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Australian Law Reform Commission

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**Additional comment to the LIV's submission in response to the ALRC Issues Paper on
Family Violence and Immigration Law**

Response to Question 4

Should the Migration Regulations 1994 (Cth) 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?

We suggest that the family violence exception should extend to those who hold a Prospective Marriage (Subclass 300) visa. Precluding non-citizens from accessing the family violence exemption in these cases runs the risk of either forcing vulnerable victims to remain in abusive relationships until they are married or further traumatising a victim of violence by returning them to their country of origin.

Equality Before the Law: Justice for Women, ALRC Report 69 (1994) stated:

The family violence exception only applies 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.

Therefore, in circumstances where the marriage has not taken place and the non-citizen has suffered family violence at the hands of his or her sponsor, they are not entitled to rely upon the exception in *Migration Regulations 1994* and inevitably, will be forced to return to their

country of origin. The ALRC described this provision as in effect treating “women as a commodity”.

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 family violence provisions in the *Migration Regulations*.

Furthermore, the lack of a safety-net in the *Migration Regulations* for such women intensifies the power imbalance between her and her abuser – non-citizens are often threatened by their sponsors with visa cancellation if they do not co-operate with the sponsor's demands. It seems to be flawed that such a threat can be supported by the current family violence provisions in the *Migration Regulations* for those on prospective marriage visas.

Furthermore, the *Declaration on the Elimination of Violence Against Women* requires states to prevent, investigate and punish acts of violence against women, and to adopt measures to eliminate violence against women who are particularly vulnerable. A woman who immigrates to Australia as a fiancée will often find herself in a particularly vulnerable position if her partner is violent. As the woman has moved away from her home country, it is very often the case that she knows no one in Australia, she has nowhere else to live but with her abusive fiancé, she has no available support and she does not know what is customary in Australia (with regards to abusive behaviour and the laws preventing it). Her problems are exacerbated if she is not fluent in English. The *Migration Regulations* should reflect this international human rights concern.

Edwin 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, 706] states that:

“Despite the reality of domestic violence occurring in such relationships...the law fails to recognise there is little or no difference between domestic violence inside or outside the marriage for immigrant victims. It is easy to imagine that both married and unmarried victims have similar challenges to getting citizenship. Based on this assumption, it would be proper to amend this part of the legislation to bring it to terms with reality. Effectively, this will make fiancées eligible to benefit from domestic violence concessions currently offered to their married counterparts under immigration law.”

Similarly, it is our contention that the *Migration Regulations* should be amended to this effect and that those victims of family violence should be able to remain in Australia even though

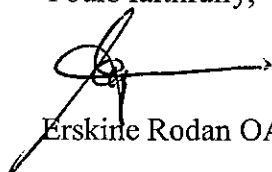
the relationship has ended. As the current law stands, the non-citizen is expected to leave and return home or remain in an abusive relationship long enough so they can use the family violence provisions once married.

The latter option goes against the intention of the legislators when implementing the family violence provisions into the *Migration Regulations*, when it was acknowledged that family violence is a crime and is unacceptable in Australia and that no one should have to remain in an abusive relationship for fear of being forced to leave Australia if they end the relationship. To this respect - in our opinion - it is difficult to see how victims of family violence on prospective marriage visas can be differentiated from victims of family violence on other partner visas.

With regards to the alternative – that the non-citizen (almost invariably a woman) return home – is often not a viable option. Some countries, such as Cambodia or the Philippines, would consider a woman returning in these circumstances as ‘broken’ and unmarriageable and often would bring shame and disrepute to her family. This is not to mention the trauma the person has already faced being a victim of domestic violence in a foreign country.

It is therefore our belief that a victim of family violence should not be punished further simply because their choice of partner resulted in an abusive relationship. Fiancés whose relationship broke down before marriage because of violence should receive the benefit of the domestic violence provisions on the same basis as those women who have married and lodged an application.

Yours faithfully,



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