



Immigration Advice
and Rights Centre

11 December 2023

Department of Communities and Justice
6 Parramatta Square
10 Darcy Street
Parramatta NSW 2124

Dear Department,

Review of NSW legal protections for victim-survivors of forced marriage

Thank you for the opportunity to provide submissions to the Department of Communities and Justice (the Department) on legal protections in New South Wales for victim-survivors of forced marriage.

Background

The Immigration Advice and Rights Centre (IARC) is the only specialist community legal centre in NSW that provides legal advice and assistance on all immigration and citizenship matters to people experiencing vulnerability. Our clients come from many diverse backgrounds and over a third require an interpreter.

IARC's work has a special focus on the intersection between immigration law and domestic, family and sexual (DFSV). Over the past four months alone, IARC has provided over 900 legal services to more than 200 victim-survivors of DFSV in NSW. This is almost double the number of legal services delivered over the same period last financial year. Within this cohort of victim-survivors of DFSV, several clients have described experiences of forced marriage. This anecdotal evidence is consistent with research, which has found that victims of forced marriage are vulnerable to DFSV, including being at increased risk of sexual violence.¹

Visa Status and AVOs

In IARC's experience, people on a temporary visa and those without a valid visa face additional barriers to obtaining protections against forced marriage under the Apprehended Violence Order (AVO) system due to their visa status.

A significant cohort of people on temporary visas or without valid visas do not have clear pathways to permanent residency in their own right and therefore do not have a clear pathway to remain safely in Australia. In some cases, accessing protections under AVOs or criminal charges against the perpetrator may itself directly impact the victim-survivor's eligibility for a permanent visa or to even their ability to remain temporarily in Australia. For example, victim-survivors on temporary visas who were granted their visa on the basis of being a member of the family unit of the perpetrator may be at risk of having their visa cancelled

¹ Asian Pacific Institute on Gender Based Violence, 'Forced Marriage' (online) <<https://www.api-gbv.org/about-gbv/types-of-gbv/forced-marriage/#:~:text=Forced%20marriage%20is%20gender%2Dbased,violence%20by%20husbands%20and%20in%2D>>



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by operation of law if the perpetrator’s visa is cancelled on the basis that the perpetrator is considered a risk to the safety of the community or an individual.² An AVO can be considered by the Department of Home Affairs as an indicator that an individual is a risk to safety and therefore relevant to the consideration of whether to cancel a visa.³

In other cases, the victim-survivor may be concerned that taking action against the perpetrator may cause the perpetrator to withdraw their sponsorship for a family visa. Currently, under the *Migration Act 1958* (Cth) and *Migration Regulations 1994* (Cth), only applicants for Partner visas and Dependent Child visas may still be eligible to be granted the visa without the sponsor, if they experienced family violence. Other family visas, including Child Visas and Orphan Relative visas, do not have protections for victim-survivors where the sponsor withdraws their sponsorship.

We acknowledge that there are two visas available under the Human Trafficking Visa Framework that aim to provide some protections to this cohort under immigration law.⁴ However, in practice, this protection is very limited and consequently does not provide sufficient assurances for victim-survivors with precarious visa statuses to feel comfortable to report to the police. Both visas are only available to victims who make an active contribution to a criminal investigation.⁵ This limitation has been rightly criticised because many victim-survivors are not willing or able to contribute to criminal investigations for a variety of reasons.⁶ For those who did access these protections from 1 January 2015 to 30 June 2021, 191 were granted a Bridging Visa F, while only 35 were granted a Referred Stay Visa.⁷ This is a concern given that the Bridging Visa F is not a substantive or permanent visa and does not offer a pathway for victim-survivors to remain in Australia in the long-term. Therefore, the Framework provides limited reassurance for victim-survivors to disclose concerns about forced marriage to police.

Whilst we acknowledge that State government agencies are not responsible for immigration law and policy, the State government can have a role to play in ensuring that people have access to reliable education and information about the intersect between the immigration system, forced marriage and the criminal justice system.

Recommendation 1: Develop resources and educational material regarding the intersect between the immigration system, forced marriage and the criminal justice system. This should be done in consultation with relevant stakeholders, including IARC.

² *Migration Act 1958* (Cth) ss116(1)(e), 140.

³ Policy guidelines for the Department of Home Affairs in relation to this discretion to cancel a visa states that “[a] visa holder may present a risk to the safety of an individual or individuals if the visa holder is the subject of an enforceable apprehended violence order (AVO) issued by a law enforcement agency or a court against a member of the Australian community, or there is evidence that the visa holder has been perpetrating family violence.” Department of Home Affairs, *Visa cancellation instructions > General visa cancellation powers (s109, s116, s128, s134B and s140)*, reissued on 30 October 2022. (Accessible by subscription to LEGEND.com, operated by the Department of Home Affairs).

⁴ These visas are the Bridging Visa F (subclass 060) and the Referred Stay Visa (subclass 852).

⁵ *Migration Regulations 1994* (Cth), reg. 2.07AK.

⁶ Joint Standing Committee on Foreign Affairs, Defence and Trade, *Hidden in Plain Sight – An Inquiry into establishing a Modern Slavery Act in Australia*, Canberra, December 2017, at 6.51. (Accessible: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/ModernSlavery/Final_report).

⁷ Freedom of Information request to the Department of Home Affairs, FA 21/06/01412, accessible at: <https://www.homeaffairs.gov.au/foi/files/2021/fa-210601412-document-released.PDF>.



Practice and procedures for AVOs – guidance for NSW police officers

While many clients have had positive interactions and received support from NSW Police, a significant number have reported concerns in relation to their treatment by police officers. These concerns include police officers not using an interpreter when needed and dismissing the victim-survivors fears for their safety.

In our experience, it appears that some police officers may not understand or may underestimate the impact that threats related to visa status can have on a victim-survivors sense of safety. As a result, we are concerned that these police officers may miss initial indicators of DFSV and forced marriage. In our experience, a number of clients first tell us about their concerns related to their visa status, due to the ongoing threats made by perpetrators. They only later disclose more details which indicate they were in a forced marriage situation and it can take a lot of time with a victim-survivor before they disclose this information.

A number of our clients have also been misidentified as the primary aggressor of DFSV. In some of these cases, the victim-survivor has told us that they did not contact the police for support, despite fears for their own safety, because they were concerned that this action could affect their own visa status. As a result, the police had no prior information to indicate that they were in fact the victim-survivor.

Some clients have indicated that police officers did not use or offer to use an interpreter when speaking with them. This includes clients who have been misidentified as the primary aggressor. In our experience, some clients may be able to converse in English on simple topics but require a professional and impartial interpreter to understand legal matters and detail their experiences of DFSV properly. We are concerned that while police officers have access to interpreters, these services are not used consistently when needed.

Recommendation 2: NSW Police officers should receive training on communicating in a culturally safe manner. NSW Police officers should be trained to recognise that reports of threats related to visa status, including threats to be taken out of Australia, may be an indicator of DFSV and risks related to forced marriage.

Recommendation 3: NSW Police Officers should receive training on how to use interpreters appropriately. Interpreters used by the NSW Police Force should undergo mandatory training on DFSV and forced marriage, to enable them to properly interpret terms used by police for non-English speakers.

Practice and procedures for AVOs – guidance in Court proceedings

A number of our clients have faced difficulties in obtaining a Final AVO in Court. Our clients have reported that during contested AVO hearings, the defendant has argued that the victim's claims are not credible because they are a temporary visa holder and are making false claims to try to get a visa. This argument overlooks the reality that many victim-survivors on temporary visas face after reporting to police. Many of our clients who are victim-survivors of DFSV are homeless and dependent on crisis services because they have previously been financially dependent on the perpetrator and in many cases cannot access Centrelink or social housing due to their visa status. Additionally, as noted above, a significant cohort of people on temporary visas or without valid visas do not have clear pathways to a permanent visa in their own right. Currently, only the Partner, Dependent Child and Global Talent visas have provisions specifically for the protection of victim-survivors of family violence.



The availability of arguments in AVO and criminal matters to attack the victim-survivor's credibility based solely on their visa status impedes the effectiveness of AVOs protecting victim-survivors on temporary visas.

Recommendation 4: NSW Courts, in consultation with relevant stakeholders, should develop a best practice guide for the justice sector when dealing with domestic violence offences and AVO matters where a party to the proceedings is a temporary visa holder.

Additional guidance – enabling access to independent legal advice

As noted above, in our experience, often one of the most pressing concerns for victim-survivors is that reporting the perpetrator may affect their own visa status. These concerns are a barrier to accessing protections under AVOs. In most cases, victim-survivors have told us that the perpetrators had frequently threatened that if they tried to report DFSV to the police, their visa would be cancelled, they would be removed from Australia and/or they would be separated from their children. A research survey conducted by Monash University in 2021 similarly found that women on temporary visa holders commonly experience these kinds of migration-related abuse.⁸

It is therefore important that victims-survivors who are living in forced marriage situations or at risk of forced marriage are told about and have access to independent, confidential and free specialist immigration advice from services, such as IARC. This will ensure that victim-survivors are empowered to make informed decisions about their safety.

Recommendation 5: NSW Police and other services who are likely to interact with victim-survivors suspected to be at risk of forced marriage or in forced marriage situations should be aware of services in NSW that can provide free, independent immigration advice.

Police and these other services should inform people of these services and facilitate access where they indicate concerns related to visa status.

Recommendation 6: Community legal centres specialising in immigration law, such as IARC, should be properly resourced to provide free legal advice and assistance to this cohort of victim-survivors.

⁸ Segrave, M. Wickes, R, and Keel, C. (2021) *Migrant and Refugee Women in Australia: The Safety and Security Survey*, Monash University.



Concluding Remarks

Temporary visa holders face complex barriers to receiving assistance and protections against forced marriage. Without addressing these barriers, it is unlikely that the legal protections in NSW will be effective in protecting temporary visa holders from forced marriage. A summary of our recommendations are as follows:

1. Develop resources and educational material on the intersection between the immigration system, forced marriage and the criminal justice system. This should be done in consultation with relevant stakeholders, including IARC.
2. NSW Police officers should receive training in communicating in a culturally safe manner. NSW Police officers should be trained to recognise that reports of threats related to visa status, including threats to be taken out of Australia, may be an indicator of DFSV and risk of forced marriage.
3. NSW Police Officers should receive training on how to use interpreters appropriately. Interpreters used by the NSW Police Force should undergo mandatory training on DFSV and forced marriage, to enable them to properly interpret terms used by police for non-English speakers.
4. NSW Courts, in consultation with relevant stakeholders, should develop a best practice guide for the justice sector when dealing with domestic violence offences and AVO matters where a party to proceedings is a temporary visa holder.
5. Police and other services who are likely to interact with victim-survivors suspected to be at risk of forced marriage or in forced marriage situations should be aware of services in NSW that can provide free, independent immigration advice. Police and these other services should inform people of these services and facilitate access where they indicate concerns related to visa status.
6. Community legal centres specialising in immigration law, such as IARC, should be properly resourced to provide free legal advice and assistance to temporary visa holders to ensure that they can make informed choices about their safety.

Please let us know if you require any further information.

Yours sincerely,

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