

# Chapter 1

## Introduction and background

1.1 On 16 March 2016 the Hon Peter Dutton MP, Minister for Immigration and Border Protection (the minister), introduced the Migration Amendment (Family Violence and Other Measures) Bill 2016 into the House of Representatives.<sup>1</sup>

1.2 On 17 March 2016, pursuant to a report of the Senate Standing Committee for Selection of Bills, the Senate referred the provisions of the bill to the Senate Legal and Constitutional Affairs Legislation Committee (the committee) of the 44<sup>th</sup> parliament for inquiry and report by 10 May 2016.<sup>2</sup> At the dissolution of the Senate and the House of Representatives on 9 May 2016, the committee ceased to exist and the inquiry lapsed.

1.3 The bill was re-referred to the committee of the 45<sup>th</sup> parliament on 15 September 2016 for inquiry and report by 10 October 2016.<sup>3</sup>

### Conduct of the inquiry

1.4 In accordance with usual practice, the committee of the 44<sup>th</sup> parliament wrote to a number of persons and organisations, inviting submissions to the inquiry by 11 April 2016. The inquiry was also made public on the committee website. The committee received nine submissions to the inquiry.

1.5 The committee of the 45<sup>th</sup> parliament resolved not to call for further submissions, but rather to rely on the submissions already provided and allow for any new submissions to be made via the committee's webpage up to the date the report was to be tabled. The committee also wrote to one organisation which had indicated an intention to make a submission to the initial inquiry, but had not done so prior to the dissolution of parliament.

1.6 The committee received a further five submissions.

1.7 Submissions are located at Appendix 1.

1.8 The committee held a public hearing in Canberra on 5 October 2016.

### References to the Hansard transcript

1.9 References to the committee Hansard are to the proof Hansard. Page numbers may vary between the proof and the official transcript.

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1 House of Representatives, *Votes and Proceedings*, No. 183, 16 March 2016, p. 1994.

2 *Journals of the Senate*, No. 148, 17 March 2016, pp 3989-3990.

3 *Journals of the Senate*, No. 7, 15 September 2016, pp 211-213.

## Purpose of the bill

1.10 The bill proposes to amend the *Migration Act 1958* (the Migration Act) to provide for the introduction of an assessable sponsorship framework for family sponsored visas.

1.11 Proposed new subsections 140AA(2) and (3) set out the purposes of the new scheme:

- (2) The purposes of this Division, to the extent it applies in relation to the sponsored family visa program, are:
  - (a) to strengthen the integrity of the program; and
  - (b) to place greater emphasis on the assessment of persons as family sponsors; and
  - (c) to improve the management of family violence in the delivery of the program.
- (3) The purposes referred to in subsection (2) are to be achieved by establishing a framework that:
  - (a) requires the approval of persons as family sponsors before any relevant visa applications are made; and
  - (b) imposes obligations on persons who are or were approved family sponsors; and
  - (c) provides for sanctions if such obligations are not satisfied; and
  - (d) facilitates the sharing of personal information in accordance with this Division.

1.12 Introducing the bill into the House of Representatives, the minister explained that under existing arrangements, sponsorship for family visas was assessed as part of the relevant visa application, and for most family visas, there was little focus on the character of the sponsor or responsibilities attaching to the sponsorship. For example, sponsors were required to provide police checks only when a child was involved in the visa application.<sup>4</sup> This had led to 'integrity issues' in the family visa program,<sup>5</sup> including 'Australians who have a violent history, including against family members, being able to sponsor noncitizens without having to disclose details of their past' to the department or to the visa applicants.<sup>6</sup> The minister said the bill would 'address these shortcomings' by extending relevant aspects of the sponsorship framework that

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4 The Hon Peter Dutton MP, Minister for Immigration and Border Protection, *House of Representatives Hansard*, 16 March 2016, p. 8.

5 Explanatory Memorandum (EM), p. 1.

6 The Hon Peter Dutton MP, Minister for Immigration and Border Protection, *House of Representatives Hansard*, 16 March 2016, p. 8.

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currently applies to temporary work sponsored visas, to the family sponsored visa program.<sup>7</sup>

1.13 The Explanatory Memorandum (EM) to the bill adds that the bill is intended to support the National Plan to Reduce Violence against Women and their Children, whose Action Item 11 includes 'requiring additional information disclosure by the Australian husband or fiancé applying for an overseas spouse visa',<sup>8</sup> in recognition that newly arrived migrants are among the more vulnerable people in the community.

### **Key provisions of the bill**

1.14 Part 2 Division 3A of the Migration Act currently provides for a sponsorship framework for the temporary sponsored work visa program. The Act currently defines an 'approved sponsor'.<sup>9</sup> The provisions of the bill would establish two distinct categories of approved sponsor: 'approved family sponsor' and 'approved work sponsor'. The provisions of the bill would amend relevant sections within Division 3A to create distinct references to work visa sponsorship and family visa sponsorship, and then to extend the application of specified provisions within Division 3A to the family visa program.

1.15 Generally speaking, the amendments set out in the bill do not set up the substantive conditions and operations of the proposed family visa assessable sponsorship framework. Rather, they establish the legislative powers under which the details of the scheme are to be prescribed by regulation.

1.16 The key proposed amendments include:

- inserting definitions into subsection 5(1) to define and distinguish an 'approved family sponsor' and an 'approved work sponsor' (Items 1 and 2);
- setting out the purposes of the program in new subsections 140AA(2) and (3), as noted above. The EM states that while these provisions set out the broad purposes of the amendments, they are not intended to limit or restrict the interpretation or administration of any of the provisions in the Division;<sup>10</sup>
- amending relevant provisions within Subdivision B of Division 3A, notably the insertion of new subsection 140E(1A), to provide that the minister must approve a person as a family sponsor in relation to prescribed classes of visa, if prescribed criteria are satisfied (Item 14). The amendments would provide for such prescription to be made in the regulations, allow the regulations to set out approval processes for family sponsors and different terms and processes

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7 The Hon Peter Dutton MP, Minister for Immigration and Border Protection, *House of Representatives Hansard*, 16 March 2016, p. 8.

8 Department of Social Services (DSS), *Second Action Plan 2013-2016: Moving Ahead, of the National Plan to Reduce Violence against Women and their Children 2010-2022*, September 2014, p. 25.

9 *Migration Act 1958*, s. 5(1).

10 EM, p. 5.

for different types of visas and sponsorships, and provide for the minister to vary sponsorship approvals;

- extending section 140H to allow the prescription in regulations of sponsorship obligations for family visa sponsors (Item 32), and inserting new subsections 140HA(2A) and (2B), setting out the kinds of sponsorship obligations that are to be applied to the sponsored family visa program, and to whom the relevant regulations will apply. The minister must 'take all reasonable steps' to ensure that the obligations prescribed in regulations include complying with requirements to keep and provide certain information, and notifying the minister of changes in the sponsor or visa holder's circumstances (Item 38);
- enabling the minister to impose sanctions if sponsorship obligations are not met by current or former family visa sponsors (Items 41 to 48). These include barring the sponsor from doing certain things, cancelling the sponsorship approval, applying for a civil penalty order, requiring an undertaking from the person (with (civil) court action able to be taken if the undertaking is breached), and barring the person from sponsoring more people or from applying to be a family sponsor in future. Item 49 would amend section 140L such that the regulations may prescribe circumstances in which the minister may or must bar or cancel sponsorships, and criteria to be taken into account by the minister in determining what action to take; and
- providing for the minister to waive a sponsorship bar placed on a person under circumstances or criteria prescribed in the regulations.

1.17 Items 60 to 63 of the bill would amend section 140ZH of the Act, which provides for disclosure of personal information by the minister in relation to the sponsored work visa program. These provisions are extended to the family program, empowering the minister to disclose personal information about potential, present and former visa applicants and their sponsors, to each other, and to prescribed Commonwealth, state or territory agencies, within circumstances and under conditions prescribed in regulations.

1.18 For the operation of these provisions, the regulations will need to prescribe the kinds of personal information that may be disclosed by the minister under the respective provisions, and the kinds of visas to which the provisions will apply.<sup>11</sup>

### **Proposed regulations**

1.19 The bill provides that its substantive provisions would commence on a day to be fixed by Proclamation, or if not before, then 12 months after the date of Royal Assent. The EM states that the delayed commencement is to allow time for the necessary regulatory and administrative arrangements to be put in place to give effect to the legislative scheme facilitated by the bill. The government expects that the

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11 EM, p. 19.

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provisions would commence by Proclamation in late 2016 or early 2017, subject to possible delays occasioned by the 2016 election.<sup>12</sup>

1.20 The Statement of Compatibility with Human Rights in the EM provides some further insight into the intended details of the scheme which would be put in place by the regulations. The EM states that the scheme would initially apply to partner visas, and then be extended to other visas in the family program.<sup>13</sup> All sponsors for partner visas would have to undergo a police check.<sup>14</sup>

1.21 The EM also sets out the situations in which the minister may refuse a sponsorship application. It states that refusals would occur 'in limited circumstances', including where the sponsor has convictions for paedophilia, sexual offences against minors, or violent offences.<sup>15</sup> Even in these circumstances, refusal of sponsorship would not be mandatory but discretionary and a decision would take into account 'a range of factors including: the length of the relationship; the type of offence; how recently the offence occurred; relevance to the family relationship; and any mitigating circumstances'.<sup>16</sup> Applicants would be entitled to natural justice during the process, and have access to merits review of any refusal by the Administrative Appeals Tribunal.<sup>17</sup>

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12 EM, p. 3.

13 EM, p. 22.

14 EM, p. 23.

15 EM, p. 24.

16 EM, p. 24.

17 EM, p. 24.

