



Australian Government

Australian Law Reform Commission

Professor Rosalind Croucher  
President

Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Australia

Dear Ms Wright,

### **Inquiry into Marriage Visa Classes**

The Australian Law Reform Commission (ALRC) welcomes the opportunity to contribute to the Senate Legal and Constitutional Affairs Committee's inquiry into Marriage Visa classes. In this submission, the ALRC wishes to draw to the Committee's attention recommendations of the ALRC's report, *Family Violence and Commonwealth Laws—Improving Legal Frameworks* (ALRC Report 117),<sup>1</sup> that may be relevant to the Committee's work.

### **The Prospective Marriage visa and the family violence exception**

The Prospective Marriage visa is a provisional visa that is granted offshore to allow a person to enter and reside in Australia for a period of 9 months, in order to fulfil the intention of marrying their Australian sponsor.<sup>2</sup> After the marriage, an application is lodged onshore for both a temporary and permanent Partner visa. If successful, a two-year temporary visa is granted, and if the relationship is genuine and continuing after this period, a permanent visa may be granted.

If the relationship breaks down during the temporary visa period, the visa holder is no longer entitled to stay in Australia, and must return home. However, the *Migration Regulations 1994* (Cth) provide for an exception, which allows a person who has suffered family violence committed by their sponsor, to be considered for permanent residence despite the breakdown of the relationship.<sup>3</sup> The family violence exception was inserted to alleviate concerns that 'some partners may remain in an abusive relationship because they believe that they may be forced to leave Australia if they end the relationship'.<sup>4</sup> That is, the policy intention is to ensure that persons do not have to remain in violent relationships in order to obtain permanent residence.

Under the current legislative arrangements, Prospective Marriage visa holders cannot access the family violence exception unless they have married their sponsor and apply for a subclass 820 Partner visa.<sup>5</sup>

### **Expanding the family violence exception to cover Prospective Marriage visas**

The ALRC recommended that the scope of the family violence exception in the *Migration Regulations 1994* (Cth) should be expanded to cover Prospective Marriage visas.<sup>6</sup> In doing so, the ALRC had regard to stakeholder concerns about the especially vulnerable position of Prospective Marriage visa holders, many of

<sup>1</sup> The Report and Summary Report are available to download at <[www.alrc.gov.au](http://www.alrc.gov.au)>.

<sup>2</sup> Department of Immigration and Citizenship, Prospective Marriage Visa (Subclass 300) <[www.immi.gov.au/migrants/partners/prospective/300/](http://www.immi.gov.au/migrants/partners/prospective/300/)> at 14 February 2012.

<sup>3</sup> Provisions relating to family violence can be found in div 1.5 to the *Migration Regulations 1994* (Cth).

<sup>4</sup> See Department of Immigration and Citizenship, Factsheet 38—The Family Violence Provisions <<http://www.immi.gov.au/media/factsheets/38domestic.htm>> at 13 February 2012.

<sup>5</sup> See eg, *Migration Regulations 1994* (Cth) sch 2 cl 820.211(8) and (9).

<sup>6</sup> Australian Law Reform Commission, *Family Violence and Commonwealth Laws — Improving Legal Frameworks* (ALRC Report 117), Recommendation 20-1.

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whom lack social and support networks, have little knowledge of the legal system, face language barriers, and are, in some cases, totally dependent on their sponsor. These factors may leave Prospective Marriage visa holders vulnerable to family violence and exploitation. Such concerns were exemplified in a submission to the ALRC from the expert immigration law firm, Erskine Rodan and Associates:

In our experience, some men are able to convince vulnerable women to move to Australia on the promise that he will one day marry her. However, once in Australia, the woman becomes the victim of abuse and then ultimately, the engagement is called off. Some women are falsely imprisoned in their fiancés' homes and are regularly raped—an action justified by their abuser with the promise of marriage. Many women are financially and psychologically abused. Some women are only permitted to leave the house to work and don't see a cent of what they earn. Such cases seem to equate to sex-trafficking of women who have come to Australia in good-faith. Despite this, however, these women are not entitled to rely upon the family violence provisions in the *Migration Regulations*.<sup>7</sup>

Stakeholders also pointed out that, for some women, being returned home without having married is not a viable option. They may be viewed as 'broken' and unmarriageable, or they may be socially ostracised as having brought shame to their families. In the worst case scenario, they may be the subject of persecution by their own families for not 'submitting' to their sponsors.<sup>8</sup>

It is not difficult to imagine a scenario where a Prospective Marriage visa holder—who is experiencing family violence—may feel coerced or forced into a marriage, because they cannot access the family violence exception, or because it is not viable to return to their home country. The ALRC is of the view that the inability of Prospective Marriage visa holders to access the family violence exception may encourage some to marry against their will.

### **Application, administration and effectiveness of the Prospective Marriage visa program**

In its submission to the ALRC's inquiry, the Department of Immigration and Citizenship highlighted that the expansion of the family violence exception to Prospective Marriage visa holders must be balanced with ensuring that the integrity of the visa system is preserved:

There is a risk ... that some applicants may perceive the requirements of a Prospective Marriage visa as easier to pass and seek to use this, and the family violence claim to quickly obtain permanent residence. [However], this risk can be mitigated if appropriate integrity measures are in place for the Prospective Marriage visa and the family violence provisions.<sup>9</sup>

The ALRC suggested that, if the family violence exception is expanded to cover Prospective Marriage visas, the Australian government may wish to consider 'further amendments to enhance the integrity measures around the criterion for a Prospective Marriage Visa'.<sup>10</sup> Enhancing integrity measures has a close connection to parts (d) and (e) of the Senate's Inquiry, namely 'the application, administration and effectiveness of the Prospective Marriage visa program', and 'the sufficiency and suitability of assessment procedures to protect against fraud'.

In considering these issues, the Committee may wish to consider Chapter 20 of the ALRC's report. In particular, the discussion on the policy tensions between the accessibility of the family violence exception and the integrity of the visa system and partner visa sponsorships may assist the Committee's deliberations.<sup>11</sup>

### **Other related matters**

In respect of part (f), whether 'current policies and practices of the Australian Government with regard to the Prospective Marriage (subclass 300) visa or other visa categories are facilitating forced marriages', the Committee may wish to consider the adequacy of the provision of information to visa applicants and holders.

The ALRC recommended that the Australian Government collaborate with migration service providers, community legal centres and industry bodies to ensure that information about legal rights and the family

<sup>7</sup> See Erskine Rodan and Associates, *Submission CFV 80*. Submissions are available to view at <[www.alrc.gov.au/inquiries/family-violence-and-commonwealth-laws/submissions-received-alrc](http://www.alrc.gov.au/inquiries/family-violence-and-commonwealth-laws/submissions-received-alrc)>.

<sup>8</sup> See eg Immigration Advice and Rights Centre, *Submission CFV 32*; Erskine Rodan and Associates, *Submission CFV 80*.

<sup>9</sup> See *Department of Immigration and Citizenship, Submission CFV 121*.

<sup>10</sup> Australian Law Reform Commission, *Family Violence and Commonwealth Laws — Improving Legal Frameworks* (ALRC Report 117), 495.

<sup>11</sup> *Ibid*, 506-508.

violence exception is provided to visa applicants prior to and on arrival in Australia and that such information should be given in a culturally appropriate and sensitive manner.<sup>12</sup> Ensuring that victims have adequate knowledge about their rights and entitlements is one important factor in empowering them to exercise personal autonomy to leave a violent relationship and not be forced into marriage against their will.

We hope this submission assists you. If you require further information, please contact me on (02) 8238 6319 or Legal Officer, Khanh Hoang, on (02) 8238 6342.

Yours sincerely,

A handwritten signature in black ink that reads "Rosalind Croucher". The signature is written in a cursive, flowing style.

**Professor Rosalind Croucher**

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<sup>12</sup> Ibid, Recommendation 20–6.