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

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

Dear Secretary

Inquiry into the Migration Amendment (Family Violence and Other Measures) Bill 2016

I welcome the opportunity to provide this submission to the Senate Standing Committees on Legal and Constitutional Affairs' inquiry into the Migration Amendment (Family Violence and Other Measures) Bill 2016 (the Bill).

I strongly support initiatives to protect the safety of those experiencing family violence and to better support those adversely affected by this type of violence. I note, in that regard, that the purpose of the Bill is to support the National Plan to Reduce Violence against Women and their Children, and in particular action item 11 from the Second Action Plan.¹

The right to privacy is not absolute and in some circumstances, privacy rights will necessarily give way where there is a compelling public interest reason to do so. In these instances, my approach is to ensure that the solution implemented minimises the privacy intrusion to the fullest extent possible in the circumstances. The challenge is to ensure that initiatives contain appropriate privacy safeguards regarding the handling of an individuals' personal information, while providing strong protection against harm from family violence.

Privacy impacts of the Bill

The Bill would introduce into the *Migration Act 1958* (Cth) (the Migration Act) a framework for the disclosure of personal information in the context of sponsored family visas. The Minister would be able to disclose personal information about a visa applicant, visa holder or former visa holders to an approved family sponsor, an applicant for approval as a family sponsor, a former approved family sponsor, or a Commonwealth, State or Territory agency.

However, the Bill does not set out the kinds of personal information that may be disclosed under this framework. Instead, this information will be prescribed through amendments to

¹ Department of Social Services 2014, *Second Action Plan 2013–2016—Moving ahead—of the National Plan to Reduce Violence against Women and their Children 2010–2022*.

the *Migration Regulations 1994* (the Regulations).² The Regulations may also prescribe the circumstances in which the Minister or a recipient of personal information under the framework may use or disclose information they receive.³

Where provisions are intended to authorise the collection, use or disclosure of personal information, consideration should be given to whether those measures are reasonable, proportionate and necessary. That is, whether they appropriately balance the intrusion on individuals' privacy with the overall public policy objectives of the proposal. Further, any such laws should be drafted narrowly, and, to the extent possible, clearly describe:

- the type of personal information that is authorised or required to be used or disclosed
- who may use or disclose the information, and who may receive the information
- the purpose for which the personal information may be used or disclosed, and, once received, for which the information may be subsequently used or disclosed by the recipient.

As the Bill relegates certain information (such as the types of personal information that may be disclosed) to future amendments to the Regulations, it is difficult to determine what privacy impacts the Bill may have, and whether these impacts would be reasonable, proportionate and necessary given the public interest in reducing family violence.

Providing for this information to be prescribed in Regulations may result in greater flexibility in personal information handling in the future. However, greater certainty about the privacy impacts of the new framework could be achieved by specifying some of the detail in the Bill (such as some kinds of personal information that the Minister may disclose) with the possibility of further prescriptions being made in the Regulations.

The current disclosure provisions in s 140ZH of the Migration Act provide some privacy protection, in the form of a requirement that the Minister notify an individual that personal information about that individual has been disclosed,⁴ and this requirement would extend to the new sponsored family visas framework.⁵ This protection could be further extended by, for example, making it clear in the Bill that the privacy of individuals is a relevant matter for the Minister to consider before disclosing personal information.

Ideally, these issues would be considered in developing the legislative proposal, and form part of a Privacy Impact Assessment (PIA). This is a step I encourage agencies to consider taking where a change is proposed to their information handling practices.⁶ I would encourage the use of a PIA to assess the potential privacy impacts of the framework and ensure that the personal information handling activities are accompanied by an appropriate level of privacy

² Migration Amendment (Family Violence and Other Measures) Bill 2016, item 60.

³ Migration Amendment (Family Violence and Other Measures) Bill 2016, item 61.

⁴ *Migration Act 1958* (Cth), s 140ZH(4).

⁵ Migration Amendment (Family Violence and Other Measures) Bill 2016, items 62–63.

⁶ The OAIC's *Guide to undertaking privacy impact assessments* is available on the OAIC website, see www.oaic.gov.au

safeguards and accountability. If the Bill is passed in its current form, it may be useful to carry out the PIA during the development of the amendments to the Regulations.

If you have any questions or would like to discuss any matters raised further please do not hesitate to contact Sarah Ghali, Assistant Director, Regulation and Strategy Branch at

Yours sincerely

Timothy Pilgrim PSM
Acting Australian Information Commissioner

12 April 2016