



Inquiry into the Migration Amendment (Removal and Other Measures) Bill 2024

Senate Legal and Constitutional Affairs Legislation
Committee

15 April 2024

Acknowledgements

We acknowledge the Traditional Owners of Country, recognise their continuing connection to land, water, and community, and pay respect to Elders past and present.

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

About Women's Legal Services Australia

Women's Legal Services Australia (**WLSA**) is the national peak body for 13 specialist Women's Legal Services in each state and territory across Australia, including two First Nations Women's Legal Services. We provide a national voice for Women's Legal Services to influence policy and law reform, and advocate to increase access to gender-specialist, integrated legal services for women.

About Women's Legal Services

Women's Legal Services provide high quality free legal services for women, including legal advice and representation, support services and financial counselling, community legal education, training for professionals, and engage in advocacy for policy and law reform. Some Women's Legal Services have operated for more than 40 years.

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
- Wurringa 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

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Executive Summary

1. Women's Legal Services Australia welcomes the opportunity to contribute to the Committee's inquiry into the Migration Amendment (Removal and Other Measures) Bill 2024.
2. Many Women's Legal Services have migration law practices that are funded by the Department of Social Services to provide legal assistance and support services to women on temporary visas or no visa who are experiencing violence and abuse. These Women's Legal Services have expertise in the range of legal issues and systemic issues impacting migrant women who are victim-survivors of family violence, including in relation to migration law and family law for parenting arrangements.
3. We endorse the Human Rights Law Centre's submission to the inquiry and share the concerns outlined by the Human Rights Law Centre with respect to the Bill in their submission. We further endorse the recommendation of Fitzroy Legal Service regarding Government engagement in a consultative process with community organisations and lived experience groups to develop pathways to community integration for those unable to return to their country of origin.
4. We are deeply concerned about the impact this Bill will have on victim-survivors of family violence and their children. For the reasons outlined in this submission and in the submission of the Human Rights Law Centre, the Bill exposes people, particularly victim-survivors of family violence and their children, to real risks of serious harm, family separation, undue criminalisation and punitive, discriminatory measures that infringe fundamental human rights, and place people at significant risk of further family violence and gender-based harm.
5. On 26 March 2024, Ms Zali Steggall OAM MP rightly identified that the Bill requires very careful scrutiny for unintended consequences, including for victim-survivors of family violence "who have increased vulnerability to deportation."
6. Ms Steggall rightly highlighted:

"Women who are on a removal pathway and who are experiencing domestic violence and abuse might find it challenging to comply with directives aimed at facilitating their removal from Australia. Obtaining a passport or attending meetings will prove incredibly difficult. There's a fear of seeking help, and the requirement for mandatory cooperation with removal efforts and the associated penalties for noncompliance will deter women in abusive situations from seeking help. We already know that CALD women face additional barriers to reporting, partly due to their fears in relation to their visa status.

...

It has an impact on legal proceedings. You are trying to circumvent the role of the High Court. Women facing domestic violence are often required to navigate legal processes such as applying for protection orders and custody of children. The legal process through the Family Court can be lengthy and result in orders that children remain in Australia to have contact with a parent or citizen-parent, whilst the mother—most likely the primary carer—will face expulsion from Australia. This legislation entitles you to require her removal while the children are ordered by the court to stay here..."
7. We are particularly concerned that the Bill will result in:
 - a) increased criminalisation of victim-survivors of family violence, predominately women, who fail to comply with a direction under the Bill;

- b) the removal of victim-survivors of family violence to countries where they face a risk of further family violence and gender-based harm without protections;
 - c) the banning of people from designated countries from travelling to Australia which can isolate victim-survivors of family violence who have been exit trafficked or are in need of support from family or friends after experiencing family violence; and
 - d) the real risk of family separation and the placement of children in the care of perpetrators of violence or the State in the absence of appropriate alternative care arrangements, contrary to the best interests of children.
8. The Bill dangerously expands Ministerial powers and has broad, serious, and life-long impacts on those affected.
 9. This Bill should not be passed.

Recommendations

- **That the Bill is not passed.**
- **That the Commonwealth Government consult with both community organisations and lived experience groups to develop pathways for community integration for those who cannot be returned to their country of origin.**
- **That increased and ongoing funding be provided to the legal assistance sector, including specialist Women's Legal Services, to assist women in respect of departure pathways, with particular focus on women who have experienced, or continue to, experience family violence.**

Separating families and putting children at risk

10. In their submission to the inquiry, the Human Rights Law Centre highlights:

*“49. The new power to direct a person to facilitate their deportation completely ignores a person’s family members in Australia. **A direction could be made requiring a person to assist with their removal, notwithstanding that the person is the primary carer of an Australian citizen child or married to an Australian permanent resident.***

*50. While a direction cannot be made requiring a child to facilitate their deportation, **their parent or guardian can be compelled to take steps to facilitate the child’s removal with no consideration of their wishes, the potential separation of the child from their family members or whether removal would be in the best interests of the child.** Not only is this contrary to basic principles of decency, it also risks breaching the obligations in the Convention on the Rights of the Child, which require the child’s best interests to be a primary consideration in all administrative, legislative and judicial decisions.” [Emphasis added; citations omitted]*

11. Further to this, the Bill completely fails to consider the reality of family separation across international borders and the complex legal processes, including family law litigation, that families must often undergo to determine suitable parenting arrangements for shared children.
12. The Hague Convention on the Civil Aspects of International Child Abduction prevents the removal of children from Australia without the permission of responsible parents or without the authorisation of a court.
13. Women’s Legal Services regularly assists women who have experienced family violence and relationship breakdown through complex family law litigation to determine parenting arrangements for children, including where one parent lives abroad. Under these processes, the Federal Circuit and Family Court of Australia is required to consider the best interests of children in making orders.
14. Recent changes to the *Family Law Act 1975* (Cth) through the Family Law Amendment Bill 2023, which received royal assent on 6 November 2023, goes further to ensure that the child’s best interests are placed at the centre of the family law system and clearly provides that safety should be specifically considered when ensuring that the best interests of children are met. These amendments will commence in early May 2024.
15. We are deeply concerned that this Bill is entirely inconsistent with the Federal Government’s commitment to “ensure the best interests of children are at the centre of all parenting decisions made inside or outside the courtroom”. This Bill compels victim-survivors of family violence to engage with perpetrators of family violence through mediation and/or commence complex family law litigation to determine international parenting arrangements or remove a child from Australia. We regularly see these matters develop into litigation cases due to their complexity and prospect of long-term family separation. These matters can take years to resolve.
16. The Bill in its current form also raises significant safety risks for children where the court determines that it is in their best interest to remain in Australia, have some contact with both parents and there is no suitable, safe, alternative primary carer to the parent on a departure or deportation pathway. In these situations, there is a real risk that children will be placed with a perpetrator of violence or placed in State care due to ongoing safety risks to the child.

Example – A child is put in unsafe international parenting arrangements

A Women's Legal Service has worked with a woman who is the primary carer of an Australian citizen child and is herself a temporary visa holder. She has no pathway to permanency in Australia. Following litigation in the Federal Circuit and Family Court of Australia, the court ordered that she remain the primary carer for the child due to a history of family violence perpetrated by the Australian father and ongoing safety risks. The father has supervised time arrangements with the child. The child remains on an airport watchlist preventing their removal from Australia.

In this case, the woman may be issued a "removal pathway direction" due to her not having a pathway to remain in Australia. This would require her to re-engage in court processes with the perpetrator of violence to determine new international parenting arrangements, including where the child would live. If the court determines that it is in the best interests for the child to remain in Australia, she may be placed in the unsafe primary care of her father or State care if there is no other safe carer.

17. This reality is not confined to non-Australian citizen families. Women's Legal Services also have experience working with migrant families who do not have a permanent right to remain in Australia, however, face significant barriers to departing Australia because their countries will not issue passports to children without the consent of both parents.

Example – A victim-survivor of family violence is criminalised

A Woman's Legal Service has worked with a woman for over two years to support her departure from Australia with her children. They are all foreign nationals, victim-survivors of family violence and have no permanent right to remain in Australia. Despite wanting to depart to their home country and making reasonable attempts to engage with their embassy, the embassy will not issue passports to the family without the consent of her violent ex-husband who cannot be located. They are unable to depart Australia.

Under this Bill, the woman will fail to comply with the removal pathway direction and may be charged with a criminal offence and face at least 12 months in prison. There is no one else to care for the children.

Isolating victim-survivors of family violence

18. We are concerned that the unprecedented power of the Minister to impose a travel ban on entire countries excluding people from entry into Australia on the basis of the nationality on their passport will also have unintended consequences for victim-survivors of family violence and their families.
19. Through our work, we have seen women and children exit-trafficked by persons using violence to countries such as Iran and abandoned overseas. The Bill would, in effect, leave women and children abandoned in those countries and excluded from re-entry to Australia unless the Minister allows the person to make a valid visa application.
20. The ban would also prevent the family members of victim-survivors of family violence from travelling to Australia to provide support when a victim-survivor needs it most, leaving the victim-survivor isolated and alone.

Example – A victim-survivor of family violence is isolated from family and not supported to engage with the Child Protection system

A Women's Legal Service worked with a woman who experienced family violence. Child Protection authorities became involved because she does not have sufficient family or community supports in Australia to support her to appropriately care for and provide for her child following family violence and relationship breakdown. She has a brother overseas who could travel to support her in Australia and alleviate the concerns of the Child Protection authority, however he is from a country that may be the subject of the travel ban.

Under this Bill, the women's brother would not be able to make a valid visa application to travel to Australia to support his sister without the Minister's permission, even if he meets the criteria to be granted a visa.

Inadequate protections for victim-survivors

21. Further to the concerns raised by the Human Rights Law Centre in their submission with respect to the inadequate safeguards for people seeking asylum and refugees, the Bill also provides inadequate protections for victim-survivors of family violence from being returned to countries where they would be persecuted or significantly harmed.
22. The National Plan to End Violence Against Women and Children 2022-2032 identifies that women from migrant and refugee backgrounds, particularly temporary visa holders, face unique challenges in reporting family violence and accessing supports:

"It is well recognised that temporary visa holders have specific experiences in relation to family and domestic violence, including perpetrators using a women's visa status to control and abuse them. A 2021 study indicated that one in 3 migrant and refugee women had experienced some form of family and domestic violence, with temporary visas holders consistently reporting proportionately higher levels of family and domestic violence, including controlling behaviours. In addition to the

barriers outlined above, women on temporary visas may not access support services for violence due to fears that doing so will affect their ability to stay in Australia...

International students and those travelling on working holiday visas may experience increased risk of violence including sexual violence due to exploitation and lack of accommodation and employment opportunities; economic abuse; lack of support from educational institutions; and control over their mobility.” [Emphasis added; citations omitted]

23. As the exclusion from being subject to a direction depends on a person having a pending application for a protection visa at the primary or merits review stage, there is a real risk that victim-survivors of family violence may be subject to a direction, where they have not made an application for a protection visa or raised these highly sensitive claims through a protection visa process that is being reviewed by the court or Minister under Ministerial Intervention.
24. Women's Legal Services regularly assist women who have experienced family violence with protection visa applications where previous claims of family violence and gender-based harm have not been raised by applicants themselves or the family violence has occurred following a primary or merits review decision and the applicant is seeking Ministerial Intervention to make another application and raise these claims.
25. It is well known and recognised in the Administrative Appeals Tribunal's Gender Guidelines that applicants face barriers in making and presenting gender-related claims:

“14. Applicants may, for social and cultural reasons, find it difficult presenting and pursuing gender-related claims in the protection visa process.

15. The difficulties faced by applicants may include but are not limited to: an assumption that female applicants' claims are derivative of male relatives' claims; difficulty an applicant may have in discussing his or her experiences of persecution because of shame or trauma; cultural differences or experience of trauma affecting an applicant's ability to give testimony or his or her demeanour; the compounding effect on an applicant's trauma that immigration detention may have; difficulties establishing the credibility of an applicant's claims; a fear of rejection and/or reprisals from his or her family and/or community.”
26. The Bill in its current form does not account for the barriers faced by victim-survivors of family violence in raising claims related to family violence and places them at significant risk of being directed to facilitate their own deportation without these claims being raised or fairly considered under a protection visa process.