

20. Migration Law—The Family Violence Exception

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Summary

20.1 This chapter considers issues surrounding the family violence exception contained in the *Migration Regulations 1994* (Cth). The exception—which is invoked mainly in partner visa cases—provides for the grant of permanent residence to victims of family violence, notwithstanding the breakdown of the spouse or de facto relationship on which their migration status depends.¹

20.2 The suite of recommendations in this chapter aims to improve the accessibility of the family violence exception to victims of family violence.

¹ Provisions relating to family violence are found in the *Migration Regulations 1994* (Cth) pt 1 div 1.5. In this Report the ALRC uses the expression ‘family violence’, as defined in Ch 3. A number of overseas jurisdictions use the term ‘domestic violence’ in their legislation—where that is the case, the ALRC replicates that terminology.

20.3 The ALRC’s principal recommendation is that the family violence exception should be expanded to cover secondary applicants for onshore permanent visas, and holders of a Prospective Marriage (Subclass 300) visa who have experienced family violence but who have not married their Australian sponsor. The ALRC makes a further recommendation that secondary applicants for a temporary visa should be able to access a new onshore temporary visa, to allow them to remain in Australia to seek services and make arrangements to return to their country of origin, or to apply for a new visa.

20.4 The ALRC also recommends targeted education and training for visa decision makers, ‘competent persons’² and ‘independent experts’³, and better information dissemination for visa applicants in relation to legal rights and family violence support services, prior to and on arrival in Australia.

Australia’s partner visa scheme

20.5 Partner visas form part of Australia’s family migration stream allowing non-citizens to enter and remain in Australia on the basis of their spouse or de facto relationship (both opposite and same-sex) with an Australian citizen or permanent resident.⁴ All applicants for a partner visa must be sponsored by an Australian citizen or permanent resident.⁵

Partner visas

20.6 To obtain permanent residence on a partner visa, applicants must go through a two-stage process.⁶ Irrespective of whether the visa application is made onshore or offshore, a partner visa application is an application for both a temporary and permanent visa.⁷ In the first stage, a temporary visa is granted for a period of two years, on the basis that the parties are in a genuine spouse or de facto relationship.⁸ After this probationary period, the relationship is reassessed and a permanent visa can

2 ‘Competent persons’ refer to a range of professionals who may give statutory declaration evidence in support of a non-judicially determined claim of family violence. See Ch 21.

3 An ‘independent expert’ refers to a Centrelink social worker, to whom a visa decision maker can refer a non-judicially determined claim of family violence where he or she is not satisfied on the evidence presented that the applicant has suffered family violence. See Ch 21.

4 See, generally, Department of Immigration and Citizenship, *Fact Sheet 30: Family Stream Migration—Partners* (2010) <www.immi.gov.au/media/fact-sheets/30partners.htm> at 13 December 2010. ‘Spouse’ is defined in *Migration Act 1958* (Cth) s 5F and *Migration Regulations 1994* (Cth) reg 1.15A; and ‘de facto partner’ in *Migration Act 1958* (Cth) s 5CB, *Migration Regulations 1994* (Cth) regs 1.09A, 2.03A.

5 *Migration Regulations 1994* (Cth) reg 1.20(2)(a). The sponsor undertakes, among other things, to assist the applicant, to the extent necessary, financially and in relation to accommodation for a two year period.

6 See Immigration Advice and Rights Centre, *Domestic/Family Violence and Australian Immigration Law* (2009), 4–6 for a comprehensive outline of the different onshore and offshore categories, and the two-stage process.

7 Applications are made at the same time and on the same form. See Department of Immigration and Citizenship, *Form 47SP—Application for Migration to Australia by a Partner* (2010) <www.immi.gov.au/allforms/pdf/47sp.pdf> at 13 December 2010. The definitions of temporary and permanent visas are set out in the *Migration Act 1958* (Cth) s 30.

8 *Migration Regulations 1994* (Cth) reg 1.15A outlines the factors that must be considered in determining whether a spouse or de facto relationship is genuine.

only be granted if, among other things, the spouse or de facto relationship remains ‘genuine and continuing’.⁹

Prospective marriage visas

20.7 A non-citizen who wishes to enter Australia for the purpose of marrying an Australian sponsor can apply for a Prospective Marriage visa (Subclass 300),¹⁰ that allows for entry into Australia for a nine-month period, within which the marriage must take place.¹¹ After the marriage, an application can be made for permanent residence on the basis of the married relationship via the two-stage process outlined above.

The family violence exception

How the exception works

20.8 The family violence exception is set out in the criteria for the relevant visa under sch 2 of the *Migration Regulations*. The exception is usually expressed as an alternate ground to the requirement for a ‘genuine and continuing’ spouse or de facto relationship, needed for obtaining permanent residence. The Department of Immigration and Citizenship (DIAC) guidelines for decision makers—the *Procedures Advice Manual 3* (PAM)—state that the family violence exception allows for the grant of a permanent visa to be considered if:

- (a) the partner relationship has broken down; and
 - (b) depending on the visa class applied for:
 - the visa applicant; or
 - a dependent child of that applicant/or that applicant’s ex-partner; or
 - a member of the family unit of that applicant and/or of that applicant’s ex-partner
- has suffered family violence committed by the visa applicant’s ex-partner.¹²

20.9 In addition to the partner visa class, the family violence exception can currently be invoked in certain skilled stream (business) visa classes.¹³ In those cases, the secondary visa applicant can rely on the family violence exception if the relationship

9 Permanent visas can be granted before the two year waiting period if, at the time of application, the relationship is considered a long-term partnership—three years or more or two years or more if there is a dependant child of the relationship. See, eg *Migration Regulations 1994* (Cth) sch 2, cl 100.221(5) in relation to Subclass 100 visas.

10 *Migration Regulations 1994* (Cth) sch 2 cls 300.215, 300.216 require the applicant to establish that the parties genuinely intend to marry within the visa period and genuinely intend to live together as spouses.

11 *Ibid* sch 2 cl 300.511.

12 Department of Immigration and Citizenship, *Procedures Advice Manual 3* (2010)—*The FV Provisions in Migration Law*, [2.1].

13 These are: Established Business in Australia (Subclass 845); State/Territory Sponsored Regional Established Business in Australia (Subclass 846); Labour Agreement (Subclass 855); Employer Nomination Scheme (Subclass 856); Regional Sponsored Migration Scheme (Subclass 857); and Distinguished Talent (Subclass 858).

has ceased, and the secondary visa applicant, or a member of his or her family unit, has suffered family violence committed by the primary visa applicant.¹⁴

20.10 In order to meet the family violence exception, applicants must satisfy the requirements for a judicially or non-judicially determined claim of family violence prescribed in regs 1.23(2)–(14).¹⁵

20.11 DIAC statistics show that only a small percentage of partner visa cases involve family violence claims. Although the number of claims has been steadily increasing since 2005, on average, they account for approximately 1.5% of all partner visa cases.¹⁶

Policy tensions

20.12 In Chapter 1, the ALRC outlines some of the key themes and policy tensions that are common in each of the Inquiry areas. The policy challenge in this area is to ensure accessibility to the family violence provisions for genuine victims of family violence while preserving the integrity of the visa system.

20.13 Accessibility is a broad concept, but in this context, refers to a number of things that may help to ensure that a victim can take measures to protect his or her safety, including:

- removing barriers to accessing the family violence exception;
- improving the ability of victims to access family violence services;
- empowering victims to access the Australian legal system through better education and information dissemination;
- ensuring that visa decision makers, and the legal system in general, are aware of, and sensitive to family violence issues.

20.14 Integrity concerns relate to ensuring that the visa system is not open to abuse or manipulation. As DIAC articulated in its submission, the finite number of permanent visas granted may mean that, ‘some applicants will seek to contrive or exaggerate claims to meet visa requirements’.¹⁷ As a result

14 See, eg, *Migration Regulations 1994* (Cth) sch 2 cl 846.321(3). Schedule 2 of the *Migration Regulations* prescribes, for all visa subclasses, ‘primary’ and ‘secondary’ criteria that must be met for the grant of a visa. A ‘secondary visa applicant’ is a person who is included in a visa application as a member of the family unit of a primary visa applicant, and is dependent therefore on the migration status of the primary visa applicant. In most instances, secondary visa applicants are the spouse and/or children of the primary visa applicant.

15 The evidentiary requirements are discussed in Ch 21.

16 Based on statistics from DIAC’s Annual Report for the period from 2005–09, and comparing the number of family violence claims with the total number of partner visa applications made.

17 DIAC, *Submission CFV 121*.

non-genuine applications have the potential to disadvantage genuine applicants who are waiting for their decisions on their visa applications and to reduce the benefit to Australia which the government hopes to deliver through the Migration Program.¹⁸

20.15 DIAC stressed that an ideal system is one that ‘would be sufficiently simple that it could be accessed by all applicants without generating an “industry” while providing robust assessment of claims and correct identification of non-genuine applications’.¹⁹

Expanding the family violence exception

20.16 During the Inquiry, a major issue identified was whether the family violence exception should be expanded to cover a wider range of visa subclasses. The ALRC recommends that the family violence exception should also be available to Prospective Marriage (Subclass 300) visa holders who are victims of family violence, but who have not married their Australian sponsor. It should also be available to secondary applicants where there is an open application for an onshore permanent visa.

20.17 For victims of family violence on temporary visas, the ALRC recommends that such persons should be able to apply for a temporary family violence visa that would allow them time to access services and make arrangements to leave Australia, or to apply for another visa.

Prospective marriage visas

20.18 A Prospective Marriage visa holder must marry his or her Australian sponsor within the visa period (nine months), before applying for an onshore partner visa. At the time of applying for a temporary Partner Visa (Subclass 820), applicants who are holders (or previous holders) of a Prospective Marriage Visa (Subclass 300) can invoke the family violence exception only if: the person *has married* his or her Australian sponsor; the marriage has broken down; and there has been family violence committed against the visa applicant, a member of the family unit of the applicant, or a dependent child of the couple by the Australian partner.²⁰ In effect, if the marriage never takes place, for whatever reason, the non-citizen who is a victim of family violence is precluded from accessing the family violence exception to obtain permanent residence.

20.19 In the report, *Equality Before the Law: Justice for Women* (ALRC Report 69), the ALRC expressed concerns in relation to the position of women entering Australia on a Prospective Marriage visa.²¹ The ALRC highlighted concerns that the provisions treat women as a commodity in that ‘if the relationship does not work out, the woman

18 Ibid. Attachment A includes a table showing the number of claims against the family violence exception since 2008–09 years, including the number of cases referred to the Department of Human Services (Centrelink).

19 DIAC, *Submission CFV 121*.

20 See *Migration Regulations 1994* (Cth) sch 2 cl 820.211(8)–(9).

21 Australian Law Reform Commission, *Equality Before the Law: Justice for Women (Part 1)*, Report 69 (1994), 224.

can be sent back to her country of origin'.²² Similar concerns have been expressed by academic commentators.²³

Vulnerable position of prospective marriage visa holders

20.20 Throughout the Inquiry, the ALRC often heard about the vulnerable position of Prospective Marriage visa holders who are the victims of family violence.²⁴ Case studies presented by stakeholders suggest that Prospective Marriage visa holders are even more vulnerable than those on Partner visas, due to: heightened isolation, lack of social and financial support, language barriers, poor knowledge of the legal system, and limited time spent in Australia.²⁵

20.21 In addition to having to relocate to Australia to be married, many victims of family violence find it difficult to return home due to cultural stigma, financial constraints and other reasons, if the marriage does not eventuate. In the worst case scenario, a person may risk persecution upon returning to their country of origin having failed to marry.²⁶

20.22 There was uniform support for the ALRC's proposal to expand the family violence exception to cover those on Prospective Marriage visas who have not married their Australian sponsor.²⁷ DIAC agreed that, as Prospective Marriage visa holders may remain in Australia for up to nine months prior to the marriage,

there is a risk that some visa applicants may be manipulated and forced to remain in an abusive relationship. Such amendments [as proposed by the ALRC] would ensure that Prospective Marriage visa holders have a legal basis for having their claims heard by the Department.²⁸

A legitimate expectation of a permanent migration outcome

20.23 The ALRC considers that expanding the family violence exception to cover Prospective Marriage visas is consistent with the policy intention of the family violence exception—to ensure that visa applicants do not have to remain in a violent relationship to ensure a migration outcome. It is also consistent with the ALRC's view that the family violence exception should be available where there is a legitimate expectation of a permanent migration outcome. It can be argued that Prospective

22 Ibid.

23 E Odhiambo-Abuya, 'The Pain of Love: Spousal Immigration and Domestic Violence in Australia—A Regime in Chaos?' (2003) 12 *Pacific Rim Law & Policy Journal* 673; M Crock, 'Women and Migration Law' in P Easteal (ed) *Women and the Law* (2010) 328; P Easteal, 'Broken Promises: Violence Against Immigrant Women in the Home' (1996) 21(2) *Alternative Law Journal* 53.

24 See, eg, IARC, *Submission CFV 149*; WEAVE, *Submission CFV 106*.

25 IARC, *Submission CFV 149*; WEAVE, *Submission CFV 106*; Bringa Refuge, *Submission CFV 96*; Erskine Rodan and Associates, *Submission CFV 80*.

26 RILC, *Submission CFV 129*.

27 Confidential, *Submission CFV 165*; N Dobbie, *Submission CFV 163*; RAILS, *Submission CFV 160*; ANU Migration Law Program, *Submission CFV 159*; Law Institute of Victoria, *Submission CFV 157*; Townsville Community Legal Service, *Submission CFV 151*; IARC, *Submission CFV 149*; Migration Institute of Australia, *Submission CFV 148*; RILC, *Submission CFV 129*; DIAC, *Submission CFV 121*; WEAVE, *Submission CFV 106*; Bringa Refuge, *Submission CFV 96*.

28 DIAC, *Submission CFV 121*.

Marriage visa holders have such an expectation in coming to Australia in order to marry their Australian sponsor with the ultimate aim of applying for a permanent Partner visa.

Preserving the integrity of the system

20.24 DIAC suggested that there was some risk in expanding the family violence exception—‘applicants may perceive the requirements of a Prospective Marriage visa as easier to pass and seek to use this and a family violence claim to obtain permanent residence’.²⁹ However, it agreed that such risks could be mitigated if the procedures for verifying the occurrence of family violence were sufficiently robust.³⁰ National Legal Aid suggested that the change be the subject of research to ‘identify whether the integrity of the system has been adversely affected’.³¹

20.25 In the ALRC’s view, the safety of Prospective Marriage visa holders is best ensured by allowing victims to access the family violence exception. If the ALRC’s recommendation is implemented, the Australian Government may wish to consider further amendments to enhance the integrity measures around the criterion for a Prospective Marriage visa.

A new class of visa?

20.26 In *Family Violence and Commonwealth Laws* (ALRC Discussion Paper 76) (Discussion Paper) the ALRC raised other possible options for reform to ensure that victims of family violence on Prospective Marriage visas were protected including: the introduction of a new temporary visa,³² and abolishing the Prospective Marriage visa in favour of a subclass of tourist visa, similar to the approach taken in New Zealand.³³ There was no support among stakeholders for abolishing the Prospective Marriage visa in favour of a visitor visa model similar to that in place in New Zealand.³⁴

20.27 However, some stakeholders supported the notion of a new temporary visa. Such a visa could allow victims to pursue Ministerial Intervention under s 351 of the *Migration Act* without first having to appeal the decision to cancel the Prospective Marriage visa to the Migration Review Tribunal (MRT), or allow a period of time for recovery from trauma associated with family violence and to make appropriate arrangements to leave Australia.³⁵

29 Ibid.

30 Ibid. See also IARC, *Submission CFV 149*. The ALRC addresses the evidentiary requirements in Ch 21.

31 National Legal Aid, *Submission CFV 164*.

32 Australian Law Reform Commission, *Family Violence and Commonwealth Laws*, Discussion Paper 76 (2011), Proposal 20–3.

33 Ibid, Question 20–5. The New Zealand visitor visa model is also discussed: 684.

34 Law Institute of Victoria, *Submission CFV 157*; DIAC, *Submission CFV 121*.

35 Law Institute of Victoria, *Submission CFV 157*; RILC, *Submission CFV 129*. For example, the LIV envisaged that a temporary visa could allow for a 6 week period (extendable in exceptional circumstances) to allow a person to recover from injury or trauma, and to make arrangements to leave Australia. Such a visa should also allow access to Special Benefit payments.

20.28 DIAC considered that retaining the Prospective Marriage visa would keep intact some system integrity measures beneficial to both it and visa applicants. The creation of a new class of visitor visa was considered inappropriate as the current visitor visas requires that applicants ‘intend only a visit to Australia—rather than have a pre-formed intent to seek to migrate’.³⁶ The new visitor visa would not be more beneficial to victims of family violence because those on the new visitor visa

may have a reasonable expectation of being sponsored for a permanent visa at the conclusion of their initial stay. This would be the case particularly for fiancés or couples who wish to use such a visa to develop their relationship to a point required for a Partner visa. As a result, holders of this visa may have similar incentives to remain in a violent relationship as some Prospective Marriage visa applicants currently do.³⁷

20.29 DIAC also argued that creation of a new visitor visa would also be contrary to ‘deregulation efforts underway by the Department to reduce the number of visas and simplify them’.³⁸

20.30 DIAC argued that an advantage of keeping the Prospective Marriage visa—in addition to allowing a nine-month stay, as opposed to three months for visitor visas—is that both applicants and sponsors must meet a range of other migration checks, including in depth health and character assessment.³⁹ It also allows for some scrutiny of relationship intentions as applicants are required to have met their sponsor in person and to have formed a genuine intention to marry. No such requirements are in place for visitor visas.

20.31 The ALRC is of the view that the safety of victims of family violence would be best achieved by retaining the Prospective Marriage visa and providing for access to the family violence exception, rather than the creation of a new visitor visa subclass for this purpose.

Recommendation 20–1 The Australian Government should amend the *Migration Regulations 1994* (Cth) to allow Prospective Marriage (Subclass 300) visa holders to have access to the family violence exception.

Secondary applicants for permanent visas

20.32 The ALRC recommends that the *Migration Regulations* should be amended to provide that the family violence exception is accessible by secondary applicants for all onshore permanent visas.

20.33 A number of temporary or provisional visas provide a pathway to permanent residency—that is, to be eligible for a permanent visa; a person must have previously

³⁶ DIAC, *Submission CFV 121*.

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

held a temporary or provisional visa.⁴⁰ Stakeholders have expressed concern that, where such pathways exist, secondary visa holders—usually a spouse and/or children—are especially vulnerable to family violence, as they are dependent on the relationship with the primary visa holder for a permanent migration outcome. For example, National Legal Aid expressed concern that the threat of removal of the application for a permanent visa is one way that family violence can be perpetuated:

We are of the view that family violence ... can potentially arise in any kind of visa ... Our experience is that the primary visa applicant may use the conditions of the temporary visa to perpetrate what is in effect further family violence on the dependents of the visa holder by threatening to remove the spouse from the visa and keep the children on the visa.

Towards the end of the temporary visa when an application is to be made for permanent residency, it is also not uncommon for an application to be made for permanent residency on behalf of the primary visa applicant and the children leaving the spouse of the visa applicant without legal status upon the expiration of the temporary visa.⁴¹

20.34 A problem arises that, by the time an application for a permanent visa is made, a secondary visa applicant—who may have been in a violent relationship for some time on the temporary visa—has no access to the family violence exception. A victim of family violence may therefore feel compelled to stay in that violent relationship until such time as the person and his or her partner are granted permanent visas, before taking steps to ensure safety.

20.35 Many stakeholders supported expanding the family violence exception to secondary applicants when an application for a permanent visa is made.⁴² The Immigration Advice and Rights Centre (IARC) agreed that all secondary applicants for permanent visas should be able to access a ‘consistent and fair regime to gain Australia’s protection if they become a victim of family violence at the hands of a primary visa applicant’.⁴³ DIAC suggested that expanding the family violence exception in this way is consistent with the ‘policy rationale behind the family violence exception to prevent people remaining in violent relationships in order to preserve his or her eligibility for a permanent visa’ and that:

to do this effectively, it is necessary to identify people who have a reasonable expectation of obtaining permanent residence on the basis of their partner relationships. The Commission’s proposal to open the provisions to people in

40 For example, the Contributory Aged Parent (Subclass 884) visa is a temporary visa that allows aged parents who are in Australia on temporary basis and who have children living in Australia, to live in Australia for two years. Holders of this visa can then apply for the Contributory Aged Parent (Residence) (Subclass 864) visa.

41 National Legal Aid, *Submission CFV 75*.

42 National Legal Aid, *Submission CFV 164*; RAILS, *Submission CFV 160*; ANU Migration Law Program, *Submission CFV 159*; Law Institute of Victoria, *Submission CFV 157*; Confidential, *Submission CFV 152*; Townsville Community Legal Service, *Submission CFV 151*; IARC, *Submission CFV 149*; Migration Institute of Australia, *Submission CFV 148*; WEAVE, *Submission CFV 106*.

43 IARC, *Submission CFV 149*.

Australia with open permanent visa applications would be a feasible way of identifying this cohort.⁴⁴

The need for consistency

20.36 The ALRC considers that the inconsistent and differential application of the family violence exception across different visa subclasses may threaten the safety of victims of family violence. Consistency in the application of the family violence exception across visa subclasses addresses a key theme in this Inquiry—that of accessibility.

20.37 There appears to be no sound policy reason why the exception should apply to protect secondary visa applicants on certain business (skilled stream) visas—as it currently does—but not to other onshore permanent visas. Family violence situations may arise between a primary and secondary visa applicant for any kind of visa. Victims should not have to remain in a violent relationship in order to ensure that their eligibility for a permanent visa is preserved.

20.38 Family violence may have occurred before and/or after an application for a permanent visa is made. Therefore the family violence exception should be made available to secondary applicants as a time of application or time of decision criterion in respect of a permanent visa application.

Consequential considerations

20.39 DIAC also suggested that if the family violence exception were to be expanded to cover all secondary applicants for permanent visas, consideration would have to be given to some consequential policy and implementation issues, including:

- measures to ensure that the expanded provisions worked with an appropriate measure of system integrity, for example a requirement that the primary applicant is granted a visa before a victim is granted theirs and/or a sponsorship bar that prevented the victim from sponsoring their ex-partner for 5 years;
- interaction with ‘Skill Select’, a new model for selecting skill migrants which will take effect from 1 July 2012 and which will change both the visa application process and the distribution between onshore and offshore visas for skilled migrants;
- how such provisions would apply to long-term Subclass 457 visa holders who move to Employer Nominated Scheme (ENS) or Regional Skilled Migration Scheme (RSMS) visas; and
- how would the Department best ensure consistency in the processing of family violence cases across multiple visa streams.⁴⁵

20.40 The ALRC agrees that such considerations will need to be considered when implementing the ALRC’s recommendation.

44 DIAC, *Submission CFV 121*.

45 DIAC, *Submission CFV 121*.

Recommendation 20–2 The Australian Government should amend the *Migration Regulations 1994* (Cth) to provide secondary applicants for onshore permanent visas with access to the family violence exception.

Temporary visas

20.41 For secondary visa holders of temporary visas, the ALRC recommends that a new temporary visa be created to allow victims of family violence to remain in Australia for a period of time to access services and make arrangements to return to their country of origin or to apply for another visa.

20.42 Some stakeholders expressed concerns for the safety of primary holders of student and visitor visas who form a relationship with an Australian resident and are subjected to family violence.⁴⁶ Similar concerns were expressed in relation to secondary holders of temporary visas, who may be subjected to family violence by a primary visa applicant.⁴⁷

20.43 Divergent views were expressed by stakeholders about the legitimate role of the migration system in ensuring the safety of victims of family violence who are in Australia temporarily. A number of stakeholders argued that the family violence exception should apply to temporary visa holders, to give effect to Australia's 'overriding obligation' as a party to international human rights instruments.⁴⁸ Others argued that there is no need for reform of migration law 'in relation to family violence matters for those victims who come to Australia on a *truly temporary basis* (such as tourism or business visitors, international students and their spouses) knowing that they have to return to their prospective countries'.⁴⁹

Expectation of a permanent migration outcome

20.44 Section 30 of the *Migration Act* defines a 'temporary visa' as a visa that allows the holder to remain in Australia for a specified period while the holder has a specified status. One problem with extending the family violence exception to cover temporary or provisional visas lies in being able to define when and whether there is a reasonable expectation of a permanent migration outcome. DIAC submitted that—unlike the situation where a permanent visa application has been made, and a reasonable expectation of a migration outcome is formed—it would be legally and practically

46 See Joint submission from Domestic Violence Victoria and others, *Submission CFV 33*; WEAVE, *Submission CFV 31*.

47 ANU Migration Law Program, *Submission CFV 79*; National Legal Aid, *Submission CFV 75*; Joint submission from Domestic Violence Victoria and others, *Submission CFV 33*; WEAVE, *Submission CFV 31*.

48 Townsville Community Legal Service, *Submission CFV 151*; WEAVE, *Submission CFV 106*; AASW (Qld), *Submission CFV 38*; Good Shepherd Australia New Zealand, *Submission CFV 41*.

49 Refugee Advice & Casework Service Inc, *Submission CFV 111*.

more difficult to define groups of temporary residents who had similar reasonable expectations'.⁵⁰

20.45 Other stakeholders pointed out that, in practice, there are some temporary visa subclasses where applicants may have a reasonable expectation of a permanent migration outcome once certain conditions are satisfied. For example, the Migration Institute of Australia submitted that 'this is particularly true of many holders of Subclass 457 visas, a considerable number of whom go on to obtain permanent residence through employer sponsorship'.⁵¹

Ministerial intervention

20.46 In the Discussion Paper, the ALRC asked whether s 351 of the *Migration Act* should be amended to allow victims of family violence on temporary visas to apply for Ministerial Intervention in circumstances where there has not been a decision made by the MRT and, if a permanent visa is granted, what factors should influence this decision.⁵²

20.47 Stakeholders did not support such an amendment.⁵³ DIAC submitted that Ministerial Intervention provisions 'are designed as a safety net option of last resort for people who do not meet the legal requirement for the grant of a visa', such that allowing victims of family violence to make direct requests to the Minister would

fundamentally change the concept and operation of the Ministerial Intervention ... [and] may also raise questions such as why family violence victims get direct access to the Minister, while such direct access is not available to other vulnerable groups, such as the parents of young Australian citizen children.⁵⁴

A new temporary visa for victims of family violence?

20.48 The Law Institute of Victoria (LIV) submitted that, even if the family violence exception were to be expanded to cover secondary visa applicants where an application for a permanent visa has been made—as the ALRC recommends—this does not provide a pathway 'for a person on a temporary visa who suffers family violence and then leaves the primary visa holder, where no further visa application is made by the primary visa holder'.⁵⁵ The LIV therefore recommended that a new subclass be created for 'victims of family violence who hold temporary Spouse Dependent visas'.⁵⁶ The LIV envisaged that such a visa would allow the victim to stay in Australia for a temporary period of time—irrespective of when the violence occurred and the

50 DIAC, *Submission CFV 121*.

51 Migration Institute of Australia, *Submission CFV 148*.

52 Australian Law Reform Commission, *Family Violence and Commonwealth Laws*, Discussion Paper 76 (2011), Question 20–3.

53 Law Institute of Victoria, *Submission CFV 157*; DIAC, *Submission CFV 121*; Refugee Advice & Casework Service Inc, *Submission CFV 111*.

54 DIAC, *Submission CFV 121*.

55 Law Institute of Victoria, *Submission CFV 157*.

56 *Ibid.*

temporary visa type—allowing the victim time to access support services and decide how to proceed.⁵⁷

20.49 In Canada, a person on a temporary visa can still apply for permanent residence on ‘Humanitarian and Compassionate’ grounds if he or she has experienced family violence.⁵⁸ A number of considerations must be taken into account in considering an application on this basis, including: establishment in, and ties to, Canada; the best interest of any children involved; health considerations; consequences of the separation of relatives; factors in the applicant’s country of origin; and the degree of establishment in Canada.⁵⁹

20.50 There was considerable support for the creation of a new visa in Australia, taking into consideration the Canadian approach.⁶⁰ For example, the ANU Migration Law Program submitted that such a visa

would break the nexus of dependence on the primary visa applicant and allow them to apply for a visa separately. The visa application would need to carry with it the right to a bridging visa with work rights to allow applicants to maintain households and care for any dependants.⁶¹

20.51 The Refugee Advice and Casework Service (RACS) agreed that, if there is a need to allow a temporary visa holder to remain in Australia temporarily after leaving the violent relationship,

a practical measure would be to allow victims to apply for a Bridging Visa E, based on the victim’s intention to make suitable arrangements to leave Australia, rather than through avenues of Ministerial Intervention.⁶²

20.52 The Migration Institute of Australia submitted that the factors listed in the Canadian model should be taken into consideration in determining whether a permanent visa should be granted.⁶³

Separating protection from the migration outcome

20.53 The visa system contemplates that temporary visas, by their nature, do not envisage an applicant being in Australia beyond the specified period contemplated by the relevant visa. Any move to extend the family violence exception to apply to temporary visas or to create a new visa subclass that provides for a permanent migration outcome, risks creating an incentive to claim family violence as a means of securing a migration outcome. On the other hand, the ALRC acknowledges that

57 Ibid.

58 See generally, Immigration and Citizenship Canada, *IP 5: Immigrant Applications in Canada made on Humanitarian or Compassionate Grounds* (2011).

59 See Ch 21.

60 ANU Migration Law Program, *Submission CFV 159*; Law Institute of Victoria, *Submission CFV 157*; Migration Institute of Australia, *Submission CFV 148*; Refugee Advice & Casework Service Inc, *Submission CFV 111*.

61 ANU Migration Law Program, *Submission CFV 159*.

62 Refugee Advice & Casework Service Inc, *Submission CFV 111*.

63 Migration Institute of Australia, *Submission CFV 148*.

Australia owes legal and moral obligations to ensure the safety of those who are in Australia on temporary visas.

20.54 The ALRC considers that there is merit in creating a new temporary visa subclass for secondary visa applicants who are victims of family violence. Such a visa should entitle the holder to access social security benefits and entitlements. A temporary visa that gives victims time and resources to access support services and make arrangements to leave Australia better ensures the safety of victims of family violence. It allows victims to leave a violent relationship with knowledge that they can take measures to protect their safety without being removed from Australia immediately. However, it is important that such a visa is temporary, so as not to ‘incentivise’ family violence claims.

20.55 If the temporary visa holder applies for another visa with a permanent migration outcome, the integrity of the system is not compromised as the applicant will have met the requirements for a permanent visa in his or her own right.

20.56 If a new temporary visa subclass is created, this may alleviate the burden on Ministerial Intervention under s 351 of the *Migration Act*—a measure of last resort. Ministerial Intervention could accommodate cases where victims of family violence have resided in Australia for a long period of time and have formed strong ties, or have children resulting from the relationship. In these cases, the expectation of, and necessity for, a permanent migration outcome could be matters to be considered by the Minister for Immigration and Citizenship.

Access to family violence services and social security

20.57 During the Inquiry, stakeholders expressed considerable concern about the limited ability for temporary visa holders to access crisis services, accommodation, and income support.⁶⁴ For example, Domestic Violence Victoria and others in a joint submission submitted that, in relation to temporary visa holders:

Access to emergency accommodation for this group of women is very limited ... the lack of housing options, ineligibility for public and community housing and lack of income support all limit the capacity of family violence services to support women without residency rights.⁶⁵

20.58 In the Discussion Paper, the ALRC expressed a view that there is a role for the migration system in ensuring access to family violence services and social security entitlements for temporary visas. Stakeholders have argued that, in practice, certain visa subclasses restrict the ability of victims to access to family violence services and social security payments and entitlements.⁶⁶ As noted in Chapter 7, a general principle of social security law is that a person must be an Australian resident—defined as an

64 NSW Women’s Refuge Movement Working Party, *Submission CFV 120*; Confidential, *Submission CFV 36*; Confidential, *Submission CFV 35*; Joint submission from Domestic Violence Victoria and others, *Submission CFV 33*; WEAVE, *Submission CFV 31*; ADFVC, *Submission CFV 26*.

65 Joint submission from Domestic Violence Victoria and others, *Submission CFV 33*.

66 Australian Law Reform Commission, *Family Violence and Commonwealth Laws*, Discussion Paper 76 (2011), 677.

Australian citizen, a permanent visa holder, or a Protected Special Category visa holder—to qualify for social security payments and entitlements.⁶⁷ In addition to meeting the residence requirements, some payments require an applicant to also meet the ‘newly arrived resident’s waiting period’, being a period of, or periods totalling, 104 weeks (2 years) before benefits are payable.⁶⁸

20.59 The Minister for Families, Community Services and Indigenous Affairs has power to make determinations to allow the holders of particular temporary visas to meet the residence requirements for Special Benefit.⁶⁹ Currently, such determinations are in force for nine types of temporary visa, including Partner (Subclass 820 and 209) visas.⁷⁰

20.60 There appears to be no reason why such a determination could not also be made in relation to any new visa subclass introduced in line with Recommendation 20–3. The policy intention behind exemption from Special Benefit is to recognise that a person may suffer a ‘substantial change in circumstances beyond their control’, where there is ‘domestic violence perpetrated by the sponsor’.⁷¹

20.61 Access to appropriate social security payments and entitlements may empower victims to leave violent relationships, and to take measures to ensure their safety. Access to Special Benefit will go some way to ensure that those on the new temporary family violence visa have some financial control over their lives, and are able to access family violence services, and other services to ensure their safety. The ALRC makes recommendations about this in Chapter 7.⁷²

Recommendation 20–3 The Australian Government should create a new temporary visa to allow victims of family violence who are secondary holders of a temporary visa to:

- (a) make arrangements to leave Australia; or
- (b) apply for another visa.

67 *Social Security Act 1991* (Cth) s7(2); FaHCSIA, *Guide to Social Security Law* <www.fahcsia.gov.au/guides_acts/> at 1 November 2011, [2.2.4.10] (Verifying Residence/Citizenship).

68 FaHCSIA, *Social Security Payments Residence Criteria* (2011) <www.fahcsia.gov.au/sa/international/policy/Residence_Criteria> at 12 July 2011.

69 Ibid.

70 The other visas include: Subclasses 310 and 826 (interdependency, provisional); Subclass 785 (temporary protection); Subclass 786 (humanitarian concerns); Subclass 447 (Secondary Movement Offshore Entry); Subclass 451 (Secondary Movement Relocation); Subclass 695 (Return Pending); Subclass 787 (Witness Protection (Trafficking) (Temporary); Subclass 070 (Bridging Removal Pending) and Criminal Justice Stay visas relating to the offence of people trafficking, sexual servitude or deceptive recruiting.

71 FaHCSIA, *Social Security Payments Residence Criteria* (2011) <www.fahcsia.gov.au/sa/international/policy/Residence_Criteria> at 12 July 2011.

72 Rec 7–2.

Fee waivers in review applications

20.62 The ALRC recommends that the Australian Government should consider reviewing the MRT's application fee arrangements—contained in reg 4.14 of the *Migration Regulations*—including their impact on the ability of victims of family violence to access merits review. Such a review should be conducted in consultation with community and migration legal centres, and the MRT. It could consider the restructuring the hierarchy of fees to ensure that victims of family violence are not unduly denied access to merits review.

20.63 Applications for all visas are considered, in the first instance, by a DIAC officer as a delegate of the Minister. In the event of an unfavourable decision, applicants can apply for merits review of the visa decision to the MRT.⁷³

20.64 When making an appeal to the MRT, an application fee must be paid.⁷⁴ Prior to 1 July 2011, the application fee for review in an MRT case was \$1400.⁷⁵ This amount is refundable to an applicant if a favourable decision on the case is made.⁷⁶ Prior to 1 July 2011, the entire fee could be waived where the relevant decision maker was satisfied that 'the fee has caused, or is likely to cause, severe financial hardship to the review applicant'.⁷⁷ However, the *Migration Amendment Regulation 2011 (No 4)* (Cth) removed the MRT's ability to waive the fee.⁷⁸ A separate piece of amending legislation also increased the review application fee to \$1540.⁷⁹ For applications lodged after 1 July 2011, where the MRT is satisfied that payment of the fee has caused, or is likely to cause, severe financial hardship' for a review applicant, it can reduce the fee by 50%—to \$770.⁸⁰

The impact of fee waiver removal on victims of family violence

20.65 Many stakeholders expressed serious concern about the impact of the removal of the MRT's fee waiver power on those experiencing family violence, and called for the fee waiver power to be reinstated.⁸¹ Some argued that the requirement to pay the fee had the potential to reduce access to merits review—and the family violence

73 *Migration Act 1958* (Cth) s 347. Although the MRT and Refugee Review Tribunal are separate Tribunals, they are co-located with members and staff cross-appointed to both Tribunals. The Tribunals operate as a single agency for the purposes of the *Financial Management and Accountability Act 1997* (Cth).

74 *Migration Act 1958* (Cth) s 347(1)(c).

75 *Migration Regulations 1994* (Cth) reg 4.13(1).

76 *Ibid* reg 4.14. Refunds are also available if the application is not reviewable by the MRT, or if the Minister has issued a conclusive certificate under s 339 of the *Migration Act* in relation to the decision.

77 *Ibid* reg 4.13(4) provides that the fee may be waived by the Registrar, the Deputy Registrar or another officer of the MRT authorised in writing by the Registrar.

78 *Migration Amendment Regulation (No 4) 2011* (Cth) sch 1 reg 2.

79 *Migration Legislation Amendment Regulations (No 1) 2011* (Cth).

80 *Migration Amendment Regulation (No 4) 2011* (Cth) reg 3.

81 National Legal Aid, *Submission CFV 164*; RAILS, *Submission CFV 160*; ANU Migration Law Program, *Submission CFV 159*; Townsville Community Legal Service, *Submission CFV 151*; IARC, *Submission CFV 149*; Migration Institute of Australia, *Submission CFV 148*; RILC, *Submission CFV 129*; Community Legal Centres NSW, *Submission CFV 127*; Federation of Ethnic Communities' Councils of Australia, *Submission CFV 126*; Refugee Advice & Casework Service Inc, *Submission CFV 111*.

exception—as well as perpetuating violence and the vulnerability of victims whose finances are controlled by their sponsor.⁸²

20.66 The Refugee and Immigration Legal Centre noted that ‘all but a handful of the people ... have been able to seek review only because they have been able to have the Tribunal fee waived completely’, and the requirement to pay a fee ‘has begun to cause hardship to clients’.⁸³ In addition, stakeholders also argued that the inability to access merits review had a number of potential consequences for victims of family violence. For example, Community Legal Centres NSW (CLC NSW) argued that as a result of the fee:

Some of these women will return to their partners (in hope that they will pay the MRT fee, and the case can be re-assessed as an ongoing relationship); some will stay unlawfully in Australia after their visa ends; some will lodge Protection Visa applications (even if they clearly cannot meet the protection visa requirements, as this is a more affordable way to remain legally in Australia and eventually access the Minister’s discretion to ‘intervene’ under s 417 of the *Migration Act*.⁸⁴

20.67 Stakeholders also argued that the financial benefit derived from the fees collected—in cases whether it would otherwise have been waived—were marginal compared to the potential detrimental impact on victims of family violence. For the financial year 2009/2010, fee waiver requests to the MRT accounted for 10% of lodgements, less than 5% of which were granted.⁸⁵ This would have amounted to \$393,500 if the new fee were paid and does not represent a significant proportion of the MRT’s revenue.

20.68 CLC NSW suggested a number of potential solutions, including:

- A hierarchy of fees, depending on the nature of the application to the MRT: e.g. business/employment related matters paying a higher fee; family visas paying a more moderate fee; family violence claims and applications from people in detention paying no fee; or
- Amend the Migration Regulations 1994 to specify that no fee is payable by an applicant who claims (at DIAC or MRT-level) to meet the family violence provisions for the visa they applied for.⁸⁶

The need to review fee structures

20.69 In the ALRC’s view, the re-introduction of the fee waiver provisions is desirable to ensure that victims of family violence have access to merits review and ultimately, the family violence exception. In particular, the ALRC is concerned about the potential

82 See case studies in submissions from IARC, *Submission CFV 149* and Community Legal Centres NSW, *Submission CFV 127*.

83 RILC, *Submission CFV 129*.

84 Community Legal Centres NSW, *Submission CFV 127* noted that, by being denied access to the MRT, a victim of family violence will not be able to access Ministerial Intervention under s 351 of the *Migration Act*.

85 Refugee Advice & Casework Service Inc, *Submission CFV 111*; Community Legal Centres NSW, *Submission CFV 127*.

86 Community Legal Centres NSW, *Submission CFV 127*.

impact the fee requirement may have on the ability of victims of family violence to access appropriate services and migration assistance to ensure their safety.

20.70 However, reverting back to the old fee waiver structure would require a broad structural reform of the MRT's fee structure, with implications extending beyond victims of family violence. In all areas of this Inquiry, the ALRC has been cognisant of avoiding the creation of a two-tiered system in which family violence is emphasised above other forms of disadvantage. For example, if the *Migration Regulations* were amended to provide that a full fee waiver is available to victims of family violence, a question arises to why victims of family violence get such treatment and not others who may also be suffering financial hardship.

20.71 Given that a new fee structure was implemented on 1 July 2011, the ALRC recommends that the Australian Government should review the impact of the provisions on victims of family violence, in consultation with community and migration legal centres and the MRT. Such a review could consider re-structuring the hierarchy of fees to ensure that victims of family violence are not unduly denied access to merits review, as suggested by the NSW CLC. The Attorney-General's Department (AGD) is currently conducting a review of the current fee arrangements.⁸⁷ The ALRC notes that AGD may wish to consider the concerns expressed by stakeholders to this Inquiry about the impact of the removal of the MRT's fee waiver on victims of family violence.

Recommendation 20–4 The Australian Government should consider reviewing the Migration Review Tribunal's application fee arrangements contained in reg 4.14 of the *Migration Regulations 1994* (Cth), including its impact on the ability of victims of family violence to access merits review.

Partner visa sponsorships

20.72 The ALRC considers that the current safeguards surrounding serial sponsorship—a limit of no more than two sponsored in a lifetime and a five year period between sponsorships—provides a measure of protection for victims of family violence.⁸⁸ The ALRC makes no recommendations to amend the sponsorship requirements in light of the difficulties in implementing a separate sponsorship criterion without breaching Australia's international obligations, and adequate framing of procedural fairness and privacy obligations to the sponsor.

20.73 As noted above, all applicants for a partner visa must be sponsored by an Australian citizen, or permanent resident. Currently, there are no separate provisions in the *Migration Regulations* under which an Australian citizen or permanent resident must apply, and be approved, as a sponsor for a partner visa. Rather, a citizen or permanent resident applies to be a sponsor by filling out a sponsorship application

⁸⁷ This was brought to the ALRC's attention by National Legal Aid, *Submission CFV 164*.

⁸⁸ See *Migration Regulations 1994* (Cth) reg 1.20J.

form, which is then submitted to DIAC along with the partner visa application.⁸⁹ This means that the ‘sponsorship approval is dealt with as part of the visa approval process, treating the sponsor and the visa applicants essentially as joint parties to the same application’.⁹⁰

20.74 In the Discussion Paper, the ALRC asked whether there was a need to amend the *Migration Act* and *Migration Regulations* to provide for a separate and reviewable criterion for the grant of a visa.⁹¹ It was envisaged that such a reform may provide a framework in which to assess the character of the sponsor. Parallels were drawn with the requirements for sponsorship of a child, whereby a sponsor must undergo a character assessment, and the sponsorship must be refused for people who have a conviction or have committed a registrable offence.⁹²

The problematic nature of regulating sponsorship

20.75 Stakeholders considered the introduction of a separate criterion for sponsorship in partner visas to be problematic.⁹³ DIAC submitted that:

Such measures could lead to claims that the Australian Government is arbitrarily interfering with families, in breach of its international obligations. It could also lead to claims that the Australian government is interfering with relationships between Australians and their overseas partners in a way it would not interfere in a relationship between two Australians.⁹⁴

20.76 The LIV argued that ‘issues of procedural fairness to the alleged perpetrator, privacy and discrimination outweigh any potential gains from disclosure to the applicant’.⁹⁵

20.77 On the other hand, some stakeholders supported having a separate criterion for sponsorship, ‘as it would prevent many potential victims from being sponsored initially’.⁹⁶ There were concerns that despite the current limitations on sponsorships, ‘there are a number of ways to subvert the existing protections such as marrying within

89 Department of Immigration and Citizenship, *Form SP 40—Sponsorship for a Partner to Migrate to Australia* 2011.

90 Visa Lawyers Australia, *Submission CFV 76*.

91 Australian Law Reform Commission, *Family Violence and Commonwealth Laws*, Discussion Paper 76 (2011), Question 20–6.

92 See *Migration Amendment Regulations (No. 2) 2010* (Cth); *Migration Regulations 1994* (Cth) reg 1.20KB(13) defines ‘registrable offence’ as a registrable offence within the meaning of, or an offence that would be registrable under the following Acts if it were committed in that jurisdiction: *Child Protection (Offenders Registration) Act 2000* (NSW); *Sex Offenders Registration Act 2006* (SA); *Crimes (Child Sex Offenders) Act 2005* (ACT). An offence is a reportable offence within the meaning of the following Acts: the *Child Protection (Offender Reporting) Act 2004* (Qld); *Community Protection (Offender Reporting) Act 2004* (WA); *Community Protection (Offender Reporting) Act 2005* (Tas); *Child Protection (Offender Reporting and Registration) Act* (NT).

93 Law Institute of Victoria, *Submission CFV 157*; Townsville Community Legal Service, *Submission CFV 151*; DIAC, *Submission CFV 121*.

94 DIAC, *Submission CFV 121*.

95 Law Institute of Victoria, *Submission CFV 157*.

96 Migration Institute of Australia, *Submission CFV 148*. See also, National Legal Aid, *Submission CFV 164*; RAILS, *Submission CFV 160*.

the newly arrived migrant sector/community as opposed to re-sponsoring from outside Australia'.⁹⁷ The Refugee and Immigration Legal Service (RAILS) stated that

sponsors should submit to a police check in relation to past family violence convictions or protection orders when making an application to sponsor a spouse/de facto partner and that there be a discretionary power for the decision maker to refuse approval of the sponsorship on that basis.⁹⁸

20.78 DIAC noted that there may be a 'risk that Australian sponsors could be disadvantaged by previous conduct that occurred a long time ago'.⁹⁹

20.79 The ALRC reiterates its view expressed in *Equality Before the Law*, that the 'Australian government has a special responsibility to immigrant women who are particularly vulnerable to abuse and the consequences of abuse'.¹⁰⁰ Rather than instituting a separate criterion for sponsorship, the ALRC considers that the safety of victims of family violence can be promoted through targeted education and information dissemination.

Education, training and information dissemination

20.80 The ALRC recommends that the Australian Government should collaborate with relevant migration service providers, community legal centres, and industry bodies to ensure targeted education and training on family violence issues for decision makers, competent persons, visa applicants and visa holders. Recognition should be given to the fact that different groups within the migration system may have differing education and information needs.

Meeting different needs across the sector

20.81 Stakeholders supported the need for education and training for all those in the migration system, but noted that education needs to be targeted to meet the needs of different groups. For example, DIAC observed that 'competent persons' are 'expected to be professionals who work with victims of family violence and so have expertise which can inform Departmental decision making'.¹⁰¹ However, such persons may not be so familiar with, or have complete understanding of, migration processes:

To this effect, it may be possible to review or improve current information in order to assist competent persons and applicants understand particular migration requirements; including the process for making and assessing family violence claims as well as guidelines on how to complete forms and comply with statutory declaration requirements.¹⁰²

97 Townsville Community Legal Service, *Submission CFV 151*.

98 RAILS, *Submission CFV 160*.

99 DIAC, *Submission CFV 121*.

100 Australian Law Reform Commission, *Equality Before the Law: Justice for Women (Part 1)*, Report 69 (1994), 231.

101 DIAC, *Submission CFV 121*.

102 *Ibid.*

20.82 DIAC suggested that due to a large number of competent persons, it would not be possible for it undertake a ‘comprehensive training program’.¹⁰³ However, this is a role that could be performed by community and migration legal centres. The IARC argued for continued funding so that it could ‘deliver community information sessions to various organisations, including those that are able to provide statements as competent persons’.¹⁰⁴ If the ALRC’s recommendation in Chapter 21 to repeal the provisions regulating the content of a competent person’s statutory declaration is implemented, this will reduce the need for competent persons to have a complete understanding of migration processes. However, training and education can still be provided to competent persons about the migration requirements and how to complete forms in a way that ensures that evidence is well presented for the visa decision maker.

20.83 In its submission, DIAC noted that it had seen ‘benefits from centralising processing of all family violence claims made during processing of permanent Partner visa applications in a single team’.¹⁰⁵ The ALRC supports the moves within DIAC towards specialised units dealing with family violence claims as this presents opportunities for targeted training of visa decision makers, allowing them to build expertise in dealing with family violence-related claims.¹⁰⁶

20.84 In relation to independent experts, stakeholders expressed concern about inconsistent decision making by Centrelink ‘independent experts’ (social workers) in the migration context, due to lack of understanding of migration requirements, or different understandings in relation to the nature, features and dynamics of family violence.¹⁰⁷ The adoption of a common definition of family violence across the different areas of Commonwealth laws may help to address this issue.¹⁰⁸ A common definition also provides a platform for training around how the definition is applied.¹⁰⁹

20.85 In respect to migration agents, the Migration Institute of Australia indicated that—apart from training about the legal requirements—migration agents could be given training to enable them to better address family violence issues with clients in culturally sensitive ways. The Institute indicated that it runs professional development programs in which family violence is sometimes mentioned in relation to certain visa types, while no regular specific family violence module exists in the curricula, the Institute intends to develop such a module.¹¹⁰ In addition, the Institute stated that it

103 Ibid.

104 IARC, *Submission CFV 149*.

105 DIAC, *Submission CFV 121*.

106 Leveraging specialisation is crucial to the ALRC’s recommendations for reform of the evidentiary requirements in Ch 21.

107 This is discussed in more detail in Ch 21.

108 The ALRC’s recommendation for a common definition of family violence across Commonwealth legislation, including the *Migration Regulations* can be found in Ch 3.

109 In Ch 4, the ALRC makes recommendations about training and education for DHS staff (including social workers) in relation to the nature, features and dynamics of family violence: Rec 4–5.

110 Migration Institute of Australia, *Consultation*, Sydney, 13 October 2011.

will collaborate with relevant agencies and experts to provide information sessions and materials to the membership to raise awareness and understanding of these issues to the level expected of customer service officers in the above mentioned agencies.¹¹¹

Opportunities for collaboration

20.86 The ALRC considers that there are opportunities for the Australian Government to collaborate with relevant migration service providers, community legal centres, and industry bodies to ensure targeted education and training on family violence issues for decision makers, competent persons and independent experts. The safety of victims of family violence is better protected if decision makers have a strong awareness and understanding of family violence issues in the migration context.

Information dissemination to visa applicants

20.87 The ALRC recommends that the Australian Government should collaborate with migration service providers, community legal centres, and industry bodies to ensure that information about legal rights and the family violence exception are provided to visa applicants and visa holders in a culturally appropriate and sensitive manner.

Pre-embarkation information

20.88 Throughout the Inquiry, the ALRC has heard about the need to ensure that visa applicants are provided with information in relation to their legal rights, the family violence provisions and family violence support services in Australia, especially at the pre-embarkation stage.¹¹² For example, the ANU Migration Law Program submitted that:

There is a need for legal information to be made available to visa applicants, including what they can do to get protection and help in the event of experiencing family violence and information specifically about the existence of the family violence provisions. This information needs to be available in community languages.¹¹³

20.89 In *Equality Before the Law*, the ALRC emphasised that ‘information about legal rights, financial matters, and domestic violence and community services in Australia must be provided to women who are immigrating both before departure and once in Australia’.¹¹⁴ The RILC suggested that ‘this could go some way in addressing this underlying issue’.¹¹⁵

20.90 In the Discussion Paper, the ALRC highlighted that the provision of information could be targeted to countries where concerns about serial sponsorship exists.¹¹⁶ DIAC cautioned that ‘any efforts to provide additional information on family violence should

111 Migration Institute of Australia, *Submission CFV 148*.

112 ANU Migration Law Program, *Submission CFV 79*; National Legal Aid, *Submission CFV 75*; Good Shepherd Australia New Zealand, *Submission CFV 41*. See also R Braaf and I Meyering, *Seeking Security: Promoting Women’s Economic Wellbeing Following Domestic Violence* (2011).

113 ANU Migration Law Program, *Submission CFV 79*.

114 Australian Law Reform Commission, *Equality Before the Law: Justice for Women (Part 1)*, Report 69 (1994), 233.

115 RILC, *Submission CFV 129*.

116 Australian Law Reform Commission, *Family Violence and Commonwealth Laws*, Discussion Paper 76 (2011), 691.

be developed in a way that does not stigmatise foreign partners or their sponsors and does not unnecessarily duplicate the information available through existing program and products'.¹¹⁷

20.91 The ALRC considers that the Australian Government should consider ways to ensure that visa applicants are provided with information prior to departure to Australia. For example, DIAC submitted that it was open to amending 'the content of Partner visa grant letters in order to more clearly set out where applicants can obtain information about life in Australia, including the availability of legal services'.¹¹⁸

Settlement information

20.92 DIAC submitted that migrants in Australia 'receive or have easy access to information about legal rights and family violence services through a number of programs managed by the Department'.¹¹⁹ These include the:

- *Beginning Life in Australia* booklet;
- Adult Migrant English Program (AMEP);
- Humanitarian Settlement Services Orientation Program; and
- Settlement Grants Program.¹²⁰

20.93 In relation to the AMEP, DIAC advised that 'course content is developed by AMEP providers and may vary but usually includes general information and contacts on legal rights, family law and domestic violence'.¹²¹

20.94 Despite the existence of these programs and materials, the experience of some community and migrant legal service providers suggested many individuals remained unaware of their rights and options. The RILC submitted, in the context of prospective marriage visa holders that:

the fundamental problem persists that vulnerable persons in these situations are unaware of their options. They are often in precarious positions because of their subjection to abuse, their lack of English ability, and their fear of social disapprobation.¹²²

20.95 The Federation of Ethnic Communities' Councils of Australia (FECCA) indicated that, in its experience, information should be delivered in an accessible way—through a variety of formats—taking into account cultural appropriateness and linguistic sensitivity. Such information should be delivered by 'bilingual, bicultural community-based and/or culturally competent workers and advocates who understand the legal frameworks and the cultural dynamics of family violence, its prevention and

117 DIAC, *Submission CFV 121*.

118 *Ibid.*

119 *Ibid.*

120 *Ibid.*, Attachment B.

121 *Ibid.*

122 RILC, *Submission CFV 129*.

methods of support'.¹²³ Recent studies have also reinforced that education initiatives are most successful when: a range of different media formats are utilised; designed or piloted with community consultation and involvement; and implemented on an ongoing basis.¹²⁴

20.96 The ALRC appreciates that DIAC has in place a number of programs that deliver settlement information to migrants, including in relation to the legal system and the family violence exception. However, there appears to be scope for better collaboration between DIAC, migration services and community legal centres to better ensure that relevant information reaches the migrant community. DIAC's booklet, *Beginning Life in Australia*, for example, may not be distributed in hard copy in print format to community legal centres or migration service providers, and therefore, is not available to a segment of the community who are internet illiterate, or who have no access to the internet.

20.97 The ALRC notes that DIAC has a YouTube channel with informative videos on a number of different aspects of the migration process.¹²⁵ A video could be produced in consultation with the migration services and the community—with voiceovers in different languages—to promote healthy relationships and information about legal services in Australia.

20.98 As another example, stakeholders suggested that newly arrived on partner visas should be required to take training on respectful and healthy relationships.¹²⁶ Such training could be provided in a culturally sensitive manner by community groups, as part of the 510 hours of English classes offered as part of the DIACs settlement programs.¹²⁷

Recommendation 20–5 The Australian Government should collaborate with relevant migration service providers, community legal centres, and industry bodies to ensure targeted education and training on family violence issues for visa decision makers, competent persons, migration agents and independent experts.

Recommendation 20–6 The Australian Government should collaborate with migration service providers, community legal centres, and industry bodies to ensure that information about legal rights and the family violence exception are provided to visa applicants prior to and on arrival in Australia. Such information should be provided in a culturally appropriate and sensitive manner.

123 Federation of Ethnic Communities' Councils of Australia, *Submission CFV 126*.

124 C Poljski and A Murdolo, *On Her Way: Primary Prevention of Violence Against Immigrant Women in Australia* (2011).

125 DIAC, *ImmiTV* <www.youtube.com/user/ImmiTV> at 9 November 2011.

126 Confidential, *Submission CFV 152*; IARC, *Submission CFV 32*.

127 ADFVC, *Submission CFV 26*.