



Australian Women Against Violence Alliance

Hon. Peter Dutton MP
Minister for Immigration & Border Protection
Department of Immigration and Border Protection
Via online submission form
Date: 15 September 2017

Australian Women Against Violence Alliance

**Submission into the Public Consultation on Visa Simplification:
Transforming Australia's Visa System**

Thank-you for the opportunity to make a submission in response to the public consultation on visa simplification.

About the Australian Women Against Violence Alliance (AWAVA)

Australian Women Against Violence Alliance (AWAVA) is one of the six National Women's Alliances funded by the Australian Government to bring together women's organisations and individuals across Australia to share information, identify issues and contribute to solutions. AWAVA's focus is on responding to and preventing violence against women and their children. AWAVA's role is to ensure that women's voices and particularly marginalised women's voices are heard by Government, and to amplify the work of its member organisations and Friends and Supporters. AWAVA's members include organisations from every State and Territory in Australia, representing domestic and family violence services, sexual assault services, and women's legal services, as well as organisations representing Aboriginal and Torres Strait Islander women, young women, women educators, women in the sex industry and other groups. AWAVA's lead agency is the Women's Services Network (WESNET).

Table of Contents

1. Introduction	3
2. Summary of Recommendations.....	6
3. Existing Federal Policy Framework in Relation to Family Violence and Women from Culturally and Linguistically Diverse Backgrounds	8
3.1. National Plan to Reduce Violence against Women and the Commitment for Women from Culturally and Linguistically Diverse Backgrounds.....	8
3.2. Human Rights Obligations.....	9
4. Current Family Violence Provisions in the Area of Migration.....	9
5. Limitations of Family Violence Provisions and Areas for Improvement	10
5.1. Expanding the Definition of Family Violence in the Area of Migration	10
5.2. Evaluation of Genuineness of Relationships Prior to Family Violence	14
5.3. The Role of an Independent Expert	15
5.4. Ensure the Confidentiality of Clinical Notes for Women Seeking Access to Family Violence Exemption Provisions.....	17
5.5. Training on Family Violence and Trauma for Decision Makers	17
6. Visa Categories and Family Violence Provisions	18
6.1. Prospective Marriage Visa Holders	18
6.2. Women Seeking Asylum	19
6.2.1. Women on TPV & SHEVs.....	19
6.2.2. Women who Arrived by Plane Seeking Asylum	20
6.2.3. Women at Risk Visa (Subclass 204).....	20
6.2.4. Complementary Protection.....	20
6.3. International Student Visa Holders.....	21
6.4. Parent Visas.....	21
7. Impact of Visa Status on Access to Services	22
7.1. Access to Crisis Accommodation	25
7.2. Access to Social Housing	25
7.3. Pensions and Disability Support.....	27
7.4. Access to Interpreters	27
8. Human Trafficking Visa Framework (HTVF)	28
9. Response to the Market Consultation Paper on Engaging Technology and Innovation within Visa Processes.....	29
10. Closing Remarks	30

1. Introduction

It is widely recognised that family violence is an endemic problem in Australian society. In 2012 the Australian Bureau of Statistics ('ABS') reported that almost two million Australians have experienced partner violence since the age of 15, while just over one million Australians have experienced physical or sexual violence from another family member.¹ Australian police deal with 5,000 family violence matters on average every week, which averages to one matter every two minutes.² It has been recognised that family violence is a gendered crime with the vast majority of family violence perpetrated against women, usually by a man.³

In 2012 the ABS reported that 34% of women have experienced physical violence since reaching the age of 15.⁴ Of those women, 62% had experienced violence by a male in their own home.⁵ One in six women has experienced physical or sexual violence from a current or former partner, compared to one in 19 men.⁶

Australia's National Research Organisation for Women's Safety (ANROWS) has found that intimate partner violence is the leading risk factor for death, disability and illness in women aged 18 to 44 years.⁷ On average, every week in Australia one woman is killed by her current or former partner.⁸

We are referring to family violence as a gendered crime in which women are the majority of victim/survivors and men are the perpetrators.⁹ For the purposes of this submission we are focusing on women predominantly as being at risk and vulnerable within the system, yet at the same time recognising that men can be victims too.

Despite high rates of violence against women, the statistic on the prevalence of violence against women from culturally and linguistically diverse (CALD) backgrounds is still a gap. Australian research in recent years reveals the depth and severity of the problems CALD women face. National Domestic and Family Violence Bench Book¹⁰ states that there is no single factor that puts CALD women at a greater risk of both experiencing abuse and being less able to seek redress for it. Rather, a raft of factors may intersect, each compounding the other. Overall, CALD women report similar forms of domestic and family violence to other women. However, the impact of violence is exacerbated by the stressors of the migration experience generally, and the constraints of visa status, which may increase

¹ Australian Bureau of Statistics, Personal Safety Survey, Australia, 2012 November 2013 cat no 4906.0 <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4906.0Chapter7002012> ('ABS'); Australian Institute of Health and Welfare, Australia's Welfare 2015 Australia's Welfare Series No 12 Cat no AUS 189 <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129552312>

² Clare Blumer, 'Australian police deal with domestic violence every two minutes' ABC News 21 April 2016 <http://www.abc.net.au/news/2016-04-21/domestic-violence/7341716>

³ See eg ABS, Crime victimisation, Australia, 2012–13 cat no 4530.0 December 2014 <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4530.0main+features100022012-13>.

⁴ ABS, Personal Safety Survey, Australia, 2012, above n 11.

⁵ Ibid.

⁶ ANROWS, Rates of Violence against Women and Men <https://anrows.org.au/sites/default/files/Violence-Against-Australian-Women-Key-Statistics.pdf>; ABS, Personal Safety Survey, Australia, 2012 above n 11.

⁷ See ANROWS, Intimate partner violence contributes highest health risk to women aged 18 to 44 <https://anrows.org.au/resources/media/media-releases/intimate-partner-violence-contributes-highest-health-risk-women-aged>

⁸ Australian Human Rights Commission, About Family and Domestic Violence <https://www.humanrights.gov.au/our-work/family-and-domestic-violence/about-family-and-domestic-violence#fn1> citing Jack Dearden and Warwick Jones, Homicide in Australia: 2006–07 National Homicide Monitoring Program Annual Report Monitoring Report No 1 (Australian Institute of Criminology, January 2009) 2.

⁹ Royal Commission into Family Violence, in the terms of reference states: "Family violence is the most pervasive form of violence perpetrated against women in Victoria. While both men and women can be perpetrators or victims of family violence, overwhelmingly the majority of perpetrators are men and victims are women and children".

¹⁰ National Domestic and Family Violence Bench Book <http://dfvbenchbook.aija.org.au/vulnerable-groups/people-from-culturally-and-linguistically-diverse-backgrounds/>

women's dependency on perpetrators for economic security and residency rights. Perpetrators in these circumstances are able to use misinformation about women's visa status and threats of deportation and the removal of children as further means of control. For these reasons, CALD women tend to endure domestic and family violence for prolonged periods before seeking help and, as a consequence, risk negative physical and mental health effects. CALD women are also generally highly motivated to resolve domestic and family violence without ending relationships and preserving the family unit, for a range of reasons including immigration concerns and family and community pressures.¹¹

The research undertaken by the Victorian based organisation InTouch identified that CALD women experience barriers to the justice system on two levels:

- (a) firstly, barriers they face when they access the justice system (this includes a misunderstanding of the concept of family violence; a lack of information about legal rights; the fear of social isolation; visa dependency issues); and
- (b) secondly, the barriers they face going through the justice and support systems like barriers to engage with the police; failure to utilise interpreters and lack of interpreters' training across the systems; underreporting of sexual abuse; unsympathetic police attitudes; insufficient information; barriers to court processes and legal help; lack of cultural awareness across justice and support systems.¹²

Research indicates that whilst cultural origin is not a predictor of a capacity for violence¹³, the perpetration of domestic and family violence in the CALD context should be considered having regard to surrounding circumstances and factors, including: the impact of protracted stays in refugee camps and related experiences of high levels of tension and violence¹⁴; the effects of isolation, unemployment, trauma, alienation and cultural change; and cultural communities' expectations of conformity with cultural norms and traditional gender roles.¹⁵

On the other hand, Borges (2017) argues that the practice of women moving across international borders for marriage remains popular, and in Australia and other former British colonies numbers remain on the rise.¹⁶ In the 2014-2015 period, the Family stream outcome for 2015-16 was 57,400 places (30.2 per cent of the total migration programme outcome) out of which 47,825 partner visas were issued. Partner visa comprise 83.3% of all family migration and 30.2% of all migration to Australia.¹⁷

While migration regulations for partner visa have been subject to change overtime, "often they hold some of the early assumptions of migrant women as the property or responsibility of their sponsors

¹¹ Vaughan, Cathy, et al, '[Promoting Community-Led Responses to Violence against Immigrant and Refugee Women in Metropolitan and Regional Australia: The Aspire Project](#)' (State of Knowledge Paper 7, Australia's National Research Organisation for Women's Safety Landscapes, October 2015).

¹² inTouch Multicultural Centre Against Family Violence (2015) Submission to the Royal Commission into Family Violence.

¹³ Mederos, Fernando, Accountability and Connection with Abusive Men: A New Child Protection Response to Increasing Family Safety (Family Violence Prevention Fund (US), 2004).

¹⁴ Pittaway, Eileen, and Rebecca Eckert, 'Domestic Violence, Refugees and Prior Experiences of Sexual Violence: Factors Affecting Therapeutic and Support Service Provision' in Zannettino, Lana, et al (eds), Improving Responses to Refugees with Backgrounds of Multiple Trauma: Pointers for Practitioners in Domestic and Family Violence, Sexual Assault and Settlement Services (Practice Monograph 1, Australian Domestic & Family Violence Clearinghouse, 2013).

¹⁵ Rees, Susan and Bob Pease, Refugee Settlement, Safety and Wellbeing: Exploring Domestic and Family Violence in Refugee Communities (VicHealth, 2006).

¹⁶ Ana Borges Jelinic (2017) Immigration and Domestic Violence: The Impact of Law on Women's Wellbeing In Australia. Conference presentation, presented on 31 July at the Evidence for Equity: Multicultural Women's Reproductive and Sexual Health Conference, 31 July - 1 August 2017, Brisbane.

¹⁷ Department of Immigration and Border Protection (2016) 2015-16 Migration Programme Report

and therefore, as people with limited rights in general and citizenship rights in particular”.¹⁸ Incidences of domestic violence could be explained due to a portion of these marriages being based on men's desire for a submissive wife with more traditional values and men's expectations that such women may be found in a nation other than their own¹⁹. This is particularly true for men from wealthy developed countries, like Australia.²⁰ Partners Survey 2012 indicated that 22% of all family stream applicants were South Asian women brought to Australia by Australian men of not South Asian origin. This number comprised the largest proportion by origin of all family stream applicants.²¹

A Freedom of Information (FOI) request²² to release ‘the total number of claims made by female partner visa applicants on the basis of a non-judicially determined claim of family violence (under regulation 1.23(8) or 1.23(9) in each year between 2000 and 2016’ indicated that in 2015-2016 there were 223 claims with non-judicial evidence, 172 with judicial and 64 claims did not have a type of evidence recorded. The total number of 459 domestic violence claims made by female applicants (for partner visa applications, subclasses 802, 801 and 100) constituted less than 1% from the total number of partner visa grants for the same period²³.

Small numbers of use of family violence provisions compared to the rate of family violence statistically experienced by women in Australia including on Partner Visas further unpacks women's disadvantage within the justice systems and highlights chronic underreporting of violence against women. As indicated above, visa dependency issues, isolation, lack of information, fear of deportation or visa cancellation²⁴, fear engaging with the police or other authorities may force women to remain in the abusive relationship. Visa status is often used as another tool of control by their abusers who threaten to report women to the DIBP as not genuine applicants who will be deported.

Women survivors of domestic violence dealing with the Department of Immigration and Border Protection often describe an experience of being re-traumatised by the process.²⁵ Women have stated that they feel judged, distrusted and evaluated while their abusers are free.²⁶

The following submission aims to answer the consultation question of needed considerations when simplifying the visa system namely retaining, improving and extending family violence provisions.

¹⁸ Ana Borges Jelinic (2017) Immigration and Domestic Violence: The Impact of Law on Women's Wellbeing In Australia. Conference presentation, presented on 31 July at the Evidence for Equity: Multicultural Women's Reproductive and Sexual Health Conference, 31 July - 1 August 2017, Brisbane.

¹⁹ See: Orloff & Sarangapani (2007) Governmental and Industry Roles and Responsibilities with Regard to International Marriage Brokers: Equalising the Balance of Power Between Foreign Fiancés and Spouses. *Violence Against Women* 13 (469); Lindee K. (2007) Love, Honor, or Control: Domestic Violence, Trafficking and the Question of How to Regulate the Mail-Order Bride Industry. *Columbia Journal of Gender and Law* 16(2); Menjivar C., Salcido (2002) Immigrant Women and Domestic Violence: Common Experiences in Different Countries. *Sage Publications* 16(6).

²⁰ Menjivar C., Salcido (2002) Immigrant Women and Domestic Violence: Common Experiences in Different Countries. *Sage Publications* 16(6).

²¹ McDonald P. (2013) The role of family migration in Australia's permanent migration program. Policy Discussion Paper. Report to the Department of Immigration and Citizenship.

²² Department of Immigration and Border Protection (2017) Decision Record, FOI Request FA 17/01/00878 File Number ADF2017/7575, accessed through 2017 FOI Disclosure Logs on August 22, 2017

²³ Department of Immigration and Border Protection (2017) Documents Release, FOI Request FA 17/01/00878 File Number ADF2017/7575. Partner Visa Applications (subclasses 820, 801, 100) Domestic Violence Claims Made in Period 01 July 2005 to the 30 June 2016 By Gender and Judicial Involvement - Primary Applicants Only Source: Department of Immigration and Border Protection, 2017 (BE10739.01). accessed through 2017 FOI Disclosure Logs on August 22, 2017

²⁴ Judicial Council on Cultural Diversity (2016) The Path to Justice: Migrant and Refugee Women's Experience of the Courts (A report for the Judicial Council on Cultural Diversity)

²⁵ See: Cavallaro, Lisa, 'I Lived in Fear because I Knew Nothing': Barriers to the Justice System Faced by CALD Women Experiencing Family Violence (InTouch Multicultural Centre Against Family Violence, Victoria Law Foundation, 2010).

²⁶ See: Ammar, N. H., Orloff, L. E., Dutton, M. A., & Hass, G. A. (2012). Battered immigrant women in the United States and protection orders: An exploratory research. *Criminal Justice Review*, 37(3), 337-359; Ghafournia, N. (2011). Battered at home, played down in policy: Migrant women and domestic violence in Australia. *Aggression and Violent Behavior*, 16(3), 207-213.

We aim to provide an analysis of the current state of family violence provisions and point to the areas that need to be considered regardless of the future form of the visa system.

2. Summary of Recommendations

Recommendation 1

That any future changes to the visa system are made to comply with the Commonwealth commitment to reduce violence against women and with Australia's international human rights obligations, in particular Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), in particular the rights that relate to gender-based violence.

Recommendation 2

The Australian Government broadens the definition of family violence in the Migration Regulations 1994 (Cth) so that it is consistent with the Family Law Act 1975 (Cth) and the National Domestic and Family Violence Bench Book.

Recommendation 3

That the Australian Government amends the Migration Regulations 1994 (Cth) and extends the definition of family violence as violence committed not only by a sponsor but their extended family members.

Recommendation 4

That the Australian Government repeals relevant provisions of the Migration Regulations 1994 (Cth) requiring that, the violence, or part of the violence must have occurred while the married or de facto relationship existed between the alleged perpetrator and the alleged victim.

Recommendation 5

That the evaluation of the genuineness of the relationship does not precede or take place in isolation from consideration of family violence claims.

Recommendation 6

That independent experts are trained in family violence according to the Australian Standards of Practice for Family Assessments and Reporting.

Recommendation 7

That the confidentiality of clinical notes for women seeking access to family violence exemption provisions is ensured.

Recommendation 8

That the relevant decision makers undertake extensive training on family violence, trauma-informed practice and cultural competency according to standards outlines by the National Domestic and Family Violence Bench Book.

Recommendation 9

That the Australian Government amends the Migration Regulations 1994 (Cth) to allow Prospective Marriage (Subclass 300) visa holders to have access to the family violence exception in cases of family violence prior to marrying a sponsor.

Recommendation 10

That the Australian Government extends complementary protection to women who suffered family violence and are unable to return to their countries of origin because of the relationship breakdown and potential repercussions.

Recommendation 11

That the Australian Government amends the Migration Regulations 1994 (Cth) to allow all temporary visa holders or those ones on visas with assurance of support to have access to the family violence exception in cases of family violence.

Recommendation 12

That the Australian Government adopts the recommendations made by the Australian Law Reform Commission (ALRC) in its 2011 report, Family Violence and Commonwealth Laws – Improving Legal Frameworks, in relation to migration law.

Recommendation 13

That the Australian Government considers waiving visa costs or introducing significant concessions for women who were victims of family violence to allow them to apply for their own visa as the current costs are prohibitive for women who often have no income.

Recommendation 14

That the Family Safety Pack are given not only to permanent visa holders but extended to all other visa categories including temporary visas.

Recommendation 15

That the Immigration policy must remove any obstacles to reporting violence and seeking help for family violence with assurances that women and children will not risk being deported or criminalised if they disclose violence to government, justice or community services.

Recommendation 16

That the Commonwealth government de-links access to the Support for Trafficked People Program from compliance with criminal investigations.

Recommendation 17

That the Commonwealth government facilitates and expedites family reunification for victims of trafficking, slavery and slavery-like offences.

Recommendation 18

That the Australian Government ensures that women seeking to escape violence are entitled to crisis payments and access to services regardless of their visa status (including allowing time to make arrangements to leave Australia if necessary but still granting access to services).

Recommendation 19

That the Australian Government improves collaboration and communication with other agencies (like Centrelink and/or Medicare) to ensure that women have equal access to services and justice regardless of their visa status.

Recommendation 20

That the Australian Government ensures access to free independent interpreters to all disadvantaged populations via appropriate funding of interpreter services to community organisations in the areas of family violence, migrations, sexual assault support services, multicultural services and others.

Recommendation 21

That the Australian Government adopts the Recommended National Standards for Working with Interpreters in Courts and Tribunals prepared by the Judicial Council on Cultural Diversity across courts, tribunals, judicial officers, interpreters and members of the legal profession.

3. Existing Federal Policy Framework in Relation to Family Violence and Women from Culturally and Linguistically Diverse Backgrounds

3.1. National Plan to Reduce Violence against Women and the Commitment for Women from Culturally and Linguistically Diverse Backgrounds.

The National Plan to Reduce Violence against Women and their Children 2010-2022 provides the current framework of action by the Commonwealth, state and territory governments to reduce violence against women and their children. The National Plan notes that violence against women crosses all races and cultures, and acknowledges that some women are at higher risk. It makes a further commitment to diversity, stating: "... policy solutions to address domestic violence and sexual assault must take into account the diverse backgrounds and needs of women and their children ... [and] be relevant to all Australians irrespective of their age, sex, sexual orientation, race, culture, disability, religious belief, faith, linguistic background or location" (Council of Australian Governments, 2011, p. 11).

The National Plan is to be implemented under four successive action plans, with the Third Action Plan currently in operation. The evaluation of the Second Action Plan indicated that despite the commitment to reduce violence against women from culturally and linguistically diverse backgrounds in particular, the needs of these groups have not been met. Thus, building on activities of the previous two action plans, the Third Action Plan (to be implemented 2016-2019) commits to meeting the needs of CALD women and reducing the rates of violence by:

- Supporting vulnerable women recovering from violence and assist them to rebuild their independence.
- Developing appropriate visa arrangements for temporary residents experiencing violence.²⁷

The Third Action Plan also outlines a strong commitment to:

3.8: Ensuring that migration rules and eligibility requirements for support services do not disempower victims of violence or discourage them from leaving violent relationships.

3.8(a) Developing appropriate visa arrangements for temporary residents who are experiencing violence.

3.8(b) Revising eligibility requirements to enable more victims of violence to access support. Services.

3.8(c) Working with service providers to improve access of temporary residents to available support services.²⁸

We also welcome the development of the Family Safety Pack that emerged as the key initiative of the Second Action Plan of the National Plan.

²⁷ The Third Action Plan of the National Plan to Reduce Violence Against Women and their Children https://www.dss.gov.au/sites/default/files/documents/10_2016/third_action_plan.pdf ; Department of Social Services (2016) Fact Sheet: How the Third Action Plan Supports Culturally and Linguistically Diverse Women and their Children https://www.dss.gov.au/sites/default/files/documents/10_2016/fact_sheet_on_how_the_third_action_plan_supports_culturally_and_linguistically_diverse_women_and_their_children.pdf

²⁸ The Third Action Plan of the National Plan to Reduce Violence Against Women and their Children. Action 3.8. https://www.dss.gov.au/sites/default/files/documents/10_2016/third_action_plan.pdf

3.2. Human Rights Obligations

Given that Australia is a signatory to international treaties²⁹ aimed to protect human rights, any changes to the visa system must be consistent with upholding human rights. In the context of violence against women, it is imperative that changes to visa system reflect both the national commitment to reduce violence against women, and honour the obligations under the Convention on the Elimination of all Forms of Violence against Women (CEDAW).

We have previously reiterated the need to correspond with the international human rights obligations in our 2016 submission into Migration Amendment Bill.³⁰

Recommendation 1

That any future changes to the visa system are made to comply with the Commonwealth commitment to reduce violence against women and with Australia's international human rights obligations, in particular Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), in particular the rights that relate to gender-based violence.

4. Current Family Violence Provisions in the Area of Migration

Under the *Migration Regulations 1994* (Cth), the partner of an Australian citizen or primary applicant for permanent residency may be granted permanent residency notwithstanding the fact that her relationship has broken down, if she can prove that she and/or her dependents have been victims of family violence, and that she had a genuine relationship at the time of the violence. The violence must have been committed by her spouse and while still in a relationship.

Applicants are required to provide either judicial evidence (in conjunction with the Family Law Act, a record of the perpetrator's conviction or an intervention order) or acceptable non-judicial evidence (a statutory declaration and at least two documents from the list of evidence specified in the legislative instrument).³¹ In instances where non-judicially determined evidence is provided, an applicant will be referred to an independent expert who will assess that evidence. We review the role of independent experts in more detail in the section 5.3. of this submission. While we support the existing process of allowing options for providing non-judicial evidence of the inflicted violence in order to access family violence provisions, it is important not to disadvantage women based on their ways of accessing justice. Often women are scared to seek formal measures against alleged perpetrators fearing further escalation of violence or deportation. All acceptable types of evidence provided by applicants should be considered as equal in establishing the truthfulness of their claims.

In 2016 the Department of Immigration and Border Protection issued new sponsor requirements for Partner and Prospective Marriage visa applications.³² Sponsors will be required to provide police checks and give consent to disclose any committed criminal offenses to applicants. Visa applications can be refused in cases of significant criminal records.

Under the current Immigration Advice and Application Assistance Scheme (IAAAS), if women are included under the eligibility criteria, they may be able to use appointed IAAAS providers to obtain free legal advice and representation. We believe that access to free legal services must be ensured for

²⁹ Australian Human Rights Commission. Fact sheet 7: Australia and Human Rights Treaties

<https://www.humanrights.gov.au/human-rights-explained-fact-sheet-7australia-and-human-rights-treaties>

³⁰ Australian Women Against Violence Alliance (2016) Submission on Migration Amendment (Family Violence and Other Measures) Bill 2016. Available at <http://awava.org.au/2016/11/01/submissions/submission-migration-amendment-family-violence-measures-bill-2016-04-october-2016>

³¹ Department of Immigration and Border Protection. Family Violence Provisions Fact Sheet

<http://www.border.gov.au/about/corporate/information/fact-sheets/38domestic#d>

³² Department of Immigration and Border Protection. New sponsor requirements for Partner and Prospective Marriage visa applications <http://www.border.gov.au/Trav/Brin/sponsor-requirements>

victims/survivors of family violence in any existing or new changes to the visa systems and assistance schemes.

While we support the current process allowing to access family violence provisions, there are (a number of critical gaps for consideration by the Department. Thus, we urge the Department of Immigration and Border Protection in the process of simplifying the visa system to consider the following recommendations, and to ensure that victim/survivors of domestic and family violence are treated with procedural fairness and are given equal pathways to obtain justice and access to services irrespective of their visa status.

5. Limitations of Family Violence Provisions and Areas for Improvement

The ASPIRE report produced by ANROWS states that while permanent immigrants have an ambiguous relationship to welfare provision, temporary immigrants are expected to pay their own way.³³ With only a limited number of visa categories where family violence provisions apply, many women fall out and do not have equal access to justice in situations of family violence.

5.1. Expanding the Definition of Family Violence in the Area of Migration

Family violence in the DIBP fact sheet is defined as follows³⁴:

'conduct, whether actual or threatened, towards:

- *the alleged victim*
- *a member of the family unit of the alleged victim*
- *a member of the family unit of the alleged perpetrator*
- *the property of the alleged victim*
- *the property of a member of the family unit of the alleged victim*
- *the property of a member of the family unit of the alleged perpetrator*

that causes the alleged victim to reasonably fear for, or to be reasonably apprehensive about, his or her own wellbeing or safety.'

Relevant family violence is not limited to physical harm. It may also include other forms of abuse such as psychological and/or financial abuse, which is consistent with the above definition.

The current definition as it stands is problematic as it does not address comprehensively all types of conducts that constitute family violence, but also does not foresee the possibility of family unit of the sponsor to be alleged perpetrators.³⁵

We would like to highlight the importance of drawing on feminist approaches in conceptualisation of violence against women. The use of a feminist approach ensures that violence against women, including sexual violence, is understood in terms of power dynamics and social structures, rather than treated as purely individual experiences. A feminist framework locates violence against women and

³³ Vaughan, Cathy, et al, '[Promoting Community-Led Responses to Violence against Immigrant and Refugee Women in Metropolitan and Regional Australia: The Aspire Project](#)' (State of Knowledge Paper 7, Australia's National Research Organisation for Women's Safety Landscapes, October 2015).

³⁴ Department of Immigration and Border Protection. Fact Sheet. Family Violence Provisions <http://www.border.gov.au/about/corporate/information/fact-sheets/38domestic>

³⁵ inTouch reports many instances in which mothers-, fathers-, sisters- and brothers-in-law have engaged in the ongoing physical, sexual, emotional, social and financial abuse of CALD women and their children. inTouch Multicultural Centre Against Family Violence (2015) Submission to the Royal Commission into Family Violence. (Recommendation 11)

children as occurring within a patriarchal society where male dominance and privilege are normalised.³⁶

We believe that the definition of family violence within migration should follow the definition of family violence as provided in the Family Law Act 1975 (Cth)³⁷:

Family violence means violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the family member), or causes the family member to be fearful.

Examples of behaviour that may constitute family violence include (but are not limited to):

- *an assault; or*
- *a sexual assault or other sexually abusive behaviour; or*
- *stalking; or*
- *repeated derogatory taunts; or*
- *intentionally damaging or destroying property; or*
- *intentionally causing death or injury to an animal; or*
- *unreasonably denying the family member the financial autonomy that he or she would otherwise have had; or*
- *unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or his or her child, at a time when the family member is entirely or predominantly dependent on the person for financial support; or*
- *preventing the family member from making or keeping connections with his or her family, friends or culture; or*
- *unlawfully depriving the family member, or any member of the family member's family, of his or her liberty.*

We also recommend to include the following forms of abuse that constitute family violence to the definition:

(a) Reproductive coercion

The term reproductive coercion is used to define a range of male partner pregnancy-controlling behaviours. These behaviours can include birth control sabotage (where contraception is deliberately thrown away or tampered with), threats and use of physical violence if a woman insists on condoms or other forms of contraception, emotional blackmail coercing a woman to have sex or to fall pregnant, or to have an abortion as a sign of her love and fidelity, as well as forced sex and rape.³⁸

Brisbane-based non-for-profit organisation Children by Choice states that women from culturally and linguistically diverse backgrounds are over-represented among women subjected to reproductive coercion, with up to one in five CALD contacts reporting this form of abuse.³⁹

(b) Technology-facilitated abuse

36 Australian Women Against Violence Alliance (2016) Policy Brief The role of specialist women's services in Australia's response to violence against women and their children <http://awava.org.au/2016/04/07/research/role-specialist-womens-services-australias-response-violence-women-children>

³⁷ Family Law Act 1975 - Sect 4ab http://www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s4ab.html

³⁸ E Miller, M Decker, H McCauley, D Tancredi, R Levenson, J Waldman, P Schoenwald, J Silverman, 'Pregnancy Coercion, Intimate Partner Violence and Unintended Pregnancy' (2010) 81 Contraception 316.

³⁹ Children by Choice Assoc Inc (2014) Domestic violence in Australia. Submission to the Finance and Public Administration References committee. Available at <https://www.childrenbychoice.org.au/factsandfigures/reproductivecoercion>

Research has found that this violence, including the non-consensual sharing of intimate images, or the threat of sharing such images, can traumatise and isolate victims and constitutes a major barrier to the full enjoyment of social life and autonomy.⁴⁰

(c) Cultural and spiritual abuse

The National Domestic and Family Violence Bench Book⁴¹ drawing on the Australian and international research indicates the need to recognise spiritual and cultural abuse as a form of domestic and family violence that may be part of a broader and complex pattern of behaviours experienced by a victim.⁴²

Spiritual and cultural abuse are means by which a perpetrator can exercise dominance, control or coercion over a victim who is especially vulnerable due to their spirituality or cultural identity. Behaviours may include any form of domestic and family violence and may involve the perpetrator (but are not limited to the examples provided below):⁴³

- belittling the victim's spiritual or cultural worth, beliefs or practices;
- denying the victim access to their spiritual or cultural community;
- preventing the victim from wearing clothing prescribed by spiritual or cultural practices;
- asserting his entitlement to a dowry from the victim's family, or punishing the victim or her family for what is claimed to be an insufficient dowry;
- forcing the victim to undergo partial or total removal of her external genitalia, or be subjected to any other injury to her genital organs for reasons that are not medically warranted (sometimes referred to as female genital mutilation or FGM);
- compelling the victim to keep the abuse secret by threatening that disclosure will result in the victim being disbelieved, shunned and shamed by their spiritual or cultural community.

It is often reported that women from culturally and linguistically backgrounds are less likely than the general population to recognise particular types of behaviours such as yelling, criticising or forcing the partner to have sex, as 'always' constituting domestic violence.⁴⁴ Another study has confirmed such findings claiming that often people used terms family conflict and family violence interchangeably.⁴⁵

We are concerned observing the pattern in some of the published AAT decision records affirming visa refusal and disregarding some forms of abuse as 'relevant family violence'.

⁴⁰ Australian Women Against Violence Alliance (2016) Policy Brief Access to justice for women and children living with or at risk of violence. Available at <http://awava.org.au/2016/08/22/research/7424>

⁴¹ See National Domestic and Family Violence Book <http://dfvbenchbook.aiaa.org.au/understanding-domestic-and-family-violence/cultural-and-spiritual-abuse/>

⁴² Cares, Alison, and Gretchen Cusick (2012) Risks and Opportunities of Faith and Culture: The Case of Abused Jewish Women 27(5) Journal of Family Violence 427.

⁴³ See: Department of Communities, Child Safety and Disability Services (QLD), '[Domestic and Family Violence and Its Relationship to Child Protection](#)' (Practice Paper, October 2012); Bent-Goodley, Tricia B, and Dawnovise N Fowler, 'Spiritual and Religious Abuse: Expanding What Is Known About Domestic Violence' (2008) 21 Journal of Women and Social Work 282; Dehan, Nicole, and Zipi Levi, 'Spiritual Abuse: An Additional Dimension of Abuse Experienced by Abused Haredi (Ultraorthodox) Jewish Wives' (2009) 15(11) Violence Against Women 1294; Knickmeyer, Nicole, Heidi Levitt and Sharon Horne, 'Putting on Sunday Best: The Silencing of Battered Women within Christian Faith Communities' (2010) 20(1) Feminism Psychology 94.

⁴⁴ See: VicHealth (2009) National Survey on Community Attitudes to Violence Against Women; Cavallaro, Lisa, 'I Lived in Fear because I Knew Nothing': Barriers to the Justice System Faced by CALD Women Experiencing Family Violence (InTouch Multicultural Centre Against Family Violence, Victoria Law Foundation, 2010).

⁴⁵ Rees S., Pease B. (2006) Refugee Settlement, Safety and Wellbeing: Exploring Domestic and Family Violence in Refugee Communities. Immigrant Women's Domestic Violence Service, Victorian Health Promotion Foundation (VicHealth).

AAT decision record 1319635 summarized visa applicant's (victim/survivor) domestic violence claims:

*He yelled and screamed at her and **threatened to send her back to Vietnam** if she did not agree to the arrangement. He **forced her to have sex**⁴⁶ on many nights when she did not want to and was very rough during that sex.⁴⁷*

Despite emotional and sexual abuse falling within the scope of the 'relevant family violence' definition, the report of the Independent Expert rejected the claims of victim/survivor:

With respect to [the sponsor's] alleged sexual abuse of [the applicant] it is noted that although [the applicant] reported that she did not like [the sponsor's] sexual behaviours at times, including his tendency to be "very rough" during sex, she did not describe it, in and of itself, as causing her to experience fear and/or apprehension about her wellbeing and or/safety.⁴⁸

Reports of this nature expose the lack of cultural competency of independent experts, lack of understanding of trauma as well as recognition that at times victims/survivors may have a limited ability to articulate trauma in legal terms.

Other decision records raised our concerns where both an AAT member and an independent expert were not satisfied that emotional and financial abuse as well as using visa as a tool of control constituted relevant family violence. We have observed a pattern that applicants were still asked to provide evidence of physical abuse and injuries.

It is concerning that the definition of the 'relevant family violence' requires incidents of abuse to be of an extreme nature, involving fear for safety and well-being and preferably physical, rather than seeing a pattern of behaviour involving a perpetrator's exercise of control over the victim.⁴⁹

Controlling or coercive behaviour does not relate to a single incident, it is a purposeful pattern of behaviour, which takes place over time in order for one individual to exert power, control or coercion over another.⁵⁰

The Victorian Royal Commission into Family Violence identifies that "although every experience is unique, family violence is not an one-off incident for many victims."⁵¹ It is a pattern of behaviour that involves an escalating spiral of violence. This can include physical and sexual abuse, as well as psychological, emotional and financial abuse—all designed to intimidate, undermine, isolate and control. It can also include violence or threats of violence against children, other family members and pets.⁵² Ultimately, it can be lethal.

The definition of family violence as it stands in the Migration Regulations does not encompass many other forms of family violence that can be inflicted and does not match the definitions in relevant states and territories legislations. The Victorian Royal Commission into Family Violence has called for

⁴⁶ Emphasis added.

⁴⁷ Administrative Appeals Tribunal. Decision Record 1319635 (Migration) [2015] AATA 3588 (27 October 2015) Retrieved on August 29 2017 <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/AATA/2015/3588.html?context=1;query=family%20violence>

⁴⁸ Ibid.

⁴⁹ Wakefield, Shellee and Annabel Taylor, 'Judicial education for domestic and family violence – State of Knowledge Paper', (ANROWS, 2015)

⁵⁰ Home Office (UK), 'Controlling or Coercive Behaviour in an Intimate or Family Relationship: Statutory Guidance Framework' (December 2015), 3.

⁵¹ State of Victoria, Royal Commission into Family Violence: Summary and recommendations

⁵² Domestic Violence Victoria (2015) Submission to the Royal Commission into Family Violence

broadening the definition of family violence in the Migration regulations.⁵³ We strongly support that call. We also support the recommendations of the Australian Law Reform Commission to repeal relevant provisions of the Migration Regulations 1994 (Cth) requiring that, the violence, or part of the violence must have occurred while the married or de facto relationship existed between the alleged perpetrator and the alleged victim.⁵⁴

Recommendation 2

The Australian Government broadens the definition of family violence in the Migration Regulations 1994 (Cth) so that it is consistent with the Family Law Act 1975 (Cth) and the National Domestic and Family Violence Bench Book.

Recommendation 3

That the Australian Government amends the Migration Regulations 1994 (Cth) and extends the definition of family violence as violence committed not only by a sponsor but their extended family members.

Recommendation 4

That the Australian Government repeals relevant provisions of the Migration Regulations 1994 (Cth) requiring that, the violence, or part of the violence must have occurred while the married or de facto relationship existed between the alleged perpetrator and the alleged victim.

5.2. Evaluation of Genuineness of Relationships Prior to Family Violence

In assessing the application under family violence provisions the Department of Immigration and Border Protection establishes whether relationships were genuine prior to considering the evidence of inflicted family violence. If relationships are deemed to be non-genuine, family violence claims are not taken into consideration.

Reviewing available decision records from the AAT we are concerned that family violence is disregarded in cases where officers are not satisfied that relationships were genuine.

In defining the genuineness of relationships amongst other principles the Department is looking for the evidence of financial and social aspects of relationships. Expanding the definition of family violence as argued above, will allow to recognise that the very fact of social isolation or financial control may constitute family violence. It is, thus, imperative for the Departmental officers to complete compulsory family violence training to enable them to recognise adequately patterns of behaviour which constitutes family violence.

Anecdotal evidence from practitioners working in the area of migration suggests that they are seeing more visa refusals on the basis of non-genuine relationships than 5 years ago.

We believe that the evaluation of the genuineness of the relationship should not precede or take place in isolation from consideration of family violence claims.⁵⁵

⁵³ State of Victoria, Royal Commission into Family Violence: Summary and recommendations

⁵⁴ Australian Law Reform Commission (2012) Family Violence and Commonwealth Laws – Improving Legal Frameworks. Chapter 21 The Family Violence Exception— Evidentiary Requirements
http://www.alrc.gov.au/sites/default/files/pdfs/publications/21_migration_-_the_family_violence_exception--evidentiary_requirements.pdf

⁵⁵ Ana Borges Jelinic (2017) Immigration and Domestic Violence: The Impact of Law on Women’s Wellbeing In Australia. Conference presentation, presented on 31 July at the Evidence for Equity: Multicultural Women’s Reproductive and Sexual Health Conference, 31 July - 1 August 2017, Brisbane.

Recommendation 5

That the evaluation of the genuineness of the relationship does not precede or take place in isolation from consideration of family violence claims.

5.3. The Role of an Independent Expert

After the consultation process in 2012 in response to the proposed amendments of the Migration Act, Centrelink workers were no longer engaged in the capacity of an independent expert in assessing the non-judiciary evidence of family violence claims. In 2013 a third party private psychology firm was subcontracted to undertake assessments.

In our opinion, the existence of an independent expert demonstrates distrust in a victim/survivor's story while a review by DIBP found that the majority of applicants seeking to rely on the exception were in genuine need of assistance.⁵⁶ Engagement of an independent expert also results in a multiple retelling of the story, potential further re-traumatisation of a victim/survivor and may constitute further systems abuse⁵⁷.

Furthermore, under Regulation 1.21 of the Migration regulations there is no requirement for an independent expert to be trained in the area of family violence.

"independent expert " means a person who:

(a) is suitably qualified to make independent assessments of non-judicially determined claims of family violence; and

(b) is employed by, or contracted to provide services to, an organisation that is specified, in a legislative instrument made by the Minister, for the purpose of making independent assessments of non-judicially determined claims of family violence.⁵⁸

The website of subcontracted LSC Psychology does not indicate their relevant training in the area of family violence. As it has been identified above in the section 5.1. reports by independent experts undertaken in 2015 (which coincides with the term of LSC Psychology contact) failed to define family violence according to the best practice and the common definition by states and territories' legislations. This creates a high risk of significant errors in their assessments.

Anecdotal evidence suggests that in many cases independent experts were not fully aware of their role, for example in providing a client with a misleading information that their assessment was not binding for the Department or the Tribunal. We have been informed by practitioners in the area of migration law that often the Department transfers the whole existing client file to an independent expert instead of only sending information relevant to family violence allegations. We believe that the Department must take all measures to ensure that the privacy of a client is respected, on the one hand, and on the other, that the role of an independent expert falls within the scope of family violence and not broader visa issues.

We have also been made aware of instances when an independent expert refused the presence of the client's legal representative at the meeting. It is a commonly accepted practice for legal representatives to be present at the interviews conducted by the Department under the condition that they do not participate in the process. We believe that this practice should be adopted by

⁵⁶ Vaughan et al, above n 5, 23 citing Nafiseh Ghafournia, 'Battered at home, played down in policy: Migrant women and domestic violence in Australia' (2011) 16(3) Aggression and Violent Behavior 207–213

⁵⁷ See The National Domestic and Family Violence Bench Book <http://dfvbenchbook.aija.org.au/understanding-domestic-and-family-violence/systems-abuse/>

⁵⁸ Migration Regulations 1994 - REG 1.21 Interpretation

independents experts too. It is important for the legal representative to be present at the interview in order to be full aware of the evidence obtained as a result of it. We are also concerned that the interviews with independent experts are not recorded and that this makes it impossible for the applicant or their legal representative to obtain it via a FOI request. Such processes significantly disadvantage an applicant and create barriers to access to justice. We do not consider that it is sufficient for a legal representative to wait outside the room, as due to inflicted trauma the capacity of an applicant to fully recall the interview may be impacted. Lastly, given that the decision of an independent expert is binding for the Department of Immigration and Border Protection, we are concerned that the power to make decisions is given to private companies.

AWAVA has previously stated the importance of accreditation of family report writers and independent experts in the family law matters.⁵⁹ We believe that this principle should be extended to the area of migration law as well. A lack of expertise in the nature and understanding of domestic and family violence can lead to making unsafe decisions and misunderstandings of the concerns raised by victims of past domestic violence.

As recommended by the final report of the 2015 Senate Inquiry into Domestic Violence in Australia⁶⁰ and in the final report of the COAG Advisory Panel on Reducing Violence against Women and their Children,⁶¹ the introduction of a formal accreditation scheme, equipping family report writers with appropriate, mandatory training would help support report writers to better understand and work with victims of violence and trauma, ensuring decisions are better informed, safer and more appropriate.⁶²

We urge the Department of Immigration and Border Protection to adopt available best practice from the area of family law in its assessment of family violence claims both by Departmental officers and subcontracted third parties. We refer you to the *Australian Standards of Practice for Family Assessments and Reporting*, a publication developed by the Family Court of Australia, the Federal Circuit Court of Australia and the Family Court of Western Australia.⁶³

In addition to accreditation with respect to a thorough understanding of the nature and dynamics of domestic and family violence, independent experts should be accredited with respect to cultural competency.

Recommendation 6

That independent experts are trained in family violence according to the Australian Standards of Practice for Family Assessments and Reporting.

⁵⁹ AWAVA (2016) Policy Brief. Access to justice for women and children living with or at risk of violence. Available at www.awava.org.au

⁶⁰ Senate Standing Committees in Finance and Public Administration, Domestic Violence in Australia, 20 August 2015, Recommendation 17.

⁶¹ Council of Australian Governments Advisory Panel on Reducing Violence against Women and their Children (COAG Advisory Panel), Final Report. 2016. Recommendation 1.4 See: <https://www.coag.gov.au/sites/default/files/files/COAGAdvisoryPanelonReducingViolenceagainstWomenandtheirChildren-FinalReport.pdf>

⁶² Ibid

⁶³ Australian Standards of Practice for Family Assessments and Reporting (2015) <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/policies-and-procedures/asp-family-assessments-reporting>

5.4. Ensure the Confidentiality of Clinical Notes for Women Seeking Access to Family Violence Exemption Provisions

Women having their applications for consideration under the family violence provisions are commonly asked to sign consent to allow the Independent Expert assessing their case to be allowed access to contact their previous psychiatrist or psychologist or to obtain access to their clinical notes. While there is no statutory basis for such a request, and while a person is free to decline to sign the consent, the implication where a person does so is that they have something to hide and that an adverse inference will be drawn. For most women, following separation from a partner, the purpose of seeing a psychiatrist or psychologist is not to prove that violence took place, but to allow the victim/survivor to focus on their health and wellbeing. There are public policy reasons why victims of violence should be free to say anything to their psychiatrist or psychologist and why other people should not have access to those records. In our view, policy guidelines should be publicly available on the circumstances in which an Independent Expert is expected to consult with or obtain records of a person's previous health records or to contact or obtain clinical notes from their previous psychologist or psychiatrist.

Some of the AAT decision records revealed inconsistent understanding of the role of psychologist in victim/survivor's wellbeing as well as acceptance of their reports as non-judiciary evidence.

The Tribunal does have reservations about the psychologist's Declaration, however, in that the applicant only appears to have gone to see [Psychologist C] during the time she was required to prepare her application for review on the basis of family violence.⁶⁴

Recommendation 7

That the confidentiality of clinical notes for women seeking access to family violence exemption provisions is ensured.

5.5. Training on Family Violence and Trauma for Decision Makers

The Royal Commission into Family Violence reported that the Department of Immigration and Border Protection should offer its front-line officers training in identifying and responding to family violence, so that they can refer women to suitable services.⁶⁵

We strongly believe that family violence education for decision makers is necessary to support victims/survivors of family violence and to ensure minimisation of adverse outcomes for women.

Australia is a party to two human rights treaties that include obligations for freedom from gender-based stereotyping; this extends to the justice system⁶⁶. However, within the legal system judicial stereotyping can act as barrier to justice for women subjected to violence⁶⁷. In such instances gender stereotyping can distort a judges' perception of the facts, understanding of who is culpable for

⁶⁴ Administrative Appeals Tribunal. Decision Record 1319635 (Migration) [2015] AATA 3588 (27 October 2015) Retrieved on August 29 2017 <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/AATA/2015/3588.html?context=1;query=family%20violence>

⁶⁵ State of Victoria, Royal Commission into Family Violence: Summary and recommendations

⁶⁶ Convention on the Elimination of All Forms of Discrimination against Women, opened for signature 1 March 1980, 1249 UNTS 13 (entered into force 3 September 1981) (CEDAW). Convention on the Rights of Persons with Disabilities, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) (CRPD).

⁶⁷ Committee on the Elimination of Discrimination against Women (CEDAW Committee), Draft General Recommendation on Women's Access to Justice (1 April 2014), para. 1.

violence and their assessment of the credibility of witnesses, ultimately compromising the intended impartiality of the justice system⁶⁸.

We believe that the best practice tools for judiciary professionals like the National Domestic and Family Violence Bench Book⁶⁹ should be adopted by the Department of Immigration and Border Protection. In accordance with the COAG Advisory Panel's Final Report on Reducing Violence Against Women and their Children⁷⁰ it is recommended that compulsory training modules should be implemented for all 'professionals likely to come into contact with victims and perpetrators of violence, so that they can identify and respond appropriately to violence against women and their children, and understand the impacts of gender and social inequality'.⁷¹ This is also consistent with the Women's Legal Services Australia Five-Step Plan for Safety First in Family Law.

Recommendation 8

That the relevant decision makers undertake extensive training on family violence, trauma-informed practice and cultural competency according to standards outlines by the National Domestic and Family Violence Bench Book.

6. Visa Categories and Family Violence Provisions

We believe that irrespective of the future shape of the visa system, the Immigration policy must remove any obstacles to reporting violence and seeking help for family violence with assurances that women and children will not risk being deported or criminalised if they disclose violence to government, justice or community services.⁷² We also urge the government to extend the access of the family violence provisions to other temporary visas or visas with the assurance of support identified below.⁷³

6.1. Prospective Marriage Visa Holders

A prospective marriage visa allows an applicant to enter Australia with the intention to marry their fiancé/fiancée. The visa lasts for nine months and the marriage is required to take place before the visa expiry date.

In cases when relationships break down due to family violence, a prospective marriage visa holder is not able to access family violence provisions in order to apply for their own permanent residency unless the marriage with a sponsor took place before the relationships broke down.⁷⁴ Such a regulation forces a woman to stay in violent relationships instead of taking steps towards a life free

⁶⁸ Eliminating judicial stereotyping, equal access to justice for women in gender-based violence cases, Simone Cusack (2014) page 20

⁶⁹ National Domestic and Family Violence Bench Book <http://dfvbenchbook.aija.org.au/contents>

⁷⁰ COAG Advisory Panel on Reducing Violence against Women and their Children – Final Report, 2016 at <https://www.coag.gov.au/sites/default/files/files/COAGAdvisoryPanelonReducingViolenceagainstWomenandtheirChildren-FinalReport.pdf>

⁷¹ Ibid Recommendation 1.4, page 38.

⁷² Vaughan, Cathy, et al, 'Promoting Community-Led Responses to Violence against Immigrant and Refugee Women in Metropolitan and Regional Australia: The Aspire Project' (State of Knowledge Paper 7, Australia's National Research Organisation for Women's Safety Landscapes, October 2015).

⁷³ Australian Law Reform Commission and New South Wales Law Reform Commission, 'Family Violence and Commonwealth Laws — Improving Legal Frameworks' (ALRC Report No 117, 2012). See recommendations 3–1, 20-1, 20-2, 21-3.

⁷⁴ Department of Immigration and Border Protection. Fact Sheet. Family Violence Provisions <http://www.border.gov.au/about/corporate/information/fact-sheets/38domestic>

from violence. Women on temporary partner visas are often misinformed by their sponsors about their immigration status. Visa status is used as another mechanism of violence and control.⁷⁵

In cases where relationships break down and due to gender inequality in many countries, women are often not able to return to their countries of origin because of the potential threat of discrimination, human rights abuses, reprisals and ostracism from their family and community, being blamed for the relationship breakdown and deemed as causing family shame.⁷⁶

In these instances, we believe that the complementary protection or other independent alternative visas should be made available for women. It is also important to consider concessions or visa fee waivers for women to ensure that they have fair and just access to their own migration outcomes and life free from violence.⁷⁷ Some service providers are forced to pay for visa fees for their clients, as without permanent residency and income, the visa costs for women are prohibitive.

Besides, prohibition to apply for permanent residency under family violence provisions while they have not married the sponsor deprives women from the right to access family violence support services because of their visa status. We support the recommendations of the Australian Law Reform Commission to extend the family violence provisions to cover prospective marriage visa holders.⁷⁸

Recommendation 9

That the Australian Government amends the Migration Regulations 1994 (Cth) to allow Prospective Marriage (Subclass 300) visa holders to have access to the family violence exception in cases of family violence prior to marrying a sponsor.

6.2. Women Seeking Asylum

6.2.1. Women on TPV & SHEVs

Women who are seeking asylum in Australia and are eligible to apply for temporary protection visa (TPV) or Safe Haven Enterprise Visa (SHEV) may find themselves in the precarious position in the context of family violence. We are concerned that in the settings when a woman is a secondary applicant with no protection claims on her own, in case of the family violence disclosure she finds herself in a disadvantaged situation. As argued above, despite absence of her own protection claims, she faces a choice to either remain in an abusive relationship or return to her country of origin and potentially face reprisals and human rights violations. The similar situation may occur after the expiry of TPV or SHEV at the stage of reapplying.

We believe that the option of complimentary protection should be made available for these women.

Overall, women who are eligible to apply for TPV and SHEV, or are holders of these visas do not have access to family violence provisions. We support statements by FECCA and many others calling to

⁷⁵ Australian Law Reform Commission (2012) Family Violence and Commonwealth Laws – Improving Legal Frameworks. Chapter 20 Migration Law – The Family Violence Exception

⁷⁶ Immigrant Women’s Support Service (2010) Policy Brief Assisting Temporary Visa Holders Who Have Experienced Domestic Violence in Australia. Available at <http://www.iwss.org.au/>; Judicial Council on Cultural Diversity (2015) The Path to Justice: Migrant and Refugee Women’s Experience of the Courts. Available at http://jccd.org.au/wp-content/uploads/2016/04/JCCD_Consultation_Report_-_Migrant_and_Refugee_Women.pdf

⁷⁷ Ana Borges Jelinic (2017) Immigration and Domestic Violence: The Impact of Law on Women’s Wellbeing In Australia. Conference presentation, presented on 31 July at the Evidence for Equity: Multicultural Women’s Reproductive and Sexual Health Conference, 31 July - 1 August 2017, Brisbane.

⁷⁸ Australian Law Reform Commission (2012) Family Violence and Commonwealth Laws – Improving Legal Frameworks. Chapter 20 Migration Law – The Family Violence Exception

provide people seeking asylum with durable solutions and pathways to permanent residence and citizenship without discrimination.⁷⁹ In the context of violence against women, it is imperative that Australia fulfils its obligations and honours its commitment to reduce violence against women.

It has been also argued that temporary protection has detrimental impacts on mental health of people seeking asylum. The study undertaken by Steel et al was the first to investigate the specific effects of temporary protection on the mental health of refugees.⁸⁰ The study suggested that both prolonged detention and temporary protection contribute substantially to the risk of ongoing depression, PTSD and mental health-related disability in refugees. The independent influence of these two risk factors remained robust after controlling for other variables previously identified as risk factors⁸¹, including female gender, greater age, extent of past traumas, length of residency and family separation.

To the contrary, studies undertaken amongst people on permanent protection provided evidence “that permanent residency is associated with improvement in the mental status of previously traumatised individuals”.⁸² Another study also suggested “that change in visa status from TPV to permanent protection was associated with substantial reductions in PTSD and depression symptoms as well as increased quality of life.”⁸³

6.2.2. Women who Arrived by Plane Seeking Asylum

Women who are secondary applicants for permanent protection visa (prior to the visa grant) without their own protection claims should have complementary protection extended to them in the instances of relationship breakdown because of family violence and risk of human rights abuses upon return because of that.

6.2.3. Women at Risk Visa (Subclass 204)

If introducing changes to the visa system in Australia, it is important to preserve the Women at Risk visa aimed at permanent protection of women who are outside of Australia and in danger of victimisation, harassment or serious abuse because of their gender.⁸⁴

6.2.4. Complementary Protection

Complementary protection is invoked in a situation when a person does not fall under the definition of a ‘refugee’ as defined by the Migration act, but where the Minister is satisfied that ‘a non-citizen has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer ‘significant harm’.⁸⁵

While the definition of cruel and inhumane treatment upon return to the country of origin can include women who left because of family violence, it is the exception to this definition that is concerning, in particular “the real risk is one faced by the population generally and is not faced by the non-citizen

⁷⁹ Federation of Ethnic Communities Council (2016) Submission to Australia’s Humanitarian Programme 2016-17

⁸⁰ Steel, Z., Silove, D., Brooks, R., Momartin, S., Alzuhairi, B. and Susljik, I. (2006) Impact of immigration detention and temporary protection on the mental health of refugees. *British Journal Of Psychiatry*, 188, 58- 64.

⁸¹ De Jong, J.T.V., Komproe, I.H., Ommeren, M.V., et al (2001) Lifetime events and posttraumatic stress disorder in 4 post conflict settings. *JAMA*, 286, 555-562.

⁸² Steel, Z. & Silove, D.M. (2001) The mental health implications of detaining asylum seekers. *Medical Journal of Australia*, 175, 596-599.

⁸³ Nickerson A., Steel Z., Bryant R., Brooks R., Silove D. (2010) Change in visa status amongst Mandaeen refugees: Relationship to psychological/symptoms and living difficulties *Psychiatry Research* 187 (2011) 267–274

⁸⁴ In 2015-2016, the Department of Immigration and Border Protection granted: 1,277 Women at Risk visas. Department of Immigration and Border Protection, Annual Report (2015)

<https://www.border.gov.au/about/reportspublications/reports/annual/annual-report-2015-16>

⁸⁵ Migration Amendment (Complementary Protection Bill) 2011 (Cth) cl 12

personally”.⁸⁶ This may mean that in countries where there is gender inequality, domestic violence is wide-spread, and/or practices of female genital mutilation and honour killings persist, women may be excluded from having access to complementary protection in cases when relationships break down because of family violence.

The Senate Legal and Constitutional Affairs Legislation Committee has expressed the view that the complementary protection needs to be reviewed ‘ensuring it would not exclude from protection people fleeing genital mutilation or domestic violence from which there is little realistic or accessible relief available in their home country’.⁸⁷

In the Migration Issues Paper, the Australian Law Reform Commission expressed a view as well that with the existing definition of complementary protection and exclusions protection of victims of family violence whose claims may have ‘fallen through the cracks’, especially in cases of severe gender-related harm or torture.⁸⁸

Recommendation 10

That the Australian Government extends complementary protection to women who suffered family violence and are unable to return to their countries of origin because of the relationship breakdown and potential repercussions.

6.3. International Student Visa Holders

International students have very limited access to services due to their visa status. International students cannot access family violence provisions due to the expectation that they will return to the country of origin upon completion of their degree. However, in the context of family violence there are further implications to consider.

In the scenario when a woman is a primary applicant (student visa holder), in the instance of family violence, she is not eligible for relevant Centrelink support. A case study by InTouch indicates that women on student visas struggle to find affordable accommodation after leaving abusive relationships. They have difficulty accessing a refuge, as many refuge’s requirements conflict with student visa requirements. For safety reasons, many refuges may require residents to discontinue studies or work while staying there. Discontinuation of studies will mean breach of the student visa and may result in deportation.⁸⁹

In the scenario when a woman is a secondary applicant accompanying her partner who is a primary student visa holder, in cases of family violence, she has no reasons for staying in Australia. More importantly, she is left without appropriate support to ensure her safety.⁹⁰ As argued above, she may also have fears returning to her country of origin after the relationship breakdown.

6.4. Parent Visas

In the submission to the Victorian Royal Commission into Family Violence inTouch indicated an increase in the number of cases when older CALD women are being abused by their children and children-in-law. InTouch reports on having 58 clients over the age of 55. Most problematic are those

⁸⁶ Migration Amendment (Complementary Protection Bill) 2011 (Cth), item 14.

⁸⁷ Senate Legal and Constitutional Affairs Legislation Committee, Migration Amendment (Complementary Protection) Bill 2009 [Provisions] (2009), 7, 8.

⁸⁸ Australian Law Reform Commission, Family Violence and Commonwealth Laws—Immigration Law, ALRC Issues Paper 37 (2011), Question 22.

⁸⁹ inTouch Multicultural Centre Against Family Violence (2015) Submission to the Royal Commission into Family Violence.

⁹⁰ Domestic Violence and Temporary Visa Holders: Barriers to safety Barb Crossing, Women’s House Shelta, Brisbane & Cecilia Barassi-Rubio, Immigrant Women’s Support Service, Brisbane

who have been brought to Australia on a Contributory Aged Parent Visa, typically to look after their grandchildren. People on this visa are not eligible for Centrelink assistance for 10 years after their arrival and, with no other family support in Australia, they remain dependent on their abusive family members.

We share the concern voiced by InTouch about violence against elderly CALD women and the lack of support services available to them because of their visa and required assurance of support from their sponsors.⁹¹

Recommendation 11

That the Australian Government amends the Migration Regulations 1994 (Cth) to allow all temporary visa holders or those ones on visas with assurance of support to have access to the family violence exception in cases of family violence.

Recommendation 12

That the Australian Government adopts the recommendations made by the Australian Law Reform Commission (ALRC) in its 2011 report, Family Violence and Commonwealth Laws – Improving Legal Frameworks, in relation to migration law.

Recommendation 13

That the Australian Government considers waiving visa costs or introducing significant concessions for women who were victims of family violence to allow them to apply for their own visa as the current costs are prohibitive for women who often have no income.

Recommendation 14

That the Family Safety Pack are given not only to permanent visa holders but extended to all other visa categories including temporary visas.

Recommendation 15

That the Immigration policy must remove any obstacles to reporting violence and seeking help for family violence with assurances that women and children will not risk being deported or criminalised if they disclose violence to government, justice or community services.

7. Impact of Visa Status on Access to Services

Overall, studies confirmed that in countries like Australia women from culturally and linguistically diverse backgrounds are less likely than Anglo women to seek help in response to family violence.⁹² Moreover as Rees has argued, “refugee women, originating from countries where the state has persecuted them and their families, may continue to associate the authorities of the receiving country with violence rather than as potential avenues for assistance”.⁹³

⁹¹ inTouch Multicultural Centre Against Family Violence (2015) Submission to the Royal Commission into Family Violence.

⁹² See: Raj, A., & Silverman, J. G. (2007). Domestic violence helpseeking behaviors of South Asian battered women residing in the United States. *International Review of Victimology*, 14(1), 143-170; Gilroy, H., McFarlane, J., Nava, A., & Maddoux, J. (2014). Community resource use among abused immigrant women: Baseline data analysis for a 7-year prospective study. *Journal of Transcultural Nursing*, 25(4), 341-347.

⁹³ Rees S (2004). Human Rights and the significance of psychosocial and cultural issues in domestic violence policy and intervention for refugee women. *Australian Journal of Human Rights*, 10 (1).

It has been argued that the immigration policy impacts on women from culturally and linguistically diverse backgrounds in two ways:

- through restrictive evidentiary requirements when making applications for residency rights via family violence exemptions; (as has been shown above) and
- through bureaucratic barriers to accessing economic security via restrictions on employment and/or limiting or preventing access to public benefits.⁹⁴

Critically, immigration policy establishes women's dependency on the family for economic security and residency rights, and often fails to acknowledge the complexity in situations where women from culturally and linguistically diverse backgrounds must seek assistance for family violence when the perpetrator is a visa sponsor and/or the primary source of family income.⁹⁵ Bonar and Roberts (2006) noted that dependent visa status often meant immigrant or refugee women and their children were unable to access refuge accommodation, income support, and/or faced threats of deportation. In some cases this meant women returned to violent partners.⁹⁶

Community-based research conducted by inTouch (2010)⁹⁷ also provides some qualitative evidence about the impacts of immigration policy on CALD women experiencing family violence. The report showed that women were finding visa dependency to be one of the main barriers to accessing legal and justice support for family violence. It also found that while women were waiting for permanent residency approvals they were restricted from accessing public housing and faced limited income assistance and rights to work. This put resource constraints on social services and prolonged the amount of time women experiencing crisis situations needed to stay in refuge accommodation. For many women, this resulted in high levels of stress, undermining physical and mental health.⁹⁸

The only peer-reviewed paper that specifically addresses immigration policy and family violence in Australia conducted by Ghafournia (2011) noted that women are still facing limited access to support service due to language barrier but also a general lack of knowledge among women relating to their rights, limited knowledge of available services and a lack of culturally appropriate services.⁹⁹

A recent report by the Multicultural Centre for Women's Health suggests that almost half (47.6%) of the immigrant and refugee women accommodated in refuges in Victoria in 2009-2010 were women without permanent residency. Similar concerns were highlighted by the ALRC in its Discussion Paper and Final Report, Family Violence and Commonwealth Laws, and were raised in submissions from TEWLS and immigrant women's organisations.¹⁰⁰

⁹⁴ Vaughan, Cathy, et al, '[Promoting Community-Led Responses to Violence against Immigrant and Refugee Women in Metropolitan and Regional Australia: The Aspire Project](#)' (State of Knowledge Paper 7, Australia's National Research Organisation for Women's Safety Landscapes, October 2015).

⁹⁵ Ibid.

⁹⁶ Bonar, M. & Roberts, D. (2006). A review of literature in relation to family and domestic violence in culturally and linguistically diverse communities in Australia. Perth: Western Australia Department for Communities.

⁹⁷ Cavallaro, Lisa, 'I Lived in Fear because I Knew Nothing': Barriers to the Justice System Faced by CALD Women Experiencing Family Violence (InTouch Multicultural Centre Against Family Violence, Victoria Law Foundation, 2010).

⁹⁸ Vaughan, Cathy, et al, '[Promoting Community-Led Responses to Violence against Immigrant and Refugee Women in Metropolitan and Regional Australia: The Aspire Project](#)' (State of Knowledge Paper 7, Australia's National Research Organisation for Women's Safety Landscapes, October 2015).

⁹⁹ Ghafournia, N. (2011). Battered at home, played down in policy: Migrant women and domestic violence in Australia. *Aggression and Violent Behavior*, 16(3), 207-213.

¹⁰⁰ See: Cavallaro, Lisa, 'I Lived in Fear because I Knew Nothing': Barriers to the Justice System Faced by CALD Women Experiencing Family Violence (InTouch Multicultural Centre Against Family Violence, Victoria Law Foundation, 2010).; Family Law Council (2012) Improving The Family Law System For Clients From Culturally And Linguistically Diverse Backgrounds

CASE STUDY

Brokerage Support for women without income accommodated in women refuges in WA.

The Women's Council for Domestic and Family Violence Services¹⁰¹ is the peak body in Western Australia for domestic and family violence services. The council represents over sixty services, the majority being refuges for women and children.

Women who are not eligible for the family violence provisions because of their visa, and who fall through the cracks in terms of support, are left in the capable, albeit stretched, hands of receiving refuges.

These refuges receive no specific funding from the Federal or State Government to help support these women and children who often have nothing but the clothes on their back when they enter the refuge. All refuges are required under their State funding contracts to accommodate women and children regardless of their capacity to contribute to the cost of accommodation. Unlike clients who have other income from employment or Centrelink, this client group is dependent on the refuge providing food, clothing, paying for medical and dental treatment, school costs, transport, and multitude of other daily necessities.

Many of these women and children require long stays in refuges, up to 12 months, while waiting for a decision by the Department of Immigration on their visa status.

The Women's Council has requested that the twenty-one women and children's refuges in the Perth metropolitan and south west region collect data on the numbers and costs of accommodating this target group.

Over the last twelve months the Women's Council had a 81% response rate from refuges, with data showing that 144 women and 154 children without permanent residence and no income have been accommodated at a total cost to refuges of \$182,484.00 (this figure includes rent not collected).

The cultural background of the women seeking support was 60% from Asian countries, 14% from New Zealand, 14% from African countries, 5% from Eastern European countries and 7% from Western European countries.

Over the period between January to June 2017 seventeen refuges reported that they accommodated clients with no or very limited income, a further three refuges reported not being able to accommodate women with no income in this target group.

Each six months' data collection has shown each an increase in the number of clients being accommodated in refuges in the wider metropolitan region from Northam to Bussellton.

41% of the women accommodated were single women.

Support directly provided to these clients within 6 months' period included \$12,133 in cash, \$1,650 in food vouchers and estimated \$14,360 in food parcels and \$5,642 paid in medical costs.

¹⁰¹ The Women's Council for Domestic and Family Violence Services is a member of the AWAVA's advisory group. Case study included with the permission.

In this section we are reiterating the calls that people seeking to escape violence should be entitled to crisis payments¹⁰² and access to services regardless of their visa status. Some services also have to cover the costs of English classes for women as they may not be entitled to concession fees due to their visa status.

Recommendation 18

That the Australian Government ensures that women seeking to escape violence are entitled to crisis payments and access to services regardless of their visa status (including allowing time to make arrangements to leave Australia if necessary but still granting access to services).

7.1. Access to Crisis Accommodation

InTouch reports that in addition to the general shortage of places in family violence refuges, CALD women find it difficult to secure a place because:

- they often have a large number of children,
- non-permanent residents do not have access to government services (including Centrelink benefits) which makes it difficult to develop and implement an exit plan and
- requirements for refuge residents to cease working and studying may conflict with their visa requirements.¹⁰³

Submissions to the Royal Commission into Family Violence stated that some refuges are unable to support women who do not have permanent residency because of the cost of full support. The cost of providing such support to these women presents significant difficulties.¹⁰⁴ Women without permanent residency and their children will need to be accommodated for much longer than other clients because of the difficulties they have gaining access to other services.¹⁰⁵

7.2. Access to Social Housing

Women on temporary visas are not eligible to access social housing, as in most states and territories eligibility criteria requires applicants to prove their permanent residency or citizenship status. The table below summarises each state and territory eligibility for social housing.

State/Territory	Visa eligibility	Exceptions
NSW ¹⁰⁶	<ul style="list-style-type: none"> - Australian citizenship or permanent residency for every person on their application who is aged 18 years and over 	<p>People escaping domestic or family violence.</p> <p>In exceptional circumstances Temporary residents may be considered <i>for a few days</i>¹⁰⁷ of temporary accommodation if they are escaping family or domestic violence (including where a child has been assessed to be at risk of</p>

¹⁰² State of Victoria, Royal Commission into Family Violence: Summary and recommendations, Parl Paper No 132 (2014–16), Recommendation 156, 162; Federation of Ethnic Communities Council (2016) Submission in response to the Migration Amendment (Family Violence and Other Measures) Bill 2016

¹⁰³ inTouch Multicultural Centre Against Family Violence (2015) Submission to the Royal Commission into Family Violence.

¹⁰⁴ State of Victoria, Royal Commission into Family Violence: Summary and recommendations

¹⁰⁵ Safe Steps Family Violence Response Centre (2015) Submission to the Royal Commission into Family Violence.

¹⁰⁶ NSW Government. Family and Community Services. Social Housing Eligibility and Allocations Policy Supplement <http://www.housingpathways.nsw.gov.au/additional-information/policies/social-housing-eligibility-and-allocations-policy-supplement#efshresidency>

¹⁰⁷ Emphasis added.

		harm from this situation) if no other accommodation options are available.
ACT ¹⁰⁸	<ul style="list-style-type: none"> - Australian citizenship or - permanent residency 	Sponsored migrants when the assurance of support has broken down can be eligible. Proof required.
QLD ¹⁰⁹	<ul style="list-style-type: none"> - Australian citizenship or - permanent residency - Permanent Protection Visa or a Resolution of Status Visa - qualify for permanent residency status through agreements between Australia and another country - have a Bridging Visa and have applied for a Protection Visa or a Resolution of Status Visa - on a Temporary Protection Visa; or - on a Bridging Visa if you previously held a Temporary Protection Visa which has expired. 	If an applicant has applied for permanent residency, a Permanent Protection Visa or a Resolution of Status Visa, but not yet obtained permanent residency, they can still apply for housing assistance.
VIC ¹¹⁰	<ul style="list-style-type: none"> - Australian citizenship or - permanent residency 	No exceptions listed
TAS ¹¹¹	<ul style="list-style-type: none"> - Australian citizenship or - permanent residency 	No exceptions listed
SA ¹¹²	<ul style="list-style-type: none"> - The only condition is to live in South Australia; no other residency requirements. 	
NT ¹¹³	<ul style="list-style-type: none"> - Australian citizenship or - permanent residency - Special Category Visa (applicable to New Zealand residents) 	
WA ¹¹⁴	<ul style="list-style-type: none"> - Australian citizenship or - permanent residency 	No exceptions listed.

¹⁰⁸ ACT Government. Eligibility for Social Housing Assistance

http://www.communityservices.act.gov.au/hcs/policies/eligibility_for_public_housing_assistance

¹⁰⁹ QLD Government Public and Community Housing <https://www.qld.gov.au/housing/public-community-housing/check-your-eligibility>

¹¹⁰ VIC Government. Social Housing <http://www.housing.vic.gov.au/social-housing>

¹¹¹ TAS Government Department of Health and Human Services. Housing Tasmania Eligibility Policy.

https://www.dhhs.tas.gov.au/housing/tenants/tenancy_facts_and_policies/becoming_a_tenant/housing_tasmania_eligibility2

¹¹² SA Government. Public and Community Housing <https://www.sa.gov.au/topics/housing/public-and-community-housing/register-for-public-and-community-housing/registering-for-public-housing>

¹¹³ NT Government Department Of Housing And Community Development

https://dhcd.nt.gov.au/_data/assets/pdf_file/0019/401239/FS07-Eligibility-criteria-for-Public-Housing.pdf

¹¹⁴ WA Government Department of Communities' Housing

<http://www.housing.wa.gov.au/housingoptions/rentaloptions/publichousing/eligibility/Pages/default.aspx>

Together with ineligibility for social support or minimal payments, such discrimination based on visa/citizenship status prohibits women (especially those on temporary visas) from leaving abusive relationships and accessing affordable housing.

7.3. Pensions and Disability Support

Prolonged waiting periods to access pension, disability support payments or carer payments are also an area of concern in the context of family violence.¹¹⁵

Recommendation 19

That the Australian Government improves collaboration and communication with other agencies (like Centrelink and/or Medicare) to ensure that women have equal access to services and justice regardless of their visa status.

7.4. Access to Interpreters

Judicial Council on Cultural Diversity identified limited English language proficiency as one of the biggest barriers CALD women face when interacting with the legal system.¹¹⁶ In situations of family violence, women may be unwilling to disclose their circumstances to interpreters who may sometimes be inadequately trained. Interpreters for particular dialects may not be available, and in small communities, the woman may know the interpreter and she may fear a lack of privacy and confidentiality. If counselled to leave the abusive relationship, CALD women may feel unable to face the cultural repercussions, which may include being ostracised from their family and community.¹¹⁷

The JCCD's Recommended National Standards for Working with Interpreters in Court and Tribunals should be adopted as a best-practice guide for the Department of Immigration and Border Protection as well as subcontracted third parties.¹¹⁸ We specifically encourage the Department to ensure that third parties such as Independent Experts also comply with good practice standards for using interpreters. Anecdotal evidence points to cases when Independent Experts refused to request another interpreter when a client expressed dissatisfaction with the service provided. In another instance we have heard that the interpreter was known to a client and an alleged perpetrator, thus placing a client in a vulnerable and unfair position. In this instance, an Independent Expert failed to request another interpreter breaching the conduct and commitment to deliver a fair hearing.

Furthermore, access to appropriate interpreters at a cost the woman can afford is likely to be critical to her fair treatment and hearing.¹¹⁹ We are concerned that not all services have sufficient funding to provide free interpreters or have access to government funded interpreter services. Anecdotal evidence obtained from our member organisations suggests that, for instance, sexual assault support services have to fund interpreters from their own limited budgets in order to provide counselling and

¹¹⁵ Multicultural Disability Advocacy Association of NSW Inc (2016) Submission: Australia's Humanitarian Programme 2016 – 2017 Discussion Paper

¹¹⁶ Judicial Council on Cultural Diversity (2015) The Path to Justice: Migrant and Refugee Women's Experience of the Courts. Available at http://jccd.org.au/wp-content/uploads/2016/04/JCCD_Consultation_Report_-_Migrant_and_Refugee_Women.pdf

¹¹⁷ George, Amanda, and Bridget Harris (2014) Landscapes of Violence: Women Surviving Family Violence in Regional and Rural Victoria. Centre for Rural and Regional Law and Justice, Deakin University

¹¹⁸ Judicial Council on Cultural Diversity (2017) Recommended National Standards for Working with Interpreters in Courts and Tribunals. Available at <http://jccd.org.au/wp-content/uploads/2017/08/Recommended-National-Standards-for-Working-with-Interpreters-in-Courts-and-Tribunals.pdf>

¹¹⁹ Cavallaro, Lisa, 'I Lived in Fear because I Knew Nothing': Barriers to the Justice System Faced by CALD Women Experiencing Family Violence (InTouch Multicultural Centre Against Family Violence, Victoria Law Foundation, 2010).

other services. Similarly, refugee community legal centres have lost the funding to cover interpreter costs.

Recommendation 20

That the Australian Government ensures access to free independent interpreters to all disadvantaged populations via appropriate funding of interpreter services to community organisations in the areas of family violence, migrations, sexual assault support services, multicultural services and others.

Recommendation 21

That the Australian Government adopts the Recommended National Standards for Working with Interpreters in Courts and Tribunals prepared by the Judicial Council on Cultural Diversity across courts, tribunals, judicial officers, interpreters and members of the legal profession.

8. Human Trafficking Visa Framework (HTVF)

Women identified/screened as being trafficked are provided a 45 day Bridging Visa F (BVF) and referred to the Australian Red Cross Support for Trafficked People Program (STPP).¹²⁰ BVF can be extended for another 45 days or longer while a victim of trafficking is assisting in criminal justice process. If after the 45 days, women are unwilling or unable to assist the Australian Federal Police in criminal justice proceedings they are exited from the STPP which means they do not have access to the HTVF. This leaves women in vulnerable situations.

Eligible victims of trafficking who have contributed to an investigation or prosecution of a human trafficking related offence and as a result would be in danger if they returned to their home country, may be granted Referred Stay Visa, subclass 852.¹²¹

CASE STUDY

Project Respect is a support and referral service for women trafficked for sexual exploitation and women in the sex industry.¹²²

In 2014, Project Respect supported 5 women, who were identified as trafficked by the AFP. These women, however, were exited from the STPP because the AFP was unable to raise a prosecution. The only pathway they had to try and find safety was to apply for a protection visa.

The Department of Immigration and Border Protection did not come to the conclusion that Australia was owing protection to them. One of the clients is currently appealing their decision in the AAT and one was deported.

Project Respect is concerned for their safety and well-being. Women are at significant risk if they will be returned to their country of origin where prostitution is illegal and they will be criminalised.

The precarity of the situation has a significant impact on women's mental health. One woman was admitted to a psychiatric facility, as a result of a potential threat of deportation combined with the ongoing PTSD she experiences as a survivor of trafficking.

The report published as a result of the Parliamentary Joint Committee On Law Enforcement 'An inquiry into human trafficking, slavery and slavery-like Practices' (Committee) states that between 1 January

¹²⁰ See: ARC Support for Trafficked People Program <http://www.redcross.org.au/support-for-trafficked-people.aspx>

¹²¹ Australian Government, Guides to Social Policy <http://guides.dss.gov.au/guide-social-security-law/9/1/2/130>

¹²² Project Respect is a member of the AWAVA's advisory group. Case study included with the permission.

2004 and 31 December 2015, the AFP referred 293 suspected trafficked people to the Support Program. Of these referrals, 188 people (0 male/188 female) were exploited in the sex work industry while 105 were subject to exploitation outside the sex work industry.¹²³ Out of the people trafficked outside the sex industry, 16 were at risk of forced marriage.

People who were trafficked may have access to other visas including claiming refugee status and complementary protection.¹²⁴ However, it is important to recognise the repercussions women who have survived trafficking may face in their countries of origin. Deportation back to their countries of origin may result in experiencing violence at the hands of their traffickers.

The current Human Trafficking Visa Framework raises two concerns. Firstly, as noted by many organisations in Australia, it is rooted in the dependency on a contribution to criminal justice process or investigation for the support services to be provided to the survivor.¹²⁵

Therefore, we support the recommendations made by the Committee. Namely, we believe that access to the Support for Trafficked People Program should be delinked from the criminal justice system to enable survivors receive the support necessary to recover from their experiences.¹²⁶

We also believe that the Human Trafficking Visa Frameworks should be delinked from the criminal justice system to ensure adequate protection for all survivors of trafficking, not only to provide them time to recover, but also to ensure they are not at risk of being deported and possibly re-trafficked after being exited from STPP.

Secondly, we believe and echo the view of the Committee that providing the possibility of family reunification is important not only for victims, but also for the protection of the victims' families.

Recommendation 16

That the Commonwealth government de-links access to the Support for Trafficked People Program from compliance with criminal investigations.

Recommendation 17

That the Commonwealth government facilitates and expedites family reunification for victims of trafficking, slavery and slavery-like offences.

9. Response to the Market Consultation Paper on Engaging Technology and Innovation within Visa Processes

In response to the invitation from the Department for business specialising in artificial intelligence amongst others to propose the use of technology and innovation in the visa system, we ask the Department to consider the following. A growing body of research has argued that processes embedded in the development of artificial intelligence can reproduce gender and race biases. It has been shown in examples associating images of households with females only, linking race to negative connotations or targeting higher remunerated jobs to males only.¹²⁷ Researches have also widely

¹²³ Commonwealth of Australia (2017) Parliamentary Joint Committee on Law Enforcement. An Inquiry Into Human Trafficking, Slavery And Slavery-Like Practices <http://apo.org.au/system/files/99476/apo-nid99476-402731.pdf>

¹²⁴ See Anti-Slavery Australia <http://www.antislavery.org.au/resources/fact-sheets/112-fact-sheet-9-visa-options-for-trafficked-people.html>

¹²⁵ Commonwealth of Australia (2017) Parliamentary Joint Committee on Law Enforcement. An Inquiry Into Human Trafficking, Slavery And Slavery-Like Practices <http://apo.org.au/system/files/99476/apo-nid99476-402731.pdf>

¹²⁶ Ibid.

¹²⁷ Crawford K. (2016) Artificial Intelligence's White Guy Problem. The New York Times; Ferrando F. (2014) Is the post-human a post-woman? Cyborgs, robots, artificial intelligence and the futures of gender: a case study. European Journal_of

agreed that the initial assumption that the technology was able to quickly solve complex problems needed to be reviewed. For artificial intelligence to overcome gender or race biases, it needs to be ‘trained’ by appropriately qualified personnel.

Committing to reduce violence against women and their children, the Australian government has recognised that violence against women is a manifestation of gender inequality and is directly connected to the unequal power dynamics between women and men and the widespread “adherence to rigidly defined gender roles.”¹²⁸ Gender inequality is prevalent and within Australia it can be demonstrated by a range of factors, including entrenched gender stereotypes and sexism.

Thus, it is vital that the Department in modernising the technological side of the visa process considers the impact of the gender and race biases that may be embedded in the systems of the artificial intelligence and their impacts on the rates of violence against women. We strongly believe that chosen companies must demonstrate sufficient knowledge and capacity to develop the system that will treat all applicants equally and with fairness regarding their gender and race.

10. Closing Remarks

We strongly believe that the immigration policy should not be driven solely by fiscal considerations. The relative merits of any policy needs to be assessed against a broader context that takes into account all the relevant dimensions of societal wellbeing.¹²⁹

It is imperative that changes to the visa system undergo a gender analysis in order to measure the potential impact of policies on women in particular. Family violence and gender-based oppression of women from culturally and linguistically diverse backgrounds coexist alongside the constructions of other forms of oppression caused by social and economic inequality. Engaging intersectional feminist frameworks¹³⁰ within policy design assists in creating fair and just regulations, honours the government’s commitment to reduce violence against women and advances gender equality.

The future visa system in Australian must ensure that women who had violence inflicted on them have equal access to services, support and justice irrespective of their visa status.

Futures Research 2:43; Jieyu Zhao, Tianlu Wang, Mark Yatskar, Vicente Ordonez, Kai-Wei Chang. Men Also Like Shopping: Reducing Gender Bias Amplification using Corpus-level Constraints. University of Virginia.

¹²⁸ Victorian Health Promotion Foundation (2011) Preventing violence against women in Australia: Research summary, p. 8. Available at

http://www.vichealth.vic.gov.au/~media/ResourceCentre/PublicationsandResources/PVAW/VH_VAW%20Research%20Summary_Nov2011.ashx

¹²⁹ Productivity Commission 2016, Migrant Intake into Australia, Inquiry Report No. 77, Canberra.

¹³⁰ Vaughan, Cathy, et al, ‘[Promoting Community-Led Responses to Violence against Immigrant and Refugee Women in Metropolitan and Regional Australia: The Aspire Project](#)’ (State of Knowledge Paper 7, Australia’s National Research Organisation for Women’s Safety Landscapes, October 2015).

Thank-you once again for the opportunity to contribute a submission to Policy Consultation Paper - Visa Simplification: Transforming Australia's Visa System. We welcome the opportunity to discuss the issues further. For further information or to discuss the content of this submission, please contact Merrindahl Andrew using the details below.

Yours faithfully,

Australian Women Against Violence Alliance (AWAVA)

Merrindahl Andrew

Program Manager

pm@awava.org.au

Phone: 02 6175 9924 / 0428 541 396