of Defence, the Department of Home Affairs, and the Australian Federal Police should meet regularly to discuss the Afghan Locally Engaged Employee program to ensure their approach is consistent with the aims of the program, and any policy articulated by the Government.

The Government agrees with the recommendation and agencies continue cooperation and information sharing on the Afghan LEE program.

Recommendation 5: The Government should:

1. Urgently consider the making of a new legislative instrument that sets out criteria for eligibility for certification for Afghan locally engaged employees to:
 - Revise the exclusion at paragraph 3(b) [of legislative instrument IMMI 12/127] to ensure it does not arbitrarily exclude classes of individuals and that it is consistent with the original intent of the program.
 - Address the inconsistency with the *Migration Regulations 1994* in the level of risk of harm that must be demonstrated.
2. Publish separate clear guidelines for the application of the eligibility criteria in the new instrument.

The Government agrees with the recommendation and has amended legislative instrument IMMI 12/127 and published clear public guidelines on the application of the eligibility criteria.

Recommendation 6: The Department of Home Affairs should seek amendment of the Migration Regulations 1994 to allow for a departmental officer to be authorised by the relevant Minister to certify an applicant according to paragraph 200.211(1A)(a) and paragraph 201.211(1A)(a) in Schedule 2 to the Migration Regulations 1994 on the Minister's behalf.

The Government agrees with the recommendation and is developing amendments to the *Migration Regulations 1994*.

Recommendation 7: The Government could cease the certification of Afghan locally engaged employee applicants by 31 May 2024. If a new instrument is made in accordance with Recommendation 5, it should require that an individual must have sought to be certified by 30 November 2023 to allow for assessment and certification prior to 31 May 2024.

The Government agrees with the recommendation.

Recommendation 8: Any future program for the resettlement of locally engaged employees in Australia should be guided by the following broad principles:

1. The policy initiative should be led by the employing agency or agencies – currently the Department of Foreign Affairs and Trade, the Department of Defence, and the Australian Federal Police.
2. There should be a whole-of-government articulation of the aims of the program and how it will be delivered.
3. The Department of Home Affairs should be responsible for the end-to-end processing.
4. There must be clear consistent eligibility criteria prioritised on risk.
5. A centralised record management system is required for recording identity, contact details, employment history and the status of individuals who might be eligible for priority resettlement.
6. The application process should be streamlined with decision-making at the appropriate level.
7. The program should be as transparent as possible in the circumstances.
8. The program should be subject to regular review.
9. Proper crisis planning is essential.

The Government agrees with the recommendation and will draw on lessons learned from the operation and closure of the Afghan LEE program.