

14 December 2022

Department of Home Affairs

A Migration System for Australia's Future

Women's Legal Services Australia thanks the Department of Home Affairs for the opportunity to make a submission to the review of Australia's migration system, *A Migration System for Australia's Future* (the Review). We give permission for this submission to be published.

About WLSA

Women's Legal Services Australia (WLSA) is a national network of 13 specialist women's legal services in each State and Territory across Australia, specifically developed to improve women's lives through specialist legal representation, support, and advocacy. Most WLSA members are implementing partners of the Department of Social Services' *Women on Temporary Visas Experiencing Violence Pilot*. Our recommendations are informed by our collective practical experience working alongside women on temporary visas experiencing violence to work through their legal issues, supporting them to make the best decisions for themselves and their families.

Introduction

Everyday WLSA observes the significant impact the migration system has on women on temporary visas who are experiencing family violence. Through this review, Australia has an unparalleled opportunity to align a new, innovative and people-centred migration program with existing government commitments and actions to end violence against women and children.

The recently launched National Plan to End Violence Against Women and Children 2022-33 (National Plan) recognises the vulnerability of migrant women and children to family violence, where 1 in 3 migrant and refugee women in Australia are experiencing family violence. It is notable that rates are known to be even higher amongst women on temporary visas.¹ Importantly, the National Plan recognises that migrant women face structural barriers other women do not, such as the impact ending a relationship has on their visa status and eligibility for social security.

Women on temporary visas can experience unique forms of family violence because their visa status can be tied to the person who uses violence.² Many of the users of family violence against temporary visa holders are Australian citizens. We see clients every day whose perpetrators use their visa status and the migration system to further coerce, manipulate and control them. It is an issue we must face as a community and it is critical the migration system is responsive to this context and provides an inclusive and safe place for all.

Summary of Recommendations

1. *Using the migration system to help end violence against women*
 - a. gender equality to be an underpinning principle to Australia's migration system
 - b. a gender and safety lens should be applied to the Review, succeeding report and any future reforms
 - c. train all Home Affairs staff on gender, family violence and trauma-informed responses
 - d. support the recovery of victim-survivors of family violence by:
 - i. offering flexibility in relation to deadlines, evidence requirements and interviews

¹ Australian Government, National Plan to End Violence Against Women and Children 2022-2033, 44.

² Ibid.

- ii. waiving all visa application fees for victim-survivors of family violence
- iii. creating a fee-free substantive temporary family violence visa
- iv. allowing access to social security, childcare subsidy and Medicare and waiving all relevant newly resident waiting periods

2. *Understanding and supporting secondary applicants*

- a. harnesses the potential economic contribution of secondary visa applicants, often women, by offering full work rights and remove increase or remove the age cap on skilled visas
- b. collect data on secondary applicants to help policy makers better understand their skills set and how they can be best be supported in Australia
- c. offer full work rights to women on temporary visas, especially those who are experiencing family violence

3. *Addressing exploitation*

- a. enhance flexibility so skilled migrants can more easily move between employers
- b. establish a unit in the Department of Home Affairs where workers can report exploitation without impact to their visa status
- c. create easier pathways to permanent residency for parents of Australian children
- d. create a person-centred migration system that supports people to permanent residency

1. **Using the migration system to help end violence against women**

Australia's future migration system must be underpinned by a number of principles that reflect our collective vision for a fair, equitable and inclusive Australian community, including gender equality. This principle reflects the government's whole-of-government commitment to supporting women's empowerment and safety. It aligns with our international obligations as well as the recently launched National Plan. The National Plan commits to placing lived experience at the heart of ending violence against women. It is important the Department of Home Affairs lives out this commitment when reimagining our migration system. Women who have recovered from family violence while on temporary visas have valid experiences to share that could help shape innovative ideas and ensure any changes meet their practical and strategic needs.

Australia must ensure a gender lens is applied across the whole migration system. Given family violence is so prevalent amongst migrants and refugees, and most users of violence are Australian citizens, the government must ensure all Department of Home Affairs staff have satisfactory training in gender, sexuality and the migration system so that all Home Affairs staff are able to identify how gender impacts a person's experience in our migration system. While training isn't the silver bullet, it will help build the capacity of the Department to support women experiencing and/or recovering from family violence. Further, specific training on how family violence manifests in the migration portfolio and what a trauma informed approaches looks like is critical to supporting victim-survivors of family violence. Case studies, lived experience and specialist services can all help inform or deliver this training to ensure best practice principles are applied.

It is critical that a trauma approach informs the Department's interactions with victim-survivors of family violence. For example, not asking for a victim-survivor's story more than once, ensuring communication does not re-traumatise, communication preferences are strictly adhered to, and content of correspondence and interview techniques are sensitive to how trauma may present for victim survivors of violence. For example, some of our clients have post-traumatic stress disorder and we have seen clients be triggered in interviews by Home Affairs.

Recommendation: Gender equality to be an underpinning principle to Australia's migration systems

Recommendation: A gender and safety lens should be applied to the Review, succeeding report and any future reforms

Recommendation: Train all Home Affairs staff on gender, family violence and trauma informed responses

How can we make the system simpler and fairer for both migrants and employers?

Many of Australia's visa application costs are extremely expensive. Most victim-survivors of family violence experience significant disadvantage and, often due to the family violence, are unable to afford any of the fees associated with applications, reviews and appeals. For example, many of our clients use brokerage from family violence services to pay for visa fees, instead of using it for rent, food and other essential purchases. One of our member service's clients had to apply for a subsequent tourist visa to remain in Australia lawfully until her Australian family law matters were resolved. The client had to seek family violence funding to cover the more than the \$1,000 visa application fee so that she could depart Australia without being barred from returning in the future. This is especially critical in many cases where our clients have children to Australian citizen fathers and court orders direct that they must return to Australia to facilitate a relationship between her children and their father.

Recommendation: Offer flexibility in relation to deadlines, evidence requirements and interviews

Recommendation: Waive all visa application fees for victim-survivors of family violence

How can we make the migration system more flexible and responsive to the changing needs of our economy and society?

As submitted above, it is critical the migration system mirrors Australia's commitment to end violence against women. One concrete action that could be immediately taken is creating a family violence visa, or extending the current provisions to have this effect. Too many of the women who access our services are ineligible to access the current family violence provisions, even when they have proof of the relationship and violence. For example, since October 2021, only 25 of 150 of Women's Legal Service Victoria's clients who were on partner visas were actually able to access these provisions. The remainder, even though they had experienced family violence, were ineligible and had very limited visa pathways to remain in Australian, temporarily or permanently.

Creating a substantive family violence visa is not only taking a step towards implementing Australia's commitments in the National Plan, but it supports women's choice to leave a violent relationship. A family violence visa could be a temporary visa with a pathway to permanent residency, providing a victim-survivor time and safety to consider what is best for her and her family. We note that a temporary visa for people impacted by COVID-19 was quickly introduced to enable people time to work out the best pathway for them, and this same efficient approach could be adopted to improve outcomes for women experiencing violence.

Recommendation: Create a fee-free substantive temporary family violence visa

What are the barriers to the participation of migrants in the labour market?

Family violence is a significant barrier to participation in the labour market. Often the person using violence does not allow a victim-survivor to work. This forms part of the coercion and pattern of violence. A family violence visa with full work rights would support the economic independence and recovery of a victims-survivor and would support the choice to leave.

It is important to note that if women on temporary visas experiencing family violence are given the right to work, they must be given *immediate* access to the childcare subsidy. Currently, if a woman on a temporary visa is part of the narrow cohort permitted to work, she is ineligible to access the

childcare subsidy. This has a far reaching and devastating impact on women and their children who, often due to low incomes, are unable to afford full fees. Many women in this situation are often forced into a decision between working to pay for childcare (if their wage can even cover full fees) and not working because it's not financially viable to do so.

Recommendation: Allow women on temporary visas experiencing family violence to access social security, childcare subsidy and Medicare and waive all relevant newly resident waiting periods.

2. Understanding and supporting secondary applicants

How do we best use the migration program to grow our economy?

Australia is committed to removing barriers that limit women's economic opportunities, including through international conventions including the Convention on the Elimination of All Forms of Discrimination Against Women. Yet some women who are in Australia on temporary visas, including those experiencing family violence, are not currently afforded any work rights. Many of our clients are willing to work, including in in-demand jobs in the childcare and aged care sectors, and not providing this option can push women, who have no other choice, to take cash jobs where they can be further exploited or abused. Many of our clients want the opportunity to work, especially as they are ineligible for social security support and need to support themselves and their children. This is particularly so for a woman on a temporary visa who may recently be separated from a partner that used violence against her. She may have been totally dependent on the abuser for financial support, and not being allowed to work not only hinders her ability to recover and start a life over free from violence, but can also contribute to her decision to return to the perpetrator. In addition, the age cap (45 years old) on most skilled visas is also barrier to women having a skilled pathway in their own right. Gendered caring responsibilities and for the clients we support, family violence, all impact on a woman's ability to start or continue a career.

Recommendation: Harness potential economic contribution of secondary visa applications by offering full work rights and remove increase or remove the age cap on skilled visas.

Should we take a different approach to identifying and counting the number of skilled migrants?

Many victim-survivors of family violence that WLSA's members support come to Australia as secondary applicants. While Australia collects comprehensive data on primary applicants, Australia does not currently count secondary visa applicants and dependents or collect much information about them. This has multiple impacts. Firstly, it creates a section of our community that we know very little about, which because most primary applicants are men, reinforces the gendered nature of our migration system. Secondly, collecting data on secondary and child applicants would provide policy makers with vital information to make informed decisions about our migration system, including how to better support dependants into the labour market. For example, whether they need industry introductions, language training or other targeted supports.

Recommendation: Collect data on secondary applicants to help understand how they can be best supported in Australia

Recommendation: Offer full work rights to women on temporary visas, especially those who are experiencing family violence

3. Addressing Exploitation

How can we better prevent the exploitation of migrant workers?

Depending on the respective visa type, some of our clients on temporary visas who experience family violence have very limited choice when it comes to moving between jobs. If a client is afforded work rights, there should be more flexibility for skilled migrants to move between employers. If a migrant is tied to a particular employer, it can create an opening for exploitation and poor treatment. Being able to more easily move employers in the same industry may help 'raise the bar' and force employers to offer better working conditions as they compete for attracting and retaining the highest quality staff.

WLSA has noted and commends the immense benefit of the Domestic Family Violence Unit at the Department of Home Affairs. This specialised unit has helped build internal capacity to appropriately respond to an issue that impacts 1 in 3 migrants and refugees in Australia. A new migration system should create a similar unit to support the exploitation of migrants and refugees. The unit should be informed by lived experience and work closely with the Family Violence Unit. The unit can play an important role in raising awareness of their rights at work and that if they are experiencing exploitation, what options and remedies they have.

People, including women on temporary visas experiencing violence, must be afforded safe pathways to report and recover from exploitation by employers without any risk to their visa. However, the onus should not only be on those who experience exploitation to report it. The Department of Home Affairs should work across government to hold unsafe employers to account and support victims in finding new work.

Recommendation: Enhance flexibility so skilled migrants can more easily move between employers

Recommendation: Establish a unit in the Department of Home Affairs, similar to the Domestic Family Violence Unit, where workers can report exploitation without fear that doing so will have a negative impact on their visa status

How can we prevent a 'permanently temporary' cohort within the migration program?

The best way to prevent a 'permanently temporary' cohort within the migration program is to provide realistic pathways to permanent residency. For example, many visas that provide a pathway to permanent residency are untenable. They are extremely expensive and take a long time to process. Partner and parent visas are expensive and require a sponsor to lodge the application. For women experiencing family violence, this is particularly problematic and is often the only way women on temporary visas can remain in Australia with their Australian citizen children.

It is well known that Australia's visa processing time is too long, onerous and puts additional stress and anxiety on applicants and their family. For a person experiencing family violence, delay can have an acute impact and significantly affect wellbeing and recovery. Australia's migration system must be re-orientated to be more focused on the experience of people applying for a visa. Decision making processes need to be streamlined, be people-centred and there needs to be clear and consistent communication between the Department and applicants.

Recommendation: Create easier pathways to permanent residency for parents of Australian children

Recommendation: Create a person-centred migration system that supports people to permanent residency

Yours sincerely



Vanessa Burn

Chair

Migration Committee

Women's Legal Services Australia