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Submitted via email to: legcon.sen

Submission to the Senate Legal and Constitutional Affairs Committee: *Migration Amendment (Family Violence and Other Measures) Bill 2016*

We welcome the opportunity to contribute to the Inquiry of the Senate Legal and Constitutional Affairs Committee (the Committee).

This submission brings together the views of scholars from the [Border Crossing Observatory](http://www.borderobservatory.org) and the [Monash Gender and Family Violence Focus Program](#) at Monash University whose past and current research informs the concerns and issues raised in this submission, and [InTouch Multicultural Centre Against Family Violence](#) who work with women and children from culturally and linguistically diverse backgrounds (CALD) who are victims/survivors of domestic violence in Victoria. Our details are provided in the appendix to this submission.

We would welcome the opportunity to discuss this submission or our wider research on migration, border control, risk, and family and domestic violence further with the Committee.

Kind regards,

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Our position

1. We are concerned that the thorough considerations and recommendations of the *ALRC Family Violence and Commonwealth Laws— Improving Legal Frameworks Final Report* (November 2011) have been bypassed, and that no clear rationale for this has been outlined. Specifically, it is unclear why the following conclusion of the ALRC has not informed the approach of the Commonwealth:

“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’ (p100). 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”.

2. Minister Dutton’s second reading speech indicated that this Bill is being introduced to counter two issues:
 - a. “sponsors...targeted by non-genuine visa applicants, who are focused solely on a permanent visa outcome. The government considers these sponsors to be vulnerable; and
 - b. Australian citizens and permanent residents who have a violent history, including against family members, being able to sponsor noncitizens without having to disclose details of their past to either the department or other parties to the visa application.”

And that the reforms being introduced can be considered “a very significant first step in protecting potentially vulnerable visa applicants from the risk of domestic violence when participating in the family sponsored visa program.” (Dutton in Hansard, 1 September 2016 House of Representatives pp 287-288).

We are unclear how these measures ‘protect’ vulnerable sponsors. We are concerned that **these measures are more likely to discourage and/or prevent partner and family visa applications, with the impact of ensuring migrant women who are potentially or currently in violent and abusive relationships remain outside the current framework of support measures including access to the Family Violence provisions.**

3. We are of the view that this amendment sends a message that CALD women are expected to leave and/or end their relationship if they are aware of their partner/potential sponsor’s previous history of violence, specifically violence in the familial setting. This runs counter to the recognition that women should be supported and empowered to know what their options are, and to provide multiple supports to enable women to make the best decision for themselves and their children without judgment. We note there is already in place a process to identify sponsors who have a history of violence and/or abuse towards children, and that this is an important existing protection mechanism for migrant children.

Our submission

The Bill is intended to:

- separate sponsorship assessment from the visa application process for family sponsored visas;
- require the approval of persons as family sponsors before any relevant visa applications are made;
- impose statutory obligations on persons who are or were approved as family sponsors and provide for sanctions if those obligations are not satisfied;
- facilitate the sharing of personal information between parties identified in a sponsorship application;
- enable the refusal of a sponsorship application and the cancellation or barring of a family sponsor in certain circumstances;
- enable the regulations to prescribe details for, and in relation to, the operation of the sponsorship framework; and make consequential amendments.

We address each of these below, with the exception of the final point.

1. Separate sponsorship assessment from the visa application process for family sponsored visas; require the approval of persons as family sponsors before any relevant visa applications are made.

The proposed separation of these two processes will have a **significant time impact on potential partner visa applicants and their children**. While the Explanatory Memorandum suggests there is a limited cost impact from this legislation, **the costs of this legislation to families are potentially significant**. This is particularly the case for off shore applicants who must maintain an independent livelihood outside of Australia while waiting for this approval and/or bear the costs of additional visits to Australia (if they wish to see their family member) while awaiting the processing of the sponsor application before the partner visa application is submitted.

In the media release related to this Bill and in the accompanying Explanatory Memorandum there is no indication of how the Department of Immigration and Border Protection will be supported to absorb the significant increased administrative burden this approval process will require. We note that it has been reported that first stage partner visa applications take between 12-24 months to be processed, at a cost of A\$6865 (excluding the cost of dependents) (MIA 2016). We would argue that both **time and costs are likely to increase**, at least to meet the costs of applying for a police criminal history record check.

We are concerned that the impact of this additional time lag will be that **women will be afforded less protection as they will remain ineligible for the Family Violence protections** while awaiting this decision, before the partner visa application can be submitted. In recent research on reviewing the Family Violence Risk Assessment and Risk Management Framework (CRAF) in Victoria, we found that migration status, specifically temporariness is a significant risk factor in the area of family violence. As one participant explained to us: “women without... permanent residency [are at] more risk and they are more vulnerable. Even though there [may be] no violence, but [abuse in the form of] neglect and deportation ... threat” (McCulloch et al 2016: 106).

If this Bill is to go ahead as introduced to the House, we urge changes to the Family Violence protection provisions (see Recommendation One below) and provisions to be put in place to ensure that applicants awaiting visa processing have access to the necessary protections and services to ensure safety in the context of family violence.

2. Impose statutory obligations on persons who are or were approved as family sponsors and provide for sanctions if those obligations are not satisfied;

There is no detail regarding how the statutory obligations will **be monitored and enforced**. As researchers who examine Immigration compliance operations and their impact on the labour force, there is a clear absence of comprehensive review of the upholding of visa conditions and/or sponsor obligations on existing visas (for example work-related visas) (see Segrave et al 2009, Maher et al 2013, Segrave 2014). Our primary concern is that the failure to meet this obligation is most likely to come to the attention of authorities when sponsors and their dependents meet challenging economic circumstances: for example, employment and income loss, significant health burdens. At times like this, we are concerned that women who hold a partner visa will be punished as a result of this. There is a concern that the result of such circumstances will be the swift cancellation of the visa and the deportation of the visa holder, in addition to the sanctions imposed on the sponsor. The potential and process to appeal a cancellation is not clear, particularly in terms of whether both the sponsor and the visa holder have the right to appeal to the AAT.

3. Facilitate the sharing of personal information between parties identified in a sponsorship application;

There are important considerations to be made regarding the decision to undertake to share the criminal history of potential sponsors with potential partner visa applicants and other parties identified in the application. We **urge a more careful consideration of the human rights impact of this decision**, and also urge a careful consideration of the **impact in terms of time and cost for appeal processes** related to refusing sponsorship and/or sharing of personal information.

We note that the introduction of this measure also presumes two things. First that they are unaware of their partner's history of and/or have not experienced any form of violence and abuse. Second it presumes that knowing someone has a history of violence, specifically family violence will lead to the end of a relationship: such an assumption is flawed and places an unfair responsibility on the receiver of that information. In relation to migrant women in particular, there can be significant consequences- culturally, socially, financially, familial- for an accepted relationship breaking down. In our recent research in Victoria the high level of vulnerability women experience was captured in one example provided by a CALD family violence case worker. The case worker explained that this client had been married overseas, had come to Australia and was in the process of applying for a partner visa and was afraid that she would have to leave Australia:

“[she explained to me] that because they ... [were] married back home in the community, they invite relatives and people come to the wedding ceremony. So everybody know that she got married. So [this] client ... told me that, 'If I have to go back, I'd rather die here'. So that's how serious, how fearful when the perpetrator threaten[ed] to send them back, because they know that the woman ... [is] too ashamed to go back” (in McCulloch et al 2016: 107).

A further concern is when a sponsor's application is refused: what will happen to the applicant (and her children). InTouch has a large percentage of women who come from strict cultures who are applying for

partner visas- in situations such as this there are very real consequences when a marriage ceremony has taken place and she is now not able to be reunited with her husband (the denied sponsor) and they cannot live as a married couple. The impact of this for women offshore can be shame on her and her family, resulting in being abandoned by society and there being no place for her to re-marry or re-establish herself. There is also the very real consequence of an established family unit being denied the ability to reunite as a consequence of the sponsorship application being refused.

Finally, to presume that women are empowered by the knowledge of a violent history undermines all the emerging research that indicates that **knowing about violence and experiencing violence is not enough to enable women to be safer**. This is a particularly important point given the body of research in Australia and internationally which finds that **separation is one of the leading risk factors for intimate partner killing or serious harm** (NSW Domestic Violence Death Review Team 2015).

4. Enable the refusal of a sponsorship application and the cancellation or barring of a family sponsor in certain circumstances;

As researchers and an NGO who work directly with migrant women in situations of family violence, this raises significant concerns that women who are *already* in situations of partner and familial abuse will be more likely to remain silent. While an IVO is a civil, not criminal, matter, any breach of an IVO is a criminal matter, and this would be identified in a police check. **We are concerned that these conditions effectively encourage migrant women who are onshore at the time of an application, to not pursue any avenue of support (criminal justice, welfare or otherwise) related to intimate partner violence and/or family violence.**

We note, for example, a recent case with InTouch where a woman from a country that is currently experiencing significant civil conflict, has been in Australia for 4 months and during that time has been married. The person she has married has become violent and abusive and she has recently discovered that her husband (Australian citizen) has been convicted in the past for child pornography offences. He is currently demanding she pays all of the rent and is threatening to withdraw his sponsorship from her partner visa application if she fails to do this. She has refused to go to the police regarding sexual, physical and other abuse for fear of retaliation from this offender and fear of deportation. InTouch are concerned that in situations such as this in the future, especially in cases where the two have not yet married, that refusal of sponsorship is likely to result in deportation/removal of the applicant who has no further avenue to remain in Australia and no access to a permanent visa. Such situations are not rare for InTouch- this highlights that refusal of sponsorship can have unintended and significant consequences for victim survivors of family violence.

We are also concerned that this approach assumes that criminal records are a certainty with regard to past histories of violence. Intimate partner and family violence are underreported crimes, notwithstanding the increased reporting that has occurred recently in Australia (see Victoria Police 2015). Even where reporting does occur there is also significant attrition at each stage of the justice process, minimising the likelihood of a conviction being recorded (Douglas 2008; MacQueen and Norris 2016). Further, it is unclear whether this criminal record check will only pertain to Australian records. This raises concerns especially with regards to other international jurisdictions where offences related to family violence are even less likely to be reported and/or recorded. There may be significant data collection and privacy impediments to the sharing of information across jurisdictional borders.

Finally we reiterate that after careful consideration in 2011, the ALRC concluded the following:

“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’ (p100). 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”

We endorse this position. We believe the starting point for protecting women should be women.

Recommendations

We reiterate our position that we endorse the recommendations of the ALRC (2011), and offer the following recommendations:

- a. **Enable women on any temporary visa to access the Family Violence provisions,**
- b. **Protect women via implementing protections that offer women information, options and avenues of support,**
- c. **Create a highly resourced and well educated DIBP team** who are equally equipped to identify and respond to situations of intimate partner and family violence,
- d. **Draw on the significant existing resources - researchers, NGO experts, and women - who work directly with CALD women and issues of temporary migration and family violence.** The complexity of their migration and familial situation is significant and supporting women can only be achieved by recognising and responding to the competing demands women are managing. Our beginning point should not be that they leave the relationship or Australia. This amendment implies that this is what Australia expects of them.

Finally, we make note that the *Migration Legislation Amendment (2016 Measures No. 3) Regulation 2016* was processed on 1st September 2016, which has put in place process changes to reflect the intention of this Bill. We are concerned that this pre-emptive amendment suggests that the consideration of submissions and the Inquiry recommendations will be cursory. We urge the Committee and the Government to carefully consider the views of all submissions.

References

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APPENDIX

About us

The Border Crossing Observatory is an innovative virtual research centre that connects Australian and international stakeholders to high quality, independent and cutting edge research on border crossings. Our strong empirical research foundation is comprised largely of projects on irregular migration and border control (<http://artsonline.monash.edu.au/thebordercrossingobservatory/>).

Monash Gender and Family Violence is a focus strategy research collaboration in the School of Social Sciences at Monash University, bringing together researchers working together and independently on high quality, innovative research on gender and intimate partner violence (<http://artsonline.monash.edu.au/gender-and-family-violence/>).

InTouch Multicultural Centre Against Family Violence work with women and children from culturally and linguistically diverse backgrounds (CALD) who are victims/survivors of domestic violence in Victoria. Our details are provided in the appendix to this submission. Of the 1000 women they work with annually, approximately 30% are on temporary visas when they seek the services and support of InTouch.

Current and recent related projects

Temporary migration and family violence: An analysis of victimisation, support and vulnerability (Status: Current)

Chief Investigator: Marie Segrave, Criminology, Monash University.

Partner Investigator/s: Maya Avdibegovic, CEO, InTouch Multicultural Centre Against Family Violence.

The aim of this project is to undertake a comprehensive review of family violence cases managed by inTouch that involve women (victims) who have or are experiencing family violence whose migration status is temporary. The project will document the ways in which migration status is connected to and impacts both vulnerabilities to family violence and access to support. The project will also document the breadth of situations of violence and exploitation, identifying, for example, the extent to which some cases may better be identified as cases of human trafficking and in so doing contribute towards the development of a risk assessment tool to enhance both data gathering and improved access to the appropriate legal and welfare-related support.

Review of the Family Violence Risk Assessment and Risk Management Framework in Victoria (Status: Completed).

Investigators: Professor Jude McCulloch, Associate Professor JaneMaree Maher, Dr Kate Fitz-Gibbon, Dr Marie Segrave, Dr James Roffee

The Victorian Department of Health and Human Services (DHHS) has contracted with a team working in the area of [gender and family violence](#) from the School of Social Sciences at Monash University to conduct a review of the Common Risk Assessment Framework (CRAF) as part of the DHHS response to the [Victorian Royal Commission on Family Violence](#). For further details about the CRAF Review, findings and recommendations [click here](#).