

7 October 2016

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By email: legcon.sen@aph.gov.au

Dear Committee Secretary,

Migration Amendment (Family Violence and Other Measures) Bill 2016

1. Women's Legal Service NSW ('WLS NSW') thanks the Senate Legal and Constitutional Affairs Committee for the opportunity to comment on the Migration Amendment (Family Violence and Other Measures) Bill 2016 ('the Bill').
2. WLS NSW is a community legal centre that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims support, care and protection, human rights and access to justice.
3. We limit our comments to the unintended consequences for visa applicants of an assessment and approval process for sponsors of visa applicants other than for work visas; the delays that will likely arise from requiring approval of the sponsor before the making of a visa application; and concerns about the information sharing provisions. Based on these concerns, we do not support the Bill.

Addressing family violence

4. We are concerned about violence against women, including violence perpetrated against women with uncertain immigration status. We welcome attention to this issue.



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5. We do not know the history of the inclusion of *"requiring additional information disclosure by the Australian husband or fiancé applying for an overseas spouse visa"* as outlined in Action 11 of the Second Action Plan supporting the National Plan to Reduce Violence against Women and their Children.
6. However, we fear there will be unintended consequences from the requirement of an assessment and approval process for sponsors of visa applicants other than for work visas, beyond the already existing requirements where children are involved, as proposed in the Bill.
7. Firstly, it seems it will be the visa applicant who will be "punished" rather than holding the domestic violence perpetrator to account. This is because if the sponsor is not approved, for example, due to a conviction relating to a domestic violence offence, the visa applicant is not able to make their application. This will mean the visa applicant will either be returned to their country of origin or not able to enter Australia in the first place.
8. This may have the consequence of ostracising, for example, the woman visa applicant and her children (if she has children) from her family and community. This may result in her exposure to violence, the very thing this Bill seeks to prevent.
9. We also understand the Bill proposes the completion of the assessment and approval of a sponsor before a person can make an application for a visa. We fear this will lead to unnecessary delays.

Information- sharing in the context of family violence

10. We are also concerned about the proposals to share information, including the visa applicant receiving information about the perpetrator and the perpetrator receiving information about the visa applicant. Much greater consideration needs to be given to any unintended consequences of information sharing such as risk of harm; and a victim centred focus on sharing information with informed consent.
11. Of particular concern is the absence of detail as to what information will be shared. This is to be determined in regulations, which do not have the same level of oversight as a Bill and can be easily changed.

Previous Australian Law Reform Commission inquiry

12. We refer to the 2011 *Family Violence and Commonwealth Laws – Improving Legal Frameworks* report in which the Australian Law Reform Commission (ALRC) considered whether the *Migration Act 1958 (Cth)* should require the sponsor of a partner visa applicant to be assessed and approved.

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13. The ALRC considered that the:

*current safeguards surrounding serial sponsorship—a limit of no more than two sponsored in a lifetime and a five year period between sponsorships—provides a measure of protection for victims of family violence.*¹

14. Furthermore, The Department of Immigration and Citizenship, as they were then called, made a submission to that inquiry stating:

*Such measures [regulating sponsorship in partner visas] could lead to claims that the Australian Government is arbitrarily interfering with families, in breach of its international obligations. It could also lead to claims that the Australian government is interfering with relationships between Australians and their overseas partners in a way it would not interfere in a relationship between two Australians.*²

15. We share these concerns.

16. Rather, victims/survivors of domestic violence should be supported and empowered to make decisions about their own lives.

17. This is reflected in the ALRC recommendation that the safety of partner visa applicants could be “*promoted through targeted education and information dissemination*” including greater awareness about legal rights and the family violence exception.³

18. There should also be greater access to specialist family violence and sexual assault support services, crisis payments, safe accommodation and family violence exemptions in visa proceedings.

19. The recent Victorian Royal Commission into Family Violence found that “*uncertainty about visa status can increase the risk of violence*”. This can happen, for example, because culturally and linguistically diverse people may feel they need to remain in the relationship or risk being deported or their family members being deported. Additionally, many reported being ineligible for Centrelink crisis support and access to other supports, such as refugees.⁴

20. The Victorian Royal Commission into Family Violence report Recommendation 162 states: *The Victorian Government, through the Council of Australian Governments, encourage the Commonwealth Government to broaden the definition of family violence in the Migrations Regulations 1994 (Cth) so that it is consistent with the Family Violence Protection Act 2008 (Vic)*

¹ ALRC, *Family Violence and Commonwealth Laws – Improving Legal Frameworks*, Report 117, 2011 at 20.72; Migration Regulations 1994 (Cth) reg 1.20].

² ALRC Report 117 at 20.75

³ ALRC Report 117, recommendation 20-5 & 20-6.

⁴ *Royal Commission into Family Violence, Final Report*, March 2016 at 1395.

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and to ensure that people seeking to escape violence are entitled to crisis payments (regardless of their visa status) [within 12 months].⁵

21. We recommend the implementation of Recommendation 20-1 to 22-3 of the *ALRC Report 117* and Recommendation 162 of the *Victorian Royal Commission into Family Violence final report*. We submit this should happen in place of the passing of the Bill.

If you would like to discuss any aspect of this submission, please contact me or Liz Snell, Law Reform and Policy Coordinator on 02 8745 6900.

Yours faithfully,

Women's Legal Service NSW

Janet Loughman
Principal Solicitor

⁵ *Royal Commission into Family Violence, Final Report*, Recommendation 162.