

Women's Legal Services Australia
Submission to the Multicultural
Framework Review

29 September 2023

Acknowledgement

We acknowledge the victim-survivors of domestic, family, and sexual violence who we work with and their voices and experiences which inform our advocacy work.

Women's legal services operate from many different locations across Australia. Across these locations, we acknowledge the Traditional Owners of Country, recognise their continuing connection to land, water and community, and pay respect to Elders past and present.

Who we are

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 designed to improve women's lives through gender-led and trauma-informed specialist legal representation, support, and advocacy.

WLSA members include:

- Women's Legal Service Victoria
- Women's Legal Service Tasmania
- Women's Legal Service NSW
- Women's Legal Service WA
- Women's Legal Service SA
- Women's Legal Service Queensland
- North Queensland Women's Legal Service
- First Nations Women's Legal Service Queensland
- Women's Legal Centre ACT
- Wirringa Baiya Aboriginal Women's Legal Centre (NSW)
- Top End Women's Legal Service
- Central Australian Women's Legal Service
- Katherine Women's Information and Legal Service

What we do

Women's legal services provide high quality free legal services, including representation and law reform activities, to support women's safety, access to rights and entitlements, and gender equality. We seek to promote a legal system that is safe, supportive, non-discriminatory, and responsive to the needs of women. Some of our services have operated for more than 40 years.

The principal areas of law that our services assist with are family law, family violence, child protection and victims of crime compensation. Some of our services also assist with migration law, employment law and discrimination law, other areas of civil law, and criminal law. Our services also develop and deliver training programs and educational workshops to share our expertise regarding effective legal responses to violence and relationship breakdown.

In 2021, seven (7) WLSA members were identified as best-placed service providers for the Temporary Visa Holders Experiencing Violence Pilot; a Pilot to provide wraparound and specialist legal and support services, including migration advice and representation, to women on temporary visas or no visa experiencing domestic and family violence. Notably, the Pilot has commenced its third funding cycle, with WLSA members again identified as best placed to deliver same.

Most of the clients assisted by women's legal services have experienced, or are still experiencing, family and domestic violence. Our services have specialist expertise in safety and risk management, maintaining a holistic and trauma-informed legal practice, and providing women additional

multidisciplinary supports, including social workers, financial counsellors, and trauma counsellors, for long-term safety outcomes.

Our advocacy approach

Our advocacy work is informed by the specialist expertise of women's legal services and their experience providing on the ground legal assistance and wraparound supports to women in the community. Our advocacy work is also informed by the lived experience of clients, many who are victim-survivors of domestic, family, and sexual violence, and who are often experiencing multiple forms of disadvantage.

We provide a unique, gendered and trauma-informed perspective on how the law is affecting women every day, and the barriers to safety, justice, and equality that women are experiencing through engagement with the legal system. Our primary concern when considering any proposed legislative amendments is whether the changes will make the legal system fairer and safer for children and adult victim-survivors of violence, who are predominantly women.

Contact us

For further information, please contact:

Lara Freidin
Executive Officer
Women's Legal Services Australia
lara@wlsa.org.au

Introduction

Women's Legal Services Australia thanks the Department of Home Affairs for the opportunity to make a submission to the Multicultural Framework Review. 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 opportunity to implement reforms to address barriers that marginalise women on temporary visas and promote their safety.

The recently launched National Plan to End Violence Against Women and Children 2022-33 (National Plan¹) 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. 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. 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. This is an issue we must face as a community and the outcomes of this Review are critical in addressing the systemic factors that undermine safety for women on temporary visas and their children.

Summary of Recommendations

Promoting gender equality and safety for all

1. Establish gender equality as an underpinning principle of Australia's multicultural framework
2. Apply a gender and safety lens to the Review, succeeding report and any future reforms

Using the migration system to help end violence against women and children

3. Create a fee-free substantive temporary family violence visa
4. Offer full work rights to women on temporary visas, especially those who are experiencing family violence
5. Allow women on temporary visas experiencing family violence to access social security, childcare subsidy and Medicare and waive all relevant newly resident waiting periods for permanent visa holders.
6. Waive or significantly reduce visa application fees for victim-survivors of family violence
7. Offer flexibility in relation to visa deadlines, evidence requirements and interviews
8. Train all Home Affairs staff on gender, family violence and trauma-informed responses

Supporting participation and inclusion for secondary applicants

9. Harness the economic contribution of secondary visa applications by offering full work rights
10. Increase or remove the age cap on skilled visas.

Preventing exploitation of migrant workers

11. Enhance flexibility so skilled migrants can more easily move between employers, especially where there is family violence

¹ <https://www.dss.gov.au/ending-violence>

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

Removing barriers to permanent residency

13. Create easier pathways to permanent residency for temporary visa holder parents of Australian children

14. Create a person-centred migration system that supports people to permanent residency.

Promoting gender equality and safety for all

The Australian Government has committed to putting gender equality at the heart of policy and decision making and making women's equality a central economic imperative. Australia's multicultural framework must reflect our collective vision for a fair, gender-equitable and inclusive Australian community.

This principle reflects a 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 to End Violence Against Women and Children.

Ensuring the safety of women and children is fundamental to a cohesive and inclusive multicultural society. Given family violence is so prevalent, including amongst migrants and refugees, and most users of violence are Australian citizens, WLSA recommends that a safety lens be applied to the Review, succeeding report and any proposed changes.

Recommendation: Establish gender equality as an underpinning principle of Australia's multicultural framework

Recommendation: Apply a gender and safety lens to the Review, succeeding report and any future reforms

Using the migration system to help end violence against women and children

It is critical for victim-survivors of family violence on temporary visas to have the option to extend temporary stay in Australia. Both primary and secondary visa applicants experiencing family violence contact our service to seek advice about their options to remain in Australia both temporarily and permanently following a breakdown in their relationship with the perpetrator.

Primary applicants are often concerned that their visas may be cancelled due to their inability to continue to meet their visa conditions whilst in crisis. Secondary applicants face additional barriers to leaving violent relationships and re-establishing their lives independently from the person using violence due to their dependency on that person's visa status and limited options to apply for a visa in their own right. Under the current migration framework, secondary applicants on most visa subclasses become ineligible to hold their visa and face barriers applying for another visa in Australia once they separate from the primary visa holder .

This results in a large number of victim-survivors of family violence and their children holding Bridging Visa E visas which are punitive, limit rights to work and access services and bar visa holders from applying for another visa in Australia and returning to Australia for 3 years after their departure.

Temporary visa holders experiencing family violence often also face considerable barriers to returning to their home country period following separation. Most of our clients have made arrangements to live and work in Australia for the period of the visa, including enrolling children in schools, taking up jobs, signing rental agreements and giving up jobs and housing overseas. Many are also unable to quickly depart Australia as they share children with the person using violence who may not agree to the family departing. As such, they should be allowed to continue to remain in Australia for the period of their visa.

Family violence provisions that allow for the grant of a permanent visa where family violence occurred during the relationship with the sponsor are only available to a very narrow cohort of victims/survivors. This has detrimental impacts on women and children in particular. For example, a large cohort of clients WLSA migration pilots support hold or have applied for visas that do not have a family violence exemption. Even though they have experienced family violence perpetrated by their sponsor or family member, they are ineligible to continue to hold their visa and have very limited visa pathways to remain in Australian, temporarily or permanently.

One concrete action that could be immediately taken is the creation of a family violence visa. WLSA is a member of the National Advocacy Group for Women on Temporary Visas and refers the Panel to the 2022 Blueprint for Reform. We advocate for the introduction of a temporary family violence visa as outlined in the Blueprint.

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 choice to leave abusive relationships. A family violence visa would promote independence and safety for women and children in crisis and help them to rebuild their lives free from violence. Allowing victim survivors to remain in Australia temporarily means they can receive assistance from family violence and legal services and information regarding their rights and obligations post separation. They can undertake counselling, divorce (which is not legal in some countries), resolve property (including debt) and parenting matters, and attend to criminal matters. The proposed visa would give visa applicants and temporary visa holders access to services to support recovery and enable them to take control of their own migration pathway.

WLSA recommends the proposed visa be made available to family violence victim survivors who do not have a meaningful pathway to apply for another visa upon cessation of the relationship including those who need to remain in Australia while undergoing legal processes or to earn money to cover the costs of returning to their country of origin. We note that a temporary visa for people impacted by COVID-19 was quickly introduced to ensure people had time to work out the best pathway for them. An equally efficient approach could be adopted to improve outcomes for women experiencing violence.

While WLSA supports the extension of family violence provisions to other visa categories that have a pathway to permanent residency, the introduction of a substantive family violence visa is crucial to support the safety of women and children on other visas without a permanent residency pathway; for example tourist visa holders who travel to Australia to spend time with family and experience family violence after their arrival.

Recommendation: Create a fee-free substantive temporary family violence visa and increase pathways to permanent residency for visa holders experiencing family violence.

Family violence is a barrier to participation in the labour market. Often the person using violence does not allow a victim-survivor to work or the victim-survivor's visa conditions limit their ability to work, creating a financial dependency on the person using violence. This forms part of the coercion and pattern of violence.

Extending work rights to all visa holders and introducing a family violence visa with full work rights would support economic independence and recovery for victims-survivors and enable women to leave violent relationships.

Further, women on temporary visas often face cultural and linguistic barriers that contribute to their isolation, making them especially vulnerable to violence and abuse. The capacity to work outside the home is an important protective factor that enables women experiencing violence to access information and supports needed to minimise the impacts of violence and keep themselves and their children safe.

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

Holders of the proposed temporary family violence visa must have access to the same services and entitlements as permanent residents and Australian citizens experiencing family violence.

Family violence does not discriminate and victim-survivors (including children) need access to social security and Medicare to support their safety and recovery. Currently most temporary visa holders are not eligible for these services and need to apply to waive the New Resident Waiting Period once their permanent visa is granted. This creates further barriers for victim-survivors to leave violent relationships even after their visa status is resolved.

To enable women on temporary visas experiencing violence 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 impacts on women who are most often the primary care givers to children. Women on temporary visas are face barriers to re-entering the work force as they are unable to afford full child care 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.

Australia's visa application process is 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.

Many of our clients use brokerage from family violence services to pay visa fees, instead of using it for rent, food and other essential purchases. For example, one of our member service's clients had to apply for a 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 visa application fees in excess of \$1000 so that she could depart Australia without being barred from returning in future.

Reducing the financial cost associated with visa applications is especially important for women who have children to Australian citizen fathers and court orders direct that they must return to Australia to facilitate a relationship between their child/ren and the father.

The financial and practical barriers experienced by victim/survivors also make it difficult for women on temporary visas to obtain evidence to substantiate matters relevant to visa applications. For example, without access to Medicare, obtaining a support letter from a General Practitioner or a psychologist is prohibitive. Evidence requirements must be low to enable clients to separate, seek help and engage with family violence, legal and migration services.

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

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

The Australian Government should ensure that the public service is equipped to provide trauma-informed and culturally safe services. In our experience, staff working in key departments and agencies have limited understanding of the effects of family violence on those engaged with the migration system and the complex intersections of family violence, migration, family and child protection laws. Some of our clients have post-traumatic stress disorder and we have seen clients triggered by requests (i.e. to engage with the person using violence or obtain DNA evidence) and in interviews with the Home Affairs department.

Building the capacity of the public service to better respond to and assist women and children experiencing family violence will strengthen Australia's multicultural framework and commitment to gender equality. We recommend targeted training on how family violence manifests in the migration portfolio and what a trauma informed approach looks like. Consideration should be given to implementing processes to minimise the number of times victim-survivors are asked to tell their story, ensure communication preferences are strictly adhered to, and promote correspondence and interview techniques that are sensitive to how trauma may present for victim survivors of violence. Case studies, lived experience and specialist services can all help inform or deliver this training to ensure best practice principles are applied.

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

Supporting participation and inclusion for secondary applicants

Australia is committed to removing barriers that limit women's economic opportunities, including through the Convention on the Elimination of All Forms of Discrimination Against Women. Yet, as noted above, some women on temporary visas are not afforded any work rights.

Many of our clients are willing to work, including in in-demand jobs in the childcare and aged care sectors. Not allowing temporary visa holders to work can push women, who have no other choice, to take cash jobs where they can be further exploited or abused. Often, our clients need to work in order to support themselves and their children, especially as they are ineligible for social security support and are reliant on charitable and family violence services for day to day necessities. 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 able to work not only hinders her ability to recover and start a live 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 a 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. Harnessing the economic contribution of secondary visa applicants would promote a more cohesive multicultural society and benefit the entire community.

Recommendation: Harness potential economic contribution of secondary visa applications by offering full work rights

Recommendation: Increase or remove the age cap on skilled visas.

Preventing exploitation of migrant workers

Preventing exploitation of migrant workers is fundamental to promoting a fair, equitable and inclusive society. Depending on the respective visa type, some migrants on temporary visas who experience family violence have very limited choice when it comes to moving between jobs. If a migrant is tied to a particular employer, it can create an opening for exploitation and poor treatment or result in a victim-survivor remaining in a violent relationship or living in a high risk situation in the same community as the person using violence to maintain her visa.

For those who are afforded work rights, including skilled migrants, there should be greater flexibility to move between employers. Being able to more easily move employers in the same industry would help 'raise the bar' and force employers to offer better working conditions as they compete for attracting and retaining the highest quality staff. It would also support women to leave relationships and communities where they are at risk of ongoing family violence.

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 similar unit should be created to support migrants and refugees experiencing exploitation. 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 rights at work and options and remedies available to those experiencing exploitation.

Migrants and refugees, including women experiencing violence, must be afforded safe pathways to report abuse and recover from exploitation without any risk to their visa status. 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

Removing barriers to permanent residency

Many visas that provide a pathway to permanent residency are untenable for victim survivors of family violence. 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 on temporary visas

experiencing family violence, this is particularly problematic as they lack familial and community support required for sponsorship and these visas are the only way women can realistically remain in Australia with their young 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 and align with other legal frameworks including family law, child protection and family violence orders. 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