

CFV 108 WEAVE

Full name:

WEAVE Inc

Question 20–1:

Women escaping domestic violence are frequently facing severe financial distress. This is particularly true if they have not been granted permanent residency and are not eligible for commonwealth financial support. Any application fee that is required for merits review would therefore put further financial hardship for women. Women escaping domestic violence should automatically be eligible for a waiver of the review application fee.

Proposal 20–1:

WEAVE agrees with this proposal.

Question 20–2:

Section 48A should be amended to allow secondary visa applicants who are experiencing domestic violence to make further protection visa application onshore.

Question 20–3:

Proposal 20–2:

Proposal 20–3:

WEAVE prefers this second option as it provides women with broader scope in their applications for visas.

WEAVE believes that the current application of the family violence exception under the Migration Regulations 1994 (Cth) should be expanded to cover other visa categories.

Case Study:

A woman and her children came to Australia as secondary holders of her partner's temporary, regional skilled visa. The child protection authorities removed her and the children from the family home due to his physical and sexual abuse of the children. The woman and her children were placed in domestic violence accommodation. Whilst there she received a letter from the Immigration Department telling her she was in breach of her visa conditions that could lead to her deportation. Further trauma on top of her and the children's devastating experience.

This woman had no access to the family violence provisions because of the visa type. Family Violence provisions were not covered in her visa type.

The option of applying for a visa in her own right was not possible given the financial cost (\$2,000) of making such an application.

She had no access to Medicare, income support, Red Cross or NGO emergency moneys. Neither was she eligible for a health care card or pension card.

She had to rely on the support of the local domestic violence service. Not all domestic violence services have the resources to provide such long term financial and accommodation services to such women.

It was only after an appeal, and many years of living under such conditions, that she was granted a protection visa and became eligible for Centrelink support.

Responses to family violence should occur across all sectors in the same way, so that the protection of all women and children from violence is acted upon, regardless of citizenship or residential status.

Marital status should not be used as criteria to include or exclude those women who have suffered from domestic violence in being able to access permanent status and protection from violence.

Question 20–4:

Marital status should not be used as criteria to include or exclude those women who have suffered from domestic violence in being able to access permanent status and protection from violence.

There are a number of other categories of temporary residents who may also be subjected to family violence which should be taken into account. There are instances where women may have come to Australia on other conditions, such as student visas, tourist visas or skilled migrant visas who may enter into relationships with Australians and become victims of domestic violence. Threats of deportation only create further pain and suffering on those already victimized by family violence.

Women can not only be dependent on their partner in relation to their visa status but may also be dependent on visas where they are contracted to a specific employer for a period of time. This leaves these women vulnerable to exploitation and abuse.

We agree with the ALRC recommendation that the family violence exception should apply to partners who have been sponsored on a Prospective Marriage Visa (Subclass 300), whether the breakdown occurred at any time before the marriage, or after marriage, but before an application for permanent residence has been lodged.

It is argued that the genuineness of the relationship should not be used as criteria for assessment at the stage where women are attempting to escape family violence. Such assessment would have taken place when the visa for temporary residence was approved. Responses to all allegations of family violence should be met with support and protection.

WEAVE is aware that there are situations where women come to Australia on prospective marriage visas with the understanding that the men who sponsor them are genuine in their desire to marry. Unfortunately there are instances where men have no such intentions but use this opportunity to sexually exploit the women, sometimes prostituting them. Once the nine month period has finished such men are happy for the women to be deported back to their country of origin. Such behaviour is regularly repeated in a serial fashion.

WEAVE would also like to note the incredible barriers that women on temporary visas face when escaping from abusive relationships. It is very difficult for women to access crisis accommodation. These women are particularly vulnerable with no access to income and they are not entitled to public

and community housing. This makes it very difficult for domestic violence services to support women who have not got Australian residency. WEAVE recommends that the Social Security Act should also be amended to enable all women experiencing domestic violence to access income support regardless of their visa type.

Question 20–5:

Question 20–6:

Proposal 20–4:

WEAVE agrees that consistent and regular education and training in the dynamics and gendered nature of domestic violence for all staff.

We would also question whether all staff have the ability or specialized experience in domestic violence, awareness of gender issues and cross-cultural understandings to safely and provide the necessary support and understanding to women in these situations.

Staff should recognize the importance of women being able to access both interpreters and support people during interviews. We understand that this has not always been the case.

It is important that competent persons be those who have adequate training and experience in the gendered nature of domestic violence, and the specific needs of culturally and linguistically diverse women, to make reliable assessments. WEAVE are aware of women who have sought such reports being refused a service on the grounds that “it was only domestic violence”. This highlights the need for competent persons to be specialist domestic violence providers. It is also important that women attempting to gain statutory declarations from competent persons be provided with support and time to access such people.

WEAVE recommends that the range of competent persons should be extended. Bilingual workers and domestic violence workers are often the first contact for women escaping violence and often have a clear understanding and intimate knowledge of the women’s experiences. They therefore should be included in the range of competent persons and be provided with the appropriate training.

Proposal 20–5:

WEAVE agrees with this proposal.

Proposal 21–1:

WEAVE agrees with this proposal.

Question 21–1:

It has been identified that domestic violence is seriously under-reported, particularly by immigrant and refugee women. There are a number of reasons for this including fear of authorities based on their experiences in their country of origin; lack of awareness of Australian laws relating to domestic violence; language and cultural barriers to accessing help and support networks.

We would agree that many immigrant and refugee women would have difficulty meeting the judicial evidence requirement of the regulations.

Research shows quite clearly that separation is often the most dangerous time for women leaving a violent relationship, as violence often escalates at this time.

We believe that the Migration Regulations 1994 (Cth) should be amended to make it clear that a family violence protection order granted after the parties have separated is sufficient evidence that 'relevant family violence' has occurred.

Mutual Undertakings, which are often taken out instead of Family Violence Protection Orders, also should be recognized as evidence in judicial decision making in family violence exception cases.

Proposal 21–2:

WEAVE agrees with this proposal.

Marital status should not be used as criteria to include or exclude those women who have suffered from domestic violence in being able to access permanent status and protection from violence.

There are a number of other categories of temporary residents who may also be subjected to family violence which should be taken into account. There are instances where women may have come to Australia on other conditions, such as student visas, tourist visas or skilled migrant visas who may enter into relationships with Australians and become victims of domestic violence. Threats of deportation only create further pain and suffering on those already victimized by family violence.

Women can not only be dependent on their partner in relation to their visa status but may also be dependent on visas where they are contracted to a specific employer for a period of time. This leaves these women vulnerable to exploitation and abuse.

The family violence exception should apply to partners who have been sponsored on a Prospective Marriage Visa (Subclass 300), whether the breakdown occurred at any time before the marriage, or after marriage, but before an application for permanent residence has been lodged.

It is argued that the genuineness of the relationship should not be used as criteria for assessment at the stage where women are attempting to escape family violence. Such assessment would have taken place when the visa for temporary residence was approved. Responses to all allegations of family violence should be met with support and protection.

WEAVE is aware that there are situations where women come to Australia on prospective marriage visas with the understanding that the men who sponsor them are genuine in their desire to marry. Unfortunately there are instances where men have no such intentions but use this opportunity to sexually exploit the women, sometimes prostituting them. Once the nine month period has finished such men are happy for the women to be deported back to their country of origin. Such behaviour is regularly repeated in a serial fashion.

Question 21–2:

Proposal 21–3:

WEAVE is of the view that the current provisions governing the statutory declaration of evidence of competent persons places unnecessary barriers to women's ability to seek protection and permanent residency.

In particular we have concerns about staff making additional assessments of family violence, despite statutory declarations being already presented as evidence of domestic violence.

The necessity of women who have experienced abuse having to re-tell their story adds a further layer of traumatising to their experiences.

We would also question whether all staff have the ability or specialized experience in domestic violence, awareness of gender issues and cross-cultural understandings to safely and provide the necessary support and understanding to women in these situations.

Staff should recognize the importance of women being able to access both interpreters and support people during interviews. We understand that this has not always been the case.

It is important that competent persons be those who have adequate training and experience in the gendered nature of domestic violence, and the specific needs of culturally and linguistically diverse women, to make reliable assessments. WEAVE are aware of women who have sought such reports being refused a service on the grounds that "it was only domestic violence". This highlights the need for competent persons to be specialist domestic violence providers. It is also important that women attempting to gain statutory declarations from competent persons be provided with support and time to access such people.

WEAVE recommends that the range of competent persons should be extended. Bilingual workers and domestic violence workers are often the first contact for women escaping violence and often have a clear understanding and intimate knowledge of the women's experiences. They therefore should be included in the range of competent persons and be provided with the appropriate training.

Consideration also needs to be given to the financial costs of being able to access competent person reports. Women are often required to pay a fee for such reports, at a time when they have no access to income support and are unlikely to have the financial resources to pay such a fee.

Proposal 21-4 :

WEAVE is of the view that competent persons should not have to name the perpetrator of violence. Women themselves may be unwilling to name the perpetrator out of fear, or that the perpetrator is known to the competent person.

Proposal 21-5 :

The regulations should be amended so that a woman's allegations of violence are not impeded by bureaucratic and minor errors or omissions. We want to ensure that women's protection is not impeded by procedural technicalities.

Proposal 21-6:

Legislation should require decision makers to give reasons for referring the matter to an independent expert.

It is WEAVE's view that where decision makers refer matters to an independent expert, that the independent expert should be highly qualified in the area of domestic violence. It is our experience

that many independent experts are not fully qualified or experienced in the area of domestic violence and often hold views and attitudes that are contrary to the well-being and protection of victims of abuse.

It is also important that such experts have knowledge and experience of the cultural issues which are specific and relevant to each case.

Proposal 21–7 :

Independent experts should be required to give full reasons for their decisions to the applicant.

Proposal 21–8 :

It is WEAVE's view that in order for cases to be transparent and open that the opinions of independent experts should be open to review.

Proposal 22–1:

WEAVE agrees with this proposal.

Question 22–1:

Other comments:

WEAVE are aware of the difficulties that women have in claiming refugee status when harm is done to them because of their gender.

First, family violence claims have tended to exist within the wider context of gender-specific harm, including: sexual violence, forced marriage, female genital mutilation, and honour killings.¹¹¹ These types of harms—generally experienced by women—are not afforded protection because neither gender, nor sex, is an enumerated Refugees Convention ground. As such, courts have traditionally failed to consider whether such gender-related claims may fall under the ground of particular social group, or other Convention reasons.¹¹²

It is of significant concern that the gender harms are not afforded protection as refugees both nationally and internationally. Given the widespread use of violence against women in all its forms, and that these harms are inflicted specifically because of women's status as women, and that this is an international form of discrimination and abuse of women as a class, Refugees Convention needs to address this problem. We urge the Federal Government to take a lead in seeing that this issue is addressed both nationally and internationally.

Gender-based persecution should explicitly be highlighted as falling within the category of refugee claims. The current system is ambiguous in recognizing this as a claim for refugee status. It is imperative that this is addressed in improved legislation and guidelines.

The public/private dichotomy is also of urgent concern. The argument of intrusion into private lives is one that has historically been used by the state to deny women the protection that the state should offer all people. By using the argument of the public/private dichotomy the State is encouraging or

failing to act to prevent the private persecution of a woman. Legislation should reflect that the state is implicated, by its failure to act and provide protection, in the infliction of harm.

In the landmark decision of the High Court of Australia in *Minister for Immigration and Multicultural Affairs v Khawar* (Khawar).¹¹⁹, the High Court found that “persecution may result where the criminal conduct of private individuals is tolerated or condoned by the state in circumstances where the state has the duty to provide such protection against harm.¹²”.

Such judgments need to be enforced by clear legislation which indicates that the state has a responsibility to protect women from both private and public harm and that when it fails to do so, refugee status can be claimed.

WEAVE would support the view expressed by Amnesty International:

“The requirement that the risk faced must not be ‘faced by the population of the country generally’ may provide, for example, for an applicant fleeing domestic violence to be excluded from [complementary] protection on the grounds that the applicant originates from a country where domestic violence is widespread and where perpetrators are not generally brought to justice. Additionally, the stipulation that the risk must be ‘faced by the non-citizen personally’ has the potential to exclude, for example, applicants who have not been directly threatened with female genital mutilation but due to their age and gender, face a probable risk that they will be subjected to the practice upon return.”

Further we agree with the recommendation that “the provision be reviewed ‘with a view to 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”

The Bill should give force to this recommendation.

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