Migration Institute of Australia

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The Executive Director
Australian Law Reform Commission

cwlth_family_violence@alrc.gov.au

Dear Executive Director;

Thank you for the opportunity to respond to the Australia Law Reform Commission (ALRC) *Family Violence – Commonwealth Law* Discussion Paper.

The Migration Institute of Australia (MIA), as the peak professional organisation for Registered Migration Agents (RMAs) in Australia, congratulates the Commission on its timely Discussion Paper and supports the general thrust of its proposals, which will more effectively ensure the safety of victims of family violence and their ability to access permanent residence in Australia.

Please find attached the Institute's submission in response. In preparing this submission, the MIA has confined its remarks to those areas impacting upon the Australian Migration Program, namely *Part G*.

The MIA would appreciate the opportunity to contribute to future consultations regarding this Paper and would be pleased to meet to discuss this submission.

Yours sincerely,

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Common Interpretative Framework
The MIA believes the proposals in *Proposal 3-1* to *3-9* for a common interpretative framework to ensure common legislative arrangements and consistent definitions across the Commonwealth are sensible and necessary.

Screening, Information Sharing and Privacy
The MIA supports *Proposal 4-2* to *4.15* for screening, information sharing and privacy.

The Institute believes consideration should be given to including the Department of Immigration and Citizenship (DIAC) in proposals that agencies such as Centrelink, the Child Support Agency (CSA) and the Family Assistance Office have screening arrangements to encourage disclosure of family violence in a safe environment.

The MIA also supports the Australia Law Review Council (ALRC) proposal that the Australian Government should ensure consistent and regular education and training in relation to the nature, features and dynamics of family violence, including its impact on victims, for visa decision makers, competent persons and independent experts, in the migration context. See *Proposal 20-4* below for further information.

Chapter 20: Migration Law – Overarching Issues
The MIA supports the ALRC proposal that the family violence exception should be made available to all *secondary visa applicants* for onshore permanent visas.

Question 20–1 *From 1 July 2011 the Migration Review Tribunal will lose the power to waive the review application fee in its totality for review applicants who are suffering severe financial hardship. In practice, will those experiencing family violence face difficulties in accessing merits review if they are required to pay a reduced application fee? If so, how could this be addressed?*

> The Institute believes that victims of family violence are particularly vulnerable to severe financial hardship and strongly supports the view that a waiver of the total review application fee should be made available to them.

Proposal 20–1 *The* Migration Regulations 1994 *(Cth) should be amended to provide that the family violence exception applies to all secondary applicants for all onshore permanent visas. The family violence exception should apply:*

(a) as a 'time of application' and a 'time of decision' criterion for visa subclasses where there is a pathway from temporary to permanent residence; and
(b) as a 'time of decision' criterion, in all other cases.

The MIA supports this proposal, on the assumption that "as a 'time of application' and a 'time of decision' criterion" be amended to read "as a 'time of application' *or* a 'time of decision' criterion".

Question 20–2 *Given that a secondary visa applicant, who has applied for and been refused a protection visa, is barred by s 48A of the* Migration Act 1958 *(Cth) from making a further protection visa application onshore:*
(a) In practice, how is the ministerial discretion under s 48B – to waive the s 48A bar to making a further application for a protection visa onshore – working in relation to those who experience family violence?
(b) Should s 48A of the Migration Act 1958 *(Cth) be amended to allow secondary visa applicants who are experiencing family violence, to make a further protection visa application onshore? If so, how?*

The MIA considers that, in the interest of better guaranteeing the security and safety of victims of family violence, s48A of the *Migration Act* should be amended to allow visa applicants who are experiencing family violence, to make a further protection visa application onshore.

Temporary Visa Holders

Question 20–3 *Section 351 of the* Migration Act 1958 *(Cth) allows the Minister for Immigration and Citizenship to substitute a decision for the decision of the Migration Review Tribunal if the Minister thinks that it is in the public interest to do so:*
(a) Should s 351 of the Migration Act 1958 *(Cth) be amended to allow victims of family violence who hold temporary visas to apply for ministerial intervention in circumstances where a decision to refuse a visa application has not been made by the Migration Review Tribunal?*

The Institute supports this proposal, as it could provide quicker resolution for cases where a speedy determination of migration status would enhance the safety and security of family violence victims and their families.

(b) If temporary visa holders can apply for ministerial intervention under s 351 of the Migration Act 1958 *(Cth), what factors should influence whether or not a victim of family violence should be granted permanent residence?*

The MIA considers that, in many cases, holders of temporary visas would have an expectation of permanent residence. 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.

As the ALRC points out, there is an obvious risk of creating an incentive to claim family violence as a means of securing a migration outcome. That risk is not limited to particular types of visa holders, however, and should not deny genuine victims of family violence from access to family violence provisions. Further, the assessment of claims of family violence should be robust enough to mitigate attempts to abuse the system.

The Institute believes that factors such as: establishment within, and ties to, Australia; the best interests of any children involved; health considerations; the consequences of the separation of relatives; and factors within the applicant's country of origin should be taken into consideration.

The extent to which secondary temporary visa holders are unable to access family violence services, income support or crisis accommodation, and the implications this may have are of great concern. As the ALRC points out, however to extend access to these services and support to a wider range of temporary visa holders could adversely impact on Australia's ability to provide those services to its own citizens.

The MIA believes further research is required to establish the extent to which those services would be required if family violence provisions were extended to a wider range of temporary visa holders.

Prospective Marriage visa holders

OPTION ONE: Proposal 20–2

Proposal 20–2 *The* Migration Regulations 1994 *(Cth) should be amended to allow a former or current Prospective Marriage (Subclass 300) visa holder to access the family violence exception when applying for a temporary partner visa in circumstances where he or she has not married the Australian sponsor.*

The MIA sees merit in this proposal. The obligation to ensure the safety and security of victims of family violence who may have been inveigled to Australia by sponsors exploiting the Migration Program would not be jeopardise the integrity of the migration system if the procedures for verifying the occurrence of family violence were sufficiently robust.

OPTION TWO: Proposal 20–3

Proposal 20–3 *Holders of a Prospective Marriage (Subclass 300) visa who are victims of family violence but who have not married their Australian sponsor, should be allowed to apply for:*

(a) a temporary visa, in order make arrangements to leave Australia; or

(b) a different class of visa.

Either of these options would be an improvement on the present situation by providing greater protection for victims of family violence. The latter option may be preferable to *Proposal 20-2* by more effectively removing a victim of family violence from a perpetrator psychologically, but its impact on the migration system and other government services should be the subject of further modelling and analysis.

Question 20–4 *If Prospective Marriage (Subclass 300) visa holders are granted access to the family violence exception, what amendments, if any, are necessary to the* Migration Regulations 1994 *(Cth) to ensure the integrity of the visa system?*

The integrity of the determination of claims of family violence procedures should ensure that the integrity of the broader visa system is not jeopardised.

Question 20–5 *Should the Prospective Marriage (Subclass 300) visa be abolished, and instead, allow persons who wish to enter Australia to marry an Australian sponsor to do so on a special class of visitor visa, similar to that in place in New Zealand?*

This proposal would, for the reasons outlined in the discussion paper, provide greater protection for victims of family violence than do current arrangements.

Question 20–6 *Should the* Migration Act 1958 *(Cth) and the* Migration Regulations 1994 *(Cth) be amended to provide that sponsorship is a separate and reviewable criterion for the grant of partner visas?*

This proposal is commendable as it would not only provide greater protection for victims of family violence, but would also prevent many potential victims from being sponsored initially.

Proposal 20–4 *The Australian Government should ensure consistent and regular education and training in relation to the nature, features and dynamics of family violence, including its impact on victims, for visa decision makers, competent persons and independent experts, in the migration context.*

The MIA supports the ALRC suggestion that there needs to be adequate education, training and information dissemination to all those within the system, for better decision making in the best interest of victims of family violence.

Institute Members occasionally have clients with family violence issues, and in that context, the MIA 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 above mentioned agencies.

Proposal 20–5 *The Australian Government should ensure that information about legal rights, family violence support services, and the family violence exception are provided to visa applicants prior to and upon arrival in Australia. Such information should be provided in a culturally appropriate and sensitive manner.*

This MIA can be of assistance this endeavour by ensuring Members have suitable material to provide to clients and prospective clients in a culturally appropriate and sensitive manner.

Chapter 21: The Family Violence Exception – Evidentiary Requirements

Proposal 21–1 *The Department of Immigration and Citizenship's* Procedures Advice Manual 3 *should provide that, in considering judicially-determined claims, family violence orders made post-separation can be considered.*

The MIA agrees with this proposal.

Question 21–1 *Where an application for a family violence protection order has been made, should the migration decision-making process be suspended until finalisation of the court process?*

The migration decision making process should be suspended until finalisation of the court process, provided that adequate care and support is available for whatever length of time is required.

Proposal 21–2 *The requirement in reg 1.23 of the* Migration Regulations 1994 *(Cth) that the violence or part of the violence must have occurred while the married or de facto relationship existed between the alleged perpetrator and the spouse or de facto partner of the alleged perpetrator should be repealed*.

The MIA strongly supports this proposal.

Question 21–2 *If the requirement in reg 1.23 is not repealed, what other measures should be taken to improve the safety of victims of family violence, where the violence occurs after separation?*

The MIA believes that the repeal of reg 1.23 is essential to improve the safety of victims of family violence.

OPTION ONE: Proposal 21–3

Proposal 21–3 *The process for non-judicially determined claims of family violence in reg 1.25 the* Migration Regulations 1994 *(Cth) should be replaced with an independent expert panel.*

The MIA believes this is a sensible proposal to ensure claims are dealt with in the fairest and most competent way for both the alleged victim and the alleged perpetrator of family violence. There are sufficient concerns cited in the Discussion Paper to consider the current arrangements unsatisfactory.

The composition of any such panel would be fundamental to its success.

OPTION TWO: Proposals 21–4 to 21–8

Proposal 21–4 *The* Migration Regulations 1994 *(Cth) should be amended to provide that competent persons should not be required to give an opinion as to who committed the family violence in their statutory declaration evidence.*

Proposal 21–5 *The* Migration Regulations 1994 *(Cth) should be amended to provide that visa decision makers can seek further information from competent persons to correct minor errors or omissions in statutory declaration evidence.*

Proposal 21–6 *The* Migration Regulations 1994 *(Cth) should be amended to provide that visa decision makers are required to provide reasons for referral to an independent expert.*

Proposal 21–7 *The* Migration Regulations 1994 *(Cth) should be amended to require independent experts to give applicants statements of reasons for their decision.*

Proposal 21–8 *The* Migration Regulations 1994 *(Cth) should be amended to provide for review of independent expert assessments.*

This option is an improvement on the current arrangements.

Chapter 22: Refugee Law

Proposal 22–1 *The Minister for Immigration and Citizenship should issue a direction under s 499 of the* Migration Act 1958 *(Cth) to visa decision makers to have regard to the Department of Immigration and Citizenship's* Procedures Advice Manual 3 *Gender Guidelines when making refugee status assessments.*

Given that "assessments of family violence claims in regard to refugee applicants require a visa decision maker to have an in depth understanding of the intersection between family violence and refugee law, and the relevant country information", this is a sensible proposal.

Question 22–1 *Under s 417 of the* Migration Act 1958 *(Cth), the Minister for Immigration and Citizenship may substitute a decision for a decision of the Refugee Review Tribunal, if the Minister considers that it is in the public interest to do so. Does the ministerial intervention power under s 417 of the* Migration Act 1958 *(Cth) provide sufficient protection for victims of family violence? If not, what improvements should be made?*

The effectiveness of the s 417 powers is entirely dependent on the Minister's willingness to exercise those powers.