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IMMIGRATION LAW

ENHANCING CIVIL PROTECTIONS AND REMEDIES FOR FORCED MARRIAGE

Submission by Immigration Advice and Rights Centre

September 2024

INTRODUCTION

This submission recommends reforms to immigration law and policy to strengthen the civil protection framework outlined in the Consultation Paper. It also proposes measures around education and training for family and domestic violence services, immigration officials, police, and interpreters.

The Immigration Advice and Rights Centre (IARC) is a community legal centre (CLC) based in New South Wales. We provide free legal advice to people who are navigating Australia's immigration system including migrants, refugees, and people seeking asylum. IARC has a legal service dedicated to assisting victim-survivors of domestic, family and sexual violence (DFSV). Our team provides trauma-informed legal assistance; outreach programs at women's refuges; and information sessions for clients, community workers, and people supporting victim-survivors of DFSV.

IARC is the only CLC in NSW that advises on all immigration, refugee, and citizenship matters. As well as DFSV, we provide legal advice in relation to workplace exploitation, visa refusals and cancellations, Family visas, and Refugee and Humanitarian visas. IARC's vision is for Australia's immigration system to be fair, just, and accessible. We leverage our experience and expertise to influence positive change through law reform and community development.

We welcome this opportunity to respond to the Attorney-General's Department Consultation Paper on forced marriage. In the year 2023-24, IARC assisted over 400 victim-survivors of family and domestic violence. Within this cohort, we have had clients holding both temporary and permanent visas describe experiences of forced marriage.

IARC proposes reforms to immigration law and policy to give victim-survivors the confidence to access civil protections and remedies for forced marriage. Without these reforms, many people with precarious visa statuses will be reluctant to engage with civil protection frameworks. Temporary visa holders fear their visa being cancelled by the Department of Home Affairs, or withdrawn by their visa sponsor, particularly when their sponsor is their partner or other family member who instigated the marriage. People whose visas will soon expire, or have already

expired, are also unlikely to engage with civil protection frameworks, unless there are significant changes to immigration law and policy.

IARC further recommends greater training on forced marriage for family and domestic violence services, immigration officials, police, and interpreters. Educating these professionals on the intersection between the immigration system, forced marriage, and family violence, would help victim-survivors holding temporary and permanent visas escape forced marriages and access support.

BUILDING A SHARED UNDERSTANDING OF FORCED MARRIAGE AS A FORM OF FAMILY AND DOMESTIC VIOLENCE TO IMPROVE VICTIM-SURVIVORS' ACCESS TO FAMILY AND DOMESTIC VIOLENCE SERVICES

Recommendations

Consultation Question 3

Allow victim-survivors of forced marriage holding temporary visas to access the family violence provisions in the *Migration Regulations* to enhance recognition of forced marriage as a form of family and domestic violence.

Consultation Question 4

Family and domestic violence services require additional training and funding to ensure they consistently recognise forced marriage as a form of family and domestic violence.

Several IARC clients are victim-survivors of forced marriage. Some, like Rebecca (see case study on next page), were pressured by their parents to migrate to Australia to marry somebody here. Others were living in Australia before being exit-trafficked to be married, meaning they were sent overseas under the false promise of returning to Australia, only for the perpetrator(s) to conspire to prevent their return.

CASE STUDY:

REBECCA*

Rebecca grew up overseas with her parents. When she turned 18 years old, Rebecca's parents told her that she had to marry her cousin, an Australian citizen living in Sydney. Rebecca did not want to marry her cousin, but she was pressured into the marriage because her parents felt she would have a better life in Australia. Rebecca's parents said they would disown her if she did not honour their wishes.

After marrying her cousin overseas, Rebecca moved to Australia on a Provisional Partner (subclass 309) visa to live with him and his parents (Rebecca's aunt and uncle). Upon arrival, Rebecca experienced ongoing family and domestic violence. Rebecca's husband, along with her aunt and uncle, strictly controlled when she could leave the house and when she could use her phone. Her husband called her degrading names and sometimes, physically assaulted her, while his parents watched on.

Rebecca sought help from IARC because she was scared that if she spoke out about the violence, her husband would withdraw his sponsorship of her visa. That would force her to return to her family overseas and face being disowned. Rebecca hoped to access the family violence provisions in the *Migration Regulations 1994* (Cth), in order to leave her husband and remain safely in Australia. However, before the Department of Home Affairs could consider whether she had experienced family violence, it first had to consider whether she was in a genuine spousal relationship with her husband before the relationship ceased. As Rebecca was subject to a forced marriage and ongoing family violence, she faced significant difficulties in providing evidence of her relationship. The Department of Home Affairs considered refusing Rebecca's visa application because they could not be satisfied that her relationship met the definition of "spouse" under the *Migration Act 1958* (Cth).

*Name altered to protect client confidentiality

IARC strongly supports recognising forced marriage as a form of family and domestic violence. Victim-survivors face violence driven by inherent power imbalances. They are pressured, threatened, or deceived into marriage, and this controlling dynamic continues to define their relationship.

Consultation Question 3

To reinforce the integral link between forced marriage and family and domestic violence, we recommend immigration policy reform to better support victim-survivors holding temporary visas. Currently, people like Rebecca cannot reliably access the family violence provisions in the *Migration Regulations 1994* (Cth), which are intended to allow Partner visa applicants to leave abusive relationships and stay in Australia. This is because the Department of Home Affairs requires proof that the marriage was valid, and the relationship was genuine, *before* assessing family violence claims. However, forced marriages are inherently invalid marriages because at least one of the two parties did not consent. Unfortunately, some of our clients have had their Partner visa applications refused despite suffering family violence because the Department has not been convinced of the genuineness of their relationship, without regard to the context of family violence.

To remedy this issue, immigration policy should be updated to state that if Department of Home Affairs delegates are satisfied that family violence has occurred – noting that entering a forced marriage is a form of family violence – there should be no further and separate assessment of the genuineness of the relationship. This policy change would enable victim-survivors to disclose their experiences of forced marriage when applying or continuing with an application for Partner visas without risking their access to the family violence provisions.

Consultation Question 4

Family and domestic violence services require additional training to consistently recognise forced marriage as a form of family and domestic violence. This training should guide services to engage with victim-survivors in an inclusive and anti-racist manner.

Interpreters are essential to support victim-survivors with precarious visa statuses overcome language barriers. Frontline services should receive

additional training on how to effectively use interpreting services to communicate better with victim-survivors. They also require greater funding so that they can offer interpreters to victim-survivors who may require support in a range of languages.

Moreover, services must counter harmful myths and stereotypes that wrongly suggest forced marriage is confined to specific cultures or religions, thereby promoting an environment where all migrant communities feel safe and supported.

Additionally, services need education on how forced marriage can intersect with modern slavery. Victim-survivors are often subjected to servitude within their spouse's household, with control exerted by the spouse and extended family. In some cases, victims are also exit-trafficked out of Australia.

Lastly, family and domestic violence services need additional funding, not only to implement this training but also to provide specialised support for clients with unique needs. This is particularly important for temporary visa holders because many cannot access Centrelink and are especially reliant on these services as a result.

ENHANCING EDUCATION AND AWARENESS RAISING

Recommendation

Consultation Question 7

Department of Home Affairs delegates, the police, and interpreters require additional education on forced marriage.

Department of Home Affairs delegates, the police, and interpreters are all frontline workers that require additional education and training on forced marriage. Department delegates should receive mandatory training on the intersection between forced marriage and family violence, delivered regularly by specialist family and domestic violence services experienced in supporting victim-survivors of forced marriage. The training would be applicable to a range of Department delegates

because the issue of forced marriage arises in various migration contexts, including Protection visa applications and visa cancellation matters. Moreover, forced marriage should be understood as a relevant form of family violence when Department delegates make decisions on visa applications under the family violence provisions (as discussed above).

Department delegates should also receive training on coercive control, a core feature of family and domestic violence, and how it impacts on victim-survivors' visa statuses. One feature of coercive control is that perpetrators often control victim-survivors' visa applications over many years or sometimes, decades. When victim-survivors seek advice from IARC, the lack of clarity around their visa status means we must lodge a Freedom of Information (FOI) request with the Department of Home Affairs to obtain their visa history. This process can take months because insufficient resources are allocated to FOI requests. The Department should prioritise FOI requests where there is an indication of family and domestic violence.

Another feature of coercive control is that perpetrators try to abuse the immigration system to exert further control over victim-survivors. Departmental delegates should be guided to give little or no weight to allegations made by perpetrators of family and domestic violence (including perpetrators within forced marriage situations), when processing visa applications or cancellations. Such allegations should not be the basis to consider refusing a visa application or cancelling a visa that has been granted, nor should they be put to victim-survivors for comment, as responding to these allegations can be re-traumatising.

In addition, Department of Home Affairs delegates should receive greater training on handling situations when a Partner visa application is withdrawn by either party. In these instances, delegates should separately ask the applicant the reason for the withdrawal. Where family and domestic violence is disclosed (including a forced marriage), the applicant should be told to seek legal advice before the Delegate accepts the withdrawal. This measure would limit perpetrators' ability to exploit the immigration system and also reduce the risk of victim-survivors being coerced into abandoning civil protection orders, as discussed later in this submission.

The police also require additional education on forced marriage. Many IARC clients have engaged with NSW Police in order to obtain protections from family violence (including forced marriage) under the Apprehended Violence Order (AVO) system in New South Wales. While many clients report positive interactions with NSW Police, there are substantial concerns around police officers not using an interpreter when needed and dismissing victim-survivors' fears for their safety.

Some clients have indicated that police officers did not use or offer to use an interpreter when speaking with them. 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 family and domestic violence properly. As police officers have access to interpreters, these services should be used consistently when clients request them.

Some police officers also do not fully understand or may underestimate the impact of threats related to visa status on a victim-survivor's sense of safety and willingness to disclose details of family violence. In IARC's experience, a number of clients start by telling us about their concerns related to their visa status, due to ongoing threats made by perpetrators. Only later, once they feel more comfortable, they reveal further details which indicate they were in a forced marriage situation. It can take a lot of time with a victim-survivor before they disclose this information. Visa holders are often hesitant to share such information with police for fear it could jeopardise their visa status. Therefore, police officers should be trained to create a safe environment where victim-survivors feel comfortable discussing forced marriage.

Lastly, interpreters are essential to effectively support victim-survivors and overcome language barriers. However, in numerous cases, interpreters have not understood the nature of forced marriage, and family and domestic violence, and subsequently made victim-survivors uncomfortable and reluctant to continue to engage with services. Mandatory training for interpreters used by the Translating and Interpreting Service (TIS) and Multicultural NSW Language Services on forced marriage, and more broadly on family and domestic violence, is necessary to facilitate disclosures of forced marriage and trauma-informed support for victim-survivors. As noted above, front-line services also require funding to ensure access to

interpreters as needed, and training on how to effectively use interpreters.

STRENGTHENING CIVIL PROTECTIONS AND REMEDIES

Recommendations

Consultation Question 13

A significant risk and/or unintended consequence of the proposed civil protection orders is that victim-survivors may have their visas cancelled or their sponsorship withdrawn, forcing them to leave Australia. We offer three recommendations to address this gap in immigration law and policy:

- 1) For Partner visa applicants accessing the family violence provisions, Departmental policy should state that if delegates are convinced family violence has occurred, there should be no further and separate assessment of the genuineness of the relationship.
- 2) Expand access to the family violence provisions in the *Migration Regulations 1994* (Cth) to include all permanent visa applicants.
- 3) Introduce a new substantive temporary visa for victim-survivors of family and domestic violence.

Consultation Question 17

The risk of victim-survivors with precarious visa statuses being coerced into abandoning orders would be strongly reduced if the above recommendations were implemented.

Consultation Question 27

The threat of visa expiry is a significant barrier to people seeking civil protection orders. Giving people whose visas will soon expire and people whose visas have already expired proper visa pathways is the key to overcoming this barrier.

Consultation Question 13

The proposed civil protections framework in the Consultation Paper could substantially improve the lives of victim-survivors, helping them escape forced marriages. However, there are risks and unintended consequences for both temporary and permanent visa holders in forced marriages. People with precarious visa statuses will be reluctant to engage with civil protection frameworks if they believe such engagement will increase the risk of visa cancellation or the withdrawal of sponsorship. To ensure the new model functions effectively, these concerns must be addressed.

We propose three reforms to immigration law and policy to mitigate these risks. Our first suggestion, as already discussed, is that immigration policy must be updated for delegates making decisions on visa applications related to the family violence provisions. Specifically, if delegates are satisfied that family violence has occurred, there should be no further and separate assessment of the genuineness of the relationship. This policy change would enable victim-survivors to disclose their experiences of forced marriage without risking their access to the family violence provisions.

Our second proposal is that access to the family violence provisions in the *Migration Regulations 1994* (Cth) must be expanded to include all applicants for permanent visas. Presently, the family violence provisions are only available to Partner visa applicants. This means countless applicants for other kinds of permanent visas cannot escape forced marriage and other forms of family violence, and remain safely in Australia. This includes those who have pending applications where they are included as a member of the family unit of the perpetrator's application, or where they are sponsored by the perpetrator for a Family visa, such as a Child visa.

Our final proposal is that the Australian Government should introduce a new substantive temporary visa to allow victim-survivors of family and domestic violence (including forced marriage) to escape family violence and remain safely in Australia. This visa should be made available to a range of people with precarious visa statuses,

including those who cannot access the family violence provisions.

The new visa would protect visa holders from visa cancellation if they were subject to family violence. Visa holders in forced marriages may fear visa cancellation for two reasons. First, if they hold a temporary visa that was granted to them because they were included in the perpetrator's visa application, they risk consequential cancellation of the visa if the perpetrator's visa is cancelled (under s 140 of the *Migration Act 1958* (Cth)).¹ Under Departmental policy, an AVO can be an indicator that an individual is a risk to the safety of the community, and therefore, sufficient grounds to consider cancelling the perpetrator's visa under s 116 of the *Migration Act*.² Second, in reporting forced marriage, the victim-survivor might admit to breaching their visa conditions. For example, a person holding a Student (subclass 500) visa might reveal that they were unable to continue studies due to the impact of family violence on their mental health. Admitting to this breach of visa conditions might be grounds for the Department of Home Affairs to consider cancelling the person's visa.

To be effective, this new visa must apply to people in Australia *and* those exit-trafficked offshore. It should be valid for three years, with the possibility of extension, to allow time for victim-survivors to seek help and safety, and to address other matters, such as Family Court proceedings. There should be no cost to apply for the visa and there should be waivers for health check requirements, given such checks are often too expensive for victim-survivors. The visa should not have any restrictions on work or study, and should allow victim-survivors to access Medicare and social security support.

Crucially, the visa must offer a pathway to permanent residence and ultimately, Australian citizenship. Citizenship is especially important for victim-survivors aged 18 or older, as they cannot be protected from exit-trafficking through Court orders issued by the Federal Circuit and Family Court of Australia, unlike children under 18.³ Accordingly, they may need to access support from their nearest embassy overseas if they become the

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

² 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).

³ Federal Circuit and Family Court of Australia, *Children: Relocation, travel and the Hague Convention* (n.d.), retrieved September 18, 2024, from [Children: Relocation, travel and the Hague Convention | Federal Circuit and Family Court of Australia \(fcfcoa.gov.au\)](https://www.fcfcoa.gov.au/Children: Relocation, travel and the Hague Convention | Federal Circuit and Family Court of Australia (fcfcoa.gov.au)).

victim of exit-trafficking. Accessing this support is much harder without an Australian passport.

Further details on these proposed reforms to immigration law can be found in *Blueprint for Reform: Removing barriers to safety for victims/survivors of domestic and family violence who are on temporary visas*.⁴

Implementing the three reforms detailed above is crucial to protect victim-survivors with precarious visa statuses because the Protection visa framework is not suited for this purpose. There are three key reasons why the Protection visa framework cannot be relied upon. First, Department delegates assess Protection visa eligibility based on whether the applicant could suffer serious or significant harm in their home country if they were returned there, rather than focusing on past harm or ongoing harm the applicant may be experiencing in Australia. Second, the threshold for “serious or significant” harm is very high, and many victim-survivors come from countries generally considered safe by the Department. For instance, victim-survivors from the United Kingdom typically have a low chance of being granted a Protection visa, given country information tends to indicate that protection is available from serious or significant harm. Third, s 48A of the *Migration Act 1958* (Cth) prevents people from re-applying for a Protection visa. This can be problematic for victim-survivors where perpetrators have lodged Protection visa applications on behalf of victim-survivors without their knowledge. Obtaining permission to re-apply for a Protection visa requires requesting ministerial intervention, which is a time-consuming process that is entirely at the Minister’s discretion.

Consultation Question 17

The Consultation Paper rightly highlights the risk of victim-survivors being coerced into abandoning civil protection orders. This risk is heightened for people with precarious visa statuses because of the threat of visa cancellation or the withdrawal of sponsorship. Perpetrators also misleadingly promise to include victim-survivors in future visa applications, without any intention of delivering on the promise, as a form of coercive control. IARC has spoken to clients who have sadly remained in

unsafe relationships and family homes, and sought to dismiss AVO applications, due to these false promises.

Unless victim-survivors can apply for a visa or continue an existing visa application independently of their perpetrator(s), precarious visa status will remain a significant source of abuse. Implementing the reforms outlined above would greatly enhance the independence of people holding different visas and reduce the risk of them being coerced into abandoning civil protection orders.

Consultation Question 27

The threat of visa expiry is a significant barrier to people seeking civil protection orders. People whose visas are due to expire soon, or people whose visas have already expired, will be unlikely to engage with civil protection frameworks, unless there is a clear pathway to allow them to remain safely in Australia while pursuing these civil protections and to address the risk of exit-trafficking.

IARC’s client Rebecca has limited visa options. If Rebecca is to engage with civil protections, she needs reassurance that she can escape her abusive family home, and remain safely in Australia. Rebecca also fears being disowned by her parents back home, a risk that could foreseeably increase if she accessed civil protections. She needs certainty that she can safely stay in Australia while accessing these protections, which she currently lacks.

Rebecca, and other victim-survivors, cannot be confident that they can remain in Australia by accessing the existing Human Trafficking Visa Framework. This framework is highly limited and does not provide sufficient assurances for victim-survivors with precarious visa statuses to report to the police. Both visas that constitute the framework – the temporary, non-substantive Bridging Visa F, and the permanent Referred Stay visa – 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 due to the high risk of re-

⁴ 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 (2022), retrieved from [Blueprint for Reform | Immigration Advice and Rights Centre \(iarc.org.au\)](#).

⁵ *Migration Regulations 1994* (Cth), reg. 2.07AK; *Migration Regulations 1994* (Cth), Sch 1, item 1306.

traumatisation involved in these processes.⁶ For those who did access these protections from 1st January 2015 to 30th June 2021, 191 were granted a Bridging Visa F, while only 35 were granted a Referred Stay Visa.⁷

It is vital that a temporary substantive visa for victim-survivors of family violence (including forced marriage) is available to people with limited or no other visa options, and people whose visa has already expired. Obtaining this visa would grant these victim-survivors with a clear pathway to stay safely in Australia. This would allow people to confidently access civil protections without worrying about being removed from Australia because of their visa situation.

ADDITIONAL COMMENTS

- The list of potential applicants in the Consultation Paper is appropriately broad.
- The list of potential respondents is appropriately broad.

The list of potential applicants is appropriately broad

We welcome the consideration in the Consultation Paper of a broad list of potential applicants for civil protection orders. We are particularly encouraged by the inclusion of child protection agencies and specified community organisations, ensuring that both child and adult victim-survivors of forced

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⁶ Joint Standing Committee on Foreign Affairs, *Defence and Trade, Hidden in Plain Sight – An Inquiry into establishing a Modern Slavery Act in Australia*, (2017), Section 6.51. Retrieved from [Hidden in Plain Sight – Parliament of Australia \(aph.gov.au\)](https://aph.gov.au/Hidden-in-Plain-Sight-Parliament-of-Australia).

⁷ Freedom of Information request to the Department of Home Affairs, FA 21/06/01412. Retrieved from

marriage can access support without needing to engage law enforcement. Alternative options to the police are especially vital for people with precarious visa statuses, who often distrust law enforcement for various reasons, including as a result of repeated threats by perpetrators that the police will deport them, or poor experiences with law enforcement either in Australia or in their home country.

The list of potential respondents is appropriately broad

The list of respondents is also appropriately broad, recognising that forced marriage can be instigated by various actors within the family and wider community. In our experience, many clients endure abuse from multiple individuals. For example, Rebecca, whose story was shared earlier in this submission, was pressured into marriage by her parents, who live in her home country. When she moved to Australia, she was then subjected to family violence by both her spouse and his parents.

CONCLUSION

Enhancing civil protections and remedies for forced marriage could transform the lives of victim-survivors by providing them with a pathway to escape. However, to ensure the framework's effectiveness, it must address the specific vulnerabilities of both temporary and permanent visa holders, as outlined in this submission. Additionally, comprehensive training on forced marriage and its intersection with family and domestic violence should enable family violence services, immigration officials, the police, and interpreters to better support victim-survivors.

<https://www.homeaffairs.gov.au/foi/files/2021/fa-210601412-document-released.PDF>.