



Australian Women Against Violence Alliance

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

**Australian Women Against Violence Alliance
Submission on Migration Amendment (Family Violence and Other Measures) Bill 2016
04 October 2016**

Thank-you for the opportunity to contribute a submission on Migration Amendment (Family Violence and Other Measures) Bill 2016.

About the Australian Women Against Violence Alliance (AWAVA)

AWAVA is one of the five National Women's Alliances funded by the Australian Government to bring together women's organisations and individuals across Australia to share information, identify issues and their solutions, to respond to and prevent violence against women and their children. AWAVA's role is to ensure that women's voices and particularly marginalised women's voices are heard by Government, amplifying the work of its member organisations and Friends and Supporters.

AWAVA works towards this by harnessing the expertise of its members, consisting of specialist women's services from the responding to violence against women sector, and working closely with government. Its members include organisations from every state and territory in Australia and represent organisations working on diverse issues including domestic and family violence, sexual assault, feminist pedagogy and women with disabilities.

Summary

The report of the Victorian Royal Commission into Family Violence, among other reports, acknowledges that the immigration status of a women subjected to family violence has a significant impact on her experience of that violence and her ability to leave the violent relationship. Accordingly, AWAVA supports the intention of the Bill to strengthen the Migration Act, and agrees that there is merit in addressing family, domestic and sexual violence in the migration law context. Reforms are needed to support more suitable pathways for victims of this violence. However, we have reservations about the likely effectiveness of proposed Bill in achieving these goals, and also the possible unforeseen ramifications of this Bill for victims/ survivors of domestic and family violence.

Effectiveness of the Bill in supporting and protecting survivors/ victims of family violence

The Bill, in part, seeks to establish a separate sponsorship framework for the sponsored family program. This would introduce a process of applications for sponsorship for family visas that would be assessed against criteria to be prescribed in the *Regulations*.¹ A person would be required to be approved as a "family sponsor"

¹ Migration Amendment (Family Violence and Other Measures Bill) 2016 (Cth), Sch 1.

before they are able to make any relevant visa application and without being approved as a “family sponsor”, any visa application for a family category visa will not be valid.²

Further, statutory obligations (rather than undertakings) would be imposed on persons who are, or were approved as “family sponsors”. If a sponsor does not satisfy their obligations they could be liable to civil penalties and administrative sanctions, which are also prescribed in the *Regulations*.³ In addition, the Bill would allow the cancellation or barring of a family sponsor and sponsorship applications in certain circumstances.⁴ However, the Bill does not specify, justify or provide any insight into the proposed statutory obligations and sanctions for sponsors or the sponsorship requirements that may be imposed on sponsors.

AWAVA acknowledges that these measures have the potential to a) prevent people from attempting to migrate to Australia if their sponsor has been convicted of a “family violence related offence” in the past and b) prevent abusive partners from coming to Australia. However, these measures may also inadvertently “punish” victims/survivors by jeopardising their ability to access a visa. Furthermore, the ambiguity of the measures raises a number of concerns about whether the proposed amendments will effectively address domestic, family and sexual violence. For example, it is far from clear whether the requirements imposed on prospective “family sponsors” will assist in not only protecting visa applicants from domestic, family and sexual violence but also providing victims/survivors with the support they need. There are also concerns about whether the criteria and obligations applied to sponsors will have unintended impacts for victim/survivors of violence, which may leave them in a position of vulnerability, or even further exacerbate their vulnerability, which is contrary to the Bill’s stated intention. For these reasons, AWAVA does not support the Bill.

AWAVA shares the concerns raised by the ANU College of Law Migration Program and the Federation of Ethnic Communities’ Councils of Australia (FECCA) regarding the potential negative impacts of cancelling or barring sponsorship status on victims/survivors of domestic, family and sexual violence.

The ANU College of Law Migration Program states:

“[T]he Bill is silent on the consequences for the visa holder should the sponsorship be cancelled. This would leave the visa holder vulnerable to exercise of the general visa cancellation power, on the grounds that the circumstances for the grant of the visa no longer exist. It may be an unintended consequence of the Bill that an innocent person is liable for visa cancellation. Unless the person can make an application for another visa, they would be liable for detention and removal from Australia. This perpetuates the vulnerability of visa holders in family violence situations, and we believe is contrary to the intent of the Bill.”⁵

The Federation of Ethnic Communities’ Councils of Australia (FECCA) raises similar concerns in its submission:

“Many individuals apply for a Partner visa onshore, when they are already residing in Australia on another visa. Adding a sponsorship framework to the family visa program may result in additional barriers for visa applicants who are already experiencing family violence, and thus leave them in a position where they are more vulnerable. The report of the Royal Commission into Family Violence recently acknowledged that the immigration status of women who experience family violence has a significant impact on their experience of that violence and their ability to leave a violent relationship.”⁶

AWAVA also questions the Bill’s ability to provide victims/survivors of domestic, family and sexual violence ~~with alternative solutions and more~~ suitable visa pathways in such circumstances. We acknowledge the

² Explanatory Memorandum, Migration Amendment (Family Violence and Other Measures Bill) 2016 (Cth), 23.

³ Migration Amendment (Family violence and Other Measures Bill) 2016 (Cth), sch 1, proposed changes to s140K, 140L and 140M. Also see the submission made by the Department of Immigration and Border Protection, Pg 5-6.

⁴ Migration Amendment (Family violence and Other Measures Bill) 2016 (Cth), sch 1, proposed changes to s140ZH (1A).

⁵ ANU College of Law Migration Program submission into *Migration Amendment (Family Violence and Other Measures) Bill 2016*, 14 April 2016.

⁶ Federation of Ethnic Communities’ Councils of Australia (FECCA) submission into *Migration Amendment (Family Violence and Other Measures) Bill 2016*, 11 April 2016.

existence of the “family violence exception”, which allows individuals who are on a temporary partner visa, and can prove that their relationship has ended due to family violence a pathway to permanent residency. We note that the Australian Law Reform Commission and FECCA have recommended that the “family violence exception” be extended to cover a broader definition of family violence and a larger range of applicants, but not that a wholly restructured sponsorship regime be introduced.

Information sharing in the context of Family, Domestic and Sexual Violence

The recent report *SENSE AND SENSITIVITY: Family Law, Family Violence, and Confidentiality* by Women’s Legal Service NSW refers to information sharing in relation to family violence and is applicable to information sharing in the context of this Bill. The report highlights that information sharing in the context of domestic, family and sexual violence is complex and emphasises that victims’/ survivors’ “needs for safety, recovery and on-going support are influenced by multiple, changing factors’ and “information sharing in this context requires careful consideration”.⁷

Further, the report calls for victim-centric practices in the context of sharing information and encourages informed consent by victims/survivors before any information is shared and also highlights that practices should encourage improved responsiveness to disclosures. The report also stresses that it is

“equally important to continually assess what is done with the information and to be clear about what information will be shared and when and who will see it. If a victim provides informed consent to share information they must have a clear understanding of exactly what information will be shared. Also risk is not static and consent may need to be obtained each time a victim’s circumstances change, including when a referral is made to a new agency.”⁸

AWAVA acknowledges the Bill also seeks to “facilitate the sharing of personal information between a range of parties associated with the sponsored family visa program” which, in part, are to “encourage the sharing of relevant information so that both applicants and sponsors can make information decision before committing to the visa application processes.”⁹ However, we believe the amendments that relate to sharing personal information do not take into account the specific needs of victim/survivors in domestic, family and sexual violence, as stated above. We also believe that the fear of a visa being cancelled or barred may actually act as an additional the barrier to disclosures.

We also raise concerns regarding the disclosure of personal information in the context of sponsored family visas and the Bill’s potential in its current form to unnecessarily interfere with the privacy and affairs of citizens, permanent residents and visa applicants. The submissions made by the Office of the Australian Information Commissioner, Immigration Advice and Rights Centre Inc. (iarc), and the ANU College of Law Migration Program state similar concerns.

Convention on the Elimination of all Forms of Violence against Women (CEDAW)

We note that the explanatory memorandum fails to consider the impact of the proposed legislation on Australia’s obligations under the Convention on the Elimination of all Forms of Violence against Women (CEDAW), which seems to be a major omission. *CEDAW Committee General Recommendation No 19 (General Comment No 19)* makes clear that gender-based violence, which includes domestic, family and sexual violence is a form of discrimination within Article 1 of *CEDAW*.¹⁰ Article 2 of *CEDAW* obliges state parties to legislate to prohibit all discrimination against women. Such violence is a violation of the rights to life, to equality, to liberty

⁷ Women’s legal Service NSW. 2016. *SENSE AND SENSITIVITY: Family Law, Family Violence, and Confidentiality* Women’s Legal Service NSW released by Women’s legal Service NSW. p 11
<http://www.wlsnsw.org.au/wp-content/uploads/WLS-NSW-Sense-and-Sensitivity-web.pdf>

⁸ Women’s legal Service NSW. 2016. *SENSE AND SENSITIVITY: Family Law, Family Violence, and Confidentiality* Women’s Legal Service NSW released by Women’s legal Service NSW. p 11
<http://www.wlsnsw.org.au/wp-content/uploads/WLS-NSW-Sense-and-Sensitivity-web.pdf>

⁹ Department of Immigration and Border Protection submission pg7

¹⁰ CEDAW Committee, *General Recommendation No. 19: Violence against Women*, UN Doc A/47/38 (1992), para 7.

and security of person, to the highest standard attainable of physical and mental health, to just and favourable conditions of work and the right to not be subjected to torture and other cruel, inhuman, or degrading treatment or punishment.¹¹

AWAVA is concerned that the statement of compatibility does not mention Australia's obligations and human rights commitments under the CEDAW. As such, we are concerned that aspects of the proposed legislation may not comply with the CEDAW. More generally, we are concerned that the legislative processes have not considered in proper detail the implications of this Bill on women and women's rights, particularly considering that family violence has disproportionate impacts on women and the Bill, in part, is intended to better support and protect women and children from violence.

We recommend that in any future iteration of this Bill, or similar Bills, all aspects of the legislation are made to comply with the CEDAW, in particular the rights that relate to gender-based violence. Further, the Explanatory Memorandum should provide a detailed explanation of how the Bill meets Australia's obligations and human rights commitments under the CEDAW.

Alternative Measures

We agree that there is merit in addressing family, domestic and sexual violence in the migration law context and that reforms are needed to support more suitable pathways for victims of this violence. We recommend the committee consider the recommendations outlined in the Victorian Royal Commission into Family violence report and also the recommendations made by the ALRC that relate to family violence, including but not limited to the recommendations that:

- 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) and to ensure that people seeking to escape violence are entitled to crisis payments (regardless of their visa status) [within 12 months].¹²
- The Australian Government adopt the recommendations made by the Australian Law Reform Commission (ALRC) in its 2011 report, *Family Violence and Commonwealth Laws – Improving Legal Frameworks*, in relation to migration law.¹³

AWAVA also believes that there is a greater need for thorough and meaningful consultation which would help make sure that there are no unintended impacts and that powers are exercised responsibly and consistent with human rights principles.

¹¹ CEDAW Committee General Comment No 19, para 7.

¹² State of Victoria, Royal Commission into Family Violence: Final Report, Parl Paper No 132 (2014–16).

¹³ Australian Law Reform Commission and New South Wales Law Reform Commission, 'Family Violence and Commonwealth Laws — Improving Legal Frameworks' (ALRC Report No 117, 2012). See recommendations 3–1, 20-1, 20-2, 21-3.