



Immigration Advice
and Rights Centre

Submission by the Immigration Advice and Rights Centre (IARC)

The House of Representatives Standing Committee on
Social Policy and Legal Affairs Inquiry into family,
domestic and sexual violence

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About the Immigration Advice and Rights Centre (IARC)

1. The Immigration Advice and Rights Centre (IARC), established in 1986, is a community legal centre in New South Wales specialising in the provision of advice, assistance, education, training and law and policy reform in Australian immigration and citizenship law.
2. IARC provides free and independent immigration advice and assistance to vulnerable people in New South Wales. We also produce legal resources such as information sheets and conduct legal education and information seminars for members of the public. Our clients are low or nil income earners and frequently experience other disadvantages including low level English language skills, disability and past experience of torture, trauma and family and domestic violence.
3. IARC's work has a special focus on the intersection between family violence and immigration law. Over 40% of our legal services are delivered to people on temporary visas experiencing family violence. In 2019/20 IARC provided 1,026 individual legal services to 490 women experiencing family violence.

Our submission

4. IARC welcomes the opportunity to comment on the House Standing Committee on Social Policy and Legal Affairs (the Committee) Inquiry into family, domestic and sexual violence (the Inquiry).
5. Our submission to the Inquiry is focused on paragraph h) of the Inquiry's Terms of Reference, and given our work and expertise, specifically addresses the experience of women on temporary visas effected by family violence.
6. Our submission has been significantly informed by the **Blueprint for Reform**¹ developed by the National Advocacy Group on Women on Temporary Visas Experiencing Violence of which IARC is a member.
7. The Blueprint for Reform is endorsed by over 50 national and state peak bodies, service providers and other organisations working to address violence against women across Australia. The recommendations represent practical and realistic measures to reduce the incidence of women on temporary visas, along with their children, from experiencing family violence.
8. Notably, the substantive issues and corresponding recommendations discussed within this submission, particularly those which relate to the operation of the family violence provisions under the Migration Law Regulations 1994, are not new. Many of these have been previously earmarked by the Australian Law Reform Commission (the ALRC). In 2011, the ALRC made the same recommendations relating to the family violence provisions as this submission.²

¹ National Advocacy Group on Women on Temporary Visas Experiencing Violence, *Blueprint for Reform: Removing Barriers to Safety for Victims/Survivors of Domestic and Family Violence who are on Temporary Visas*, https://iarc.asn.au/wp-content/uploads/2020/07/Blueprint-for-Reform_web-version-021019.pdf

² Australian Law Reform Commission (2011) *Family Violence and Commonwealth Laws— Improving Legal Frameworks Final Report*, 30 November 2011, https://www.alrc.gov.au/wp-content/uploads/2019/08/whole_alrc_117.pdf

Summary of recommendations

- 1) The *Migration Regulations 1994* (Cth) should be amended to:
 - a) Extend to the family violence provisions to:
 - Any person experiencing family violence on Prospective Marriage Visas (subclass 300) who does not marry their sponsor prior to relationship breakdown, and their children;
 - Any person experiencing family violence who has applied for a permanent visa onshore as a secondary applicant, and their children; and
 - Any person experiencing family violence who has applied for a family visa onshore, who is awaiting a decision, and their children.
 - b) Introduce a new subclass of temporary visas for any person experiencing family violence so there is time to access support necessary to feel safe without fear of removal from Australia.
 - c) Introduce another visa pathway for people on temporary visas that have Australian citizen or permanent resident children but are unable to leave Australia with their children.
- 2) The *Migration Regulations* and Departmental policy should be amended to:
 - a) require family violence to be determined before assessing for a genuine relationship;
 - b) ensure the evidence required to establishing a genuine and continuing relationship is capable of being reasonably provided in the context of a violent relationship; and
 - c) extend the family violence provisions to include violence perpetrated by a family member other than the sponsoring partner.
- 3) Decision makers should receive appropriate and regular training on family violence and be required to consider the nature of the claimed family violence when making an assessment on whether the relationship was 'genuine and continuing' prior to it ending
- 4) The Australian Government should reinstate funding to the community legal centres and other legal service providers formerly allocated under the Immigration Advice and Application Assistance Scheme (IAAAS) to ensure that women applying for family violence provisions can access free legal representation.
- 5) The Australian, State and Territory Governments should provide additional specific funding to service providers including sexual, domestic and family violence, crisis accommodation, legal, migrant resource, settlement services, health and community organisations that people on temporary visas experiencing violence and their children are able to access.
- 6) The Australian Government should exempt women who have experienced family violence and granted a permanent visa from the newly arrived resident's waiting period for full access to Centrelink benefits.
- 7) The Australian Government should allow women on temporary visas who have experienced family violence to access Centrelink and Medicare while their visa is being processed.
- 8) The State and Territory governments should expand the eligibility of temporary accommodation, crisis accommodation, rental assistance and public housing to ensure that all women on temporary visas experiencing family violence have a safe place to live.

Overview of the family violence provisions

9. The *Migration Regulations 1994* (Cth) (the **Regulations**) make certain provisions which determine whether, for the purpose of Australian immigration law, family violence is taken to have occurred. These provisions, known as the **family violence provisions**, are set-out in set-out in Division 1.5 of the Regulations
10. The family violence provisions mean that where family violence is taken to have occurred, certain visa applicants may continue with their visa application notwithstanding that their relationship with their sponsor has ended.
11. The provisions exist to ensure that visa applicants do not feel compelled to remain in abusive and violent relationships in order to obtain a visa.

Eligibility

12. The family violence provisions only apply to certain visa subclasses and do not apply to all temporary visa holders.
13. Presently, the family violence provisions apply only to:
 - Partner (subclass 820/801) visas;
 - Partner (subclass 100) visas if the applicant is in Australia as the holder of a Temporary Partner (subclass 309) visa;
 - Prospective Marriage (subclass 300) visas where the applicant in Australia and have married their partner
 - Distinguished Talent (subclass 858) visas; and
 - Dependent Child (subclass 445) visas.
14. Women on all other temporary visa subclasses are not eligible to access the family violence provisions, leaving them at risk of visa refusal or cancellation with few options to remain in Australia should their relationship end.
15. The family violence provisions also require that the relationship has ended (although there is no requirement however that the relationship needs to have ended as a result of family violence) and that family violence occurred while the victim³ and their sponsor were in a married or de facto relationship.

Defining and establishing family violence

16. "Relevant family violence" for the purposes of the family violence provisions is conduct, whether actual or threatened, which causes the victim to be reasonably fearful or apprehensive about their own safety or well-being.
17. The conduct anticipated in the family violence provisions is not limited to physical harm. Other forms abuse, such as psychological and financial abuse, would fall within the

³ The term "victim" is used in this submission to reflect the language of the Regulations where relevant. Elsewhere, we have used the term victim/survivor to convey the understanding that domestic and family violence is both a process of victimisation and survival, and that people's choice to identify as either one or both should be respected. See Domestic Violence NSW, *Good Practice Guidelines for the Domestic and Family Violence Sector in NSW*, <https://www.dvnsw.org.au/work/resources/good-practice-guidelines-for-the-nsw-dfv-sector/>, page 17.

definition of relevant family violence provided that it caused the victim to be reasonably fearful or apprehensive about their own safety or well-being.

18. For the purposes of the family violence provisions, the perpetrator of the family violence must be the sponsoring partner and the victim must be:

- the main visa applicant; or
- a dependent child of that applicant and/or the sponsor.

19. Family violence claims need to be substantiated with evidence prescribed in the Regulations. This may include judicial evidence such as a court order or conviction or non-judicial evidence which includes a statement by the victim along with two pieces of evidence from experts such as police, medical practitioners, nurses, psychologists and social workers.

Reforming the immigration system to protect victim/survivors of family violence

20. While the family violence provisions are an established mechanism to enable some visa applicants to continue with their application for permanent residency, the ability to protect women on temporary visas experiencing family violence is limited by:
- the lack of similar provisions for holders of other temporary visas and limited alternative pathways; and
 - the practical application of the family violence provisions being incompatible with the reality faced by many victim/survivors of family violence.

Limited pathways for temporary visa holders who cannot access the family violence provisions

21. The exclusion of most types of temporary visas from the family violence provisions means that many women in abusive relationships will feel compelled to remain in those relationships in order to protect their visa status.
22. This is particularly the case where refusal or cancellation of the victim/survivor's visa may result in separation from her children. This separation can arise for many reasons, including court orders preventing the mother from removing the child from Australia, the violent partner controlling access to passports and finances or the mother's concerns for her ability to provide for the child's needs in her home country. Often these children can be Australian citizens.
23. The number of women impacted by this issue is significant. In 2019/20, IARC assisted 193 women who had experienced family violence who were not eligible for the family violence provisions.
24. The following case studies are illustrative of the problems that IARC often encounters in our practice:

Case study 1

Constance came to Australia in 2015 as a student. In June 2016, she met Mark – an Australian citizen – and they moved in together in December of that year. They have lived together as a couple since and in December 2018 Constance gave birth to their first child, Jessica.

Mark and Constance have been saving money for a Partner visa but have been in no hurry to do so because Constance's student visa does not expire until the end of 2020.

Mark and Constance have struggled to save the nearly \$8,000 needed for the Partner visa as Mark has been gambling online, a problem that has gotten worse since he lost his job due to COVID-19. Mark has always had a temper but he has recently become physically violent and drinking more.

Constance is fearful for hers and Jessica's safety but if she ends the relationship she will have to leave Australia when her student visa expires. As Jessica is an Australian citizen, she is unable to become a citizen of Constance's home country and the government there will not give Jessica a visa without Mark's consent so there is no option for Constance to take Jessica home with her.

Case study 2

Miriam came to Australia with her husband Sam and their two children, Lila (8) and Sara (2). Sam was sponsored for a temporary work visa by his employer and Miriam, Lila and Sara are dependents on that visa. Sam's employer has agreed to sponsor him for a permanent visa and the application is expected to be granted soon.

Last week, Sam got drunk and violently assaulted Miriam in front of their daughters. Miriam took the children and is currently staying at a friend's house. Sam has told Miriam that if she doesn't return home with the girls, he will tell the Department of Home Affairs that their relationship is over and her visa will be cancelled. She won't be eligible for the permanent visa that Sam has applied for.

Miriam doesn't know what to do. If she returns to her home country with her children, under the laws of that country she will lose custody of the girls to Sam's family. If she stays in Australia with Sam, she is concerned that his violence will get worse.

25. To fully realise the objective of protecting women on temporary visas from violent partners, the Migration Act and Regulations must be amended to address the clear and obvious gaps that exist for women who are not presently able to access the family violence provisions.
26. In this regard, we note the recommendations of the Australian Law Reform Commission which previously considered that "inconsistent and differential application of the family violence exception across different visa subclasses may threaten the safety of victim/survivors of family violence".⁴
27. We acknowledge that simply extending the family violence provisions to all visas is impractical and inappropriate. We also acknowledge that not all women on temporary visas who experience family violence will want to remain in Australia permanently.
28. Accordingly, the Australian Government must take a range of measures to appropriately reform Australian immigration law.
29. The recommendations outlined below will ensure that women on a pathway to permanent residency or who have Australian citizen children who cannot be removed from Australia have an opportunity to remain in Australia, while giving women on other temporary visas the opportunity to access the support necessary to safely leave their relationship and prepare for a return to their home country.

⁴ Australian Law Reform Commission (2011) *Family Violence and Commonwealth Laws— Improving Legal Frameworks Final Report*, 30 November 2011, https://www.alrc.gov.au/wp-content/uploads/2019/08/whole_alrc_117.pdf

Recommendations

- 1) The Migration Regulations should be amended to:
 - a) Extend to the family violence provisions to:
 - Any person experiencing family violence on Prospective Marriage Visas (subclass 300) who does not marry their sponsor prior to relationship breakdown, and their children;
 - Any person experiencing family violence who has applied for a permanent visa onshore as a secondary applicant, and their children; and
 - Any person experiencing family violence who has applied for a family visa onshore, who is awaiting a decision, and their children.
 - b) Introduce a new subclass of temporary visas for any person experiencing family violence so there is time to access support necessary to feel safe without fear of removal from Australia.
 - c) Introduce another visa pathway for people on temporary visas that have Australian citizen or permanent resident children but are unable to leave Australia with their children.

Practical application of the family violence provisions

30. Before the Department considers whether family violence should be taken to have occurred, it must first assess the relationship between the visa applicant and their sponsor.
31. To meet the requirements for the grant of a partner visa, the Department must be satisfied that both parties have a mutual commitment to a shared life to the exclusion of all others and that the relationship is genuine and continuing.
32. In considering the relationship, the decision maker must have regard to:
 - the financial aspects of the relationship;
 - the nature of the household;
 - the social aspects of the relationship; and
 - the nature of the persons' commitment to each other.
33. This process requires the applicant to produce evidence of their relationship such as evidence of joint assets and liabilities, the sharing of day-to-day household expenses and responsibilities, the undertaking of joint social activities, the opinion of friends and family about the nature of the relationship and the degree of companionship and emotional support the couple give each other.
34. In IARC's experience, family violence rarely encompasses physical violence alone and may not involve physical violence at all. Most of our clients report non-physical forms of family violence such as controlling behaviour and financial abuse. Examples of the sorts of abuse IARC encounters daily includes denying independent access to bank accounts and/or the freedom to earn an income and restrictions on contact with people outside the perpetrator's family. Such abuse inevitably means there is great difficulty producing the necessary evidence to satisfy the requirement that the relationship was genuine and continuing.

35. Expectations surrounding required evidence need to be capable of capturing the nature of a violent relationship to ensure eligible women can access the family violence provisions in practice.

Case study 3

Diana met Mitchell in 2017 when they were both working on the same farm in rural NSW. They spent a year travelling around Australia together and decided that Diana move in with Mitchell and apply for a Partner visa so they could start a family.

While Diana was keen to work to contribute to the couple's finances, Mitchell told her he earned enough to support both of them and he wanted her to focus on starting a family. Diana wanted a baby too so agreed that she wouldn't look for a job for the time being.

When they were travelling Mitchell was social and outgoing but he was very different after Diana moved in. He didn't want to go out and socialise and they mostly stayed home. Mitchell wasn't close to his family and he told Diana that they were against their relationship and he didn't want to take her to family celebrations as it would be awkward.

Mitchell gave Diana an ATM card linked to his account but kept making excuses when she asked him about opening a joint account in her name too. He told her that he couldn't put her name on the utility bills or rent agreement because she wasn't working and wasn't a permanent resident. The ATM card was often declined when Diana tried to buy food for the home but as she didn't have access to the account she couldn't see why.

Frustrated with never having money to buy things she needed, Diana decided to start looking for a part time job. One evening she received a call from a man inviting her to a job interview. Mitchell demanded to know who the caller was. He accused Diana of having an affair and when she told him she had applied for a job he told her she made him feel inadequate as a partner. When Diana tried to calm him down, he punched her. A neighbour called the police and Mitchell was arrested and charged with assault. A few days later Diana found out she was pregnant.

Diana made an application under the family violence provisions but when she was asked to provide evidence of the couples shared finances and social life since the time of application, she was unable to find any documents.

36. To avoid victim/survivors of domestic violence being denied access to the family violence provisions because they have failed to meet the unrealistic evidence requirements required to establish a genuine relationship, the Regulations and Departmental policy should be amended so that the existence of family violence should be established *before* an assessment of whether a relationship is genuine and continuing is made.
37. Decision makers should also receive appropriate and regular training on family violence and be required to consider the nature of the claimed family violence when making an assessment on whether the relationship was 'genuine and continuing' prior to it ending. The existence of family violence (such as financial abuse or controlling behaviour) should not be the reason, or part of the reason, for refusing the visa application.

38. A further limitation of the family violence provisions is that abuse or violence from a sponsor's family will generally not be sufficient to satisfy the definition of family violence.⁵ This means that many woman subject to physical and non-physical forms of family violence such as dowry abuse by people other than their partner may be compelled to stay in those relationships when it is not safe to do so.

Case study 4

Maya and Paul were married in 2017 as part of a culturally arranged marriage organised by their families. In 2019, Maya was granted her Temporary Partner visa and moved to Australia to live with Paul, his parents, his brother and his brother's wife.

Maya was excited to settle into a new life in Australia and start a family with Paul. Before she moved to Australia, they spoke several times a day on Skype about their future plans. They wanted to buy a house and have three children. Paul was romantic and Maya felt lucky to have him in her life.

Life in Australia was not what Maya expected. Paul told Maya she had to get pregnant right away and became cold and distant when that didn't happen. His mother was cruel and made Maya cook and clean for hours every day and wouldn't let her go out other than with the family. If she wasn't happy with the work Maya did she would slap and verbally abuse her.

One night, Paul's father came into Maya's room while Paul was at work. He told Maya he wanted to have sex with her. When she refused, he slapped her in the face. Maya told Paul what happened and begged him to stop his parents from hurting her but he told her that it was their house and that they can do what they like. He told Maya that if she was able to get pregnant, they might treat her better.

A few days later, Paul's mother threw a pot of hot food at Maya as she wasn't happy with the way it was cooked. Maya was burnt and ran outside screaming for help. A neighbour called the police and arranged for Maya to be taken to hospital and then a refuge.

Maya made an application under the family violence provisions but her visa was refused because the violence she experienced was perpetrated by Paul's parents and not Paul.

Recommendations

- 2) The Migration Regulations and Departmental policy should be amended to:
 - a) require family violence to be determined before assessing for a genuine relationship;
 - b) ensure the evidence required to establishing a genuine and continuing relationship is capable of being reasonably provided in the context of a violent relationship; and
 - c) extend the family violence provisions to include violence perpetrated by a family member other than the sponsoring partner;
- 3) Decision makers should also receive appropriate and regular training on family violence and be required to consider the nature of the claimed family violence when making an assessment on whether the relationship was 'genuine and continuing' prior to it ending

⁵ See for example *Bhalla v Minister for Immigration and Border Protection* [2016] FCA 395.

Funding to community legal services

39. For many years, immigration advice and assistance for vulnerable migrants, including temporary visa holders experiencing family violence, was funded through the Immigration Advice and Application Assistance Scheme (the **IAAAS**). The IAAAS enabled temporary visa holders to access prompt, expert advice about their rights through community legal centres such as IARC and other eligible migration agents.
40. On 30 June 2018, the Australian Government ceased funding IAAAS for most categories of immigration assistance, including family violence services.
41. The termination of the IAAAS has had a significant impact on the scope and availability of services for women experiencing family violence. For IARC alone, the loss of IAAAS has meant a loss in revenue of approximately \$150,000 per year which has not been replaced by other government funding streams.
42. The necessary consequence of this reduction in funding means fewer services for women on temporary visas experiencing family violence and poorer outcomes. Since IAAAS was terminated, IARC has shifted focus from providing ongoing casework services to more limited, one-off assistance in family violence matters in order to ensure that as many women experiencing violence receive at least some assistance.⁶
43. Given the complexity of the evidentiary requirements in family violence matters (as discussed above) and the barriers that migrant women experiencing family violence face (such as language, isolation and limited understanding of the legal system), access to comprehensive, ongoing representation by experienced migration practitioners can be the difference between a positive outcome or the refusal of the visa.

Recommendations

- 4) The Australian Government should reinstate funding to the community legal centres and other legal service providers formerly allocated under the Immigration Advice and Application Assistance Scheme (IAAAS) to ensure that women applying for family violence provisions can access free legal representation.
- 5) The Australian, State and Territory Governments should provide additional specific funding to service providers including sexual, domestic and family violence, crisis accommodation, legal, migrant resource, settlement services, health and community organisations that people on temporary visas experiencing violence and their children are able to access.

⁶ Since IAAAS was withdrawn, IARC's casework services for family violence related matters have declined 72%.

Limited access to community support services

44. Temporary visas status precludes many women from being able to access support and services that may be otherwise available, such as Centrelink and housing.

Case study 5

Suzanne was born in New Zealand and has lived in Australia since 2003. She has been married to Richard, an Australian citizen since 2005. They have three children aged 7, 2 and 6 months.

As the holder of a Special Category visa, Suzanne didn't need to apply for a Partner visa to stay in Australia, although she and Richard talked about it so that she could one day become an Australian citizen like her children. When Richard lost his job, they decided they wouldn't spend the money they had saved for the visa application as they might need it to support themselves.

A few months ago, Richard was charged with family violence offences for assaulting Suzanne and their eldest daughter. Suzanne and the children were able to remain living in the family's rented home in regional NSW for a few weeks but as Suzanne could not keep up with rent payments they were evicted from the home.

Suzanne and the children stayed with friends for a few weeks and applied for housing but was refused as she is not a Permanent Resident. Suzanne is worried that if she is unable to find stable housing for her children, they might be taken away from her and she doesn't think they are safe with Richard.

45. The lack of access to critical support services leaves victim/survivors of family violence dependent on their abusive partner and impedes their ability to establish themselves after the end of their relationship. As a result, some women feel compelled to stay in violent relationships.
46. Australian governments of all levels must ensure that woman on temporary visas have access to services and support based on their safety needs, not their immigration status.

Recommendations

- 6) The Australian Government should exempt women who have experienced family violence and granted a permanent visa from the newly arrived resident's waiting period for full access to Centrelink.
- 7) The Australian Government should allow women on temporary visas who have experienced family violence access to Centrelink and Medicare while their visa is being processed.
- 8) The State and Territory governments should expand the eligibility of temporary accommodation, crisis accommodation, rental assistance and public housing to ensure that all women on temporary visas experiencing family violence have a safe place to live.

Concluding remarks

47. The recommendations contained within this report are not new and have been made to multiple previous inquiries examining the efficacy of immigration law and policy in protecting women on temporary visa from family violence. They reflect the views of countless practitioners and experts working in the field of domestic and family violence
48. Reforming the Migration Regulations and ensuring community support is accessible to women in violent relationships are both necessary actions to achieve the National Outcomes under the National Plan to Reduce Violence against Women and their Children 2010-2022. State and Territory Governments have also made similar commitments to eradicate family violence and the adoption of the recommendations contained within this submission would demonstrate tangible steps taken by governments to implementing their commitments.
49. We commend the National Advocacy Group's **Blueprint for Reform** to the Committee and request that you adopt our recommendations set out in this submission and the recommendations of the National Advocacy Group in full.
50. IARC is thankful for the Committee in taking the time to read this submission and would welcome the opportunity to address any questions that the Committee might have about our submission.

24 July 2020