

11 April 2016

Committee Secretary
Senate Legal and Constitutional Affairs References Committee
PO Box 6100
Parliament House
Canberra ACT 2600
By email: legcon.sen@aph.gov.au

Migration Amendment (Family Violence and Other Measures) Bill 2016

The Federation of Ethnic Communities' Councils of Australia (FECCA) is the peak body representing Australia's culturally and linguistically diverse (CALD) communities and their organisations, and promoting issues on behalf of its constituency to government and the broader community. FECCA strives to ensure that the needs and aspirations of various cohorts of Australia's CALD population are heard by policy and decision makers, as well as the broader public.

FECCA commends the Government on its efforts to address family violence, however we hold concerns about this Bill including how effective it will be and whether it interferes with Australia's human rights obligations.

Australian Law Reform Commission report

The Australian Law Reform Commission's (ALRC) 2011 report, *Family Violence and Commonwealth Laws – Improving Legal Frameworks* considered the problematic nature of regulating sponsorship.

At the time of the ALRC's inquiry, the Department of Immigration submitted:

Such measures could lead to claims that the Australian Government is arbitrarily interfering with families in breach of its international obligations. It could also lead to claims that the Australian Government is interfering with relationships between Australians and their overseas partners in a way it would not interfere in a relationship between two Australians.¹

The Department also noted that "there may be a risk that Australian sponsors could be disadvantaged by previous conduct that occurred a long time ago".²

¹ Australian Law Reform Commission, *Family Violence and Commonwealth Laws – Improving Legal Frameworks* (2011), 507.

² Ibid, 508.

Other submitters raised concerns relating to procedural fairness, privacy and discrimination.³

The report concluded: “[r]ather 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”.⁴

Existing protections for Partner visa holders who experience family violence

The sponsorship framework for work visas is an important aspect of Australia’s migration framework as migrant workers do not have other protections within the *Migration Act*.

The *Migration Act* includes protections for Partner visa holders, including access to the family violence exception. Additionally, sponsorship is barred in the case that a sponsor has committed paedophilia or other sexual offences relating to minors. The Act also precludes a person to sponsor a Partner visa applicant if they have previously sponsored someone for a Partner visa in the last five years.⁵ In addition, sponsors cannot sponsor more than two people in a lifetime, unless there are compelling reasons.⁶

Ministerial discretion and human rights obligations

FECCA considers that the proposed amendments allow a process for the Minister to approve a person as a family sponsor to be established in the *Migration Regulations 1994* and the potential of the Bill to interfere with Australia’s human rights obligations in relation to right to family. The right to family is enshrined in the *International Covenant on Civil and Political Rights* (ICCPR, articles 17 and 23) and *International Covenant on Economic, Social and Cultural Rights* (ICESCR, article 10). The Bill allows family sponsored to be subjected to approval by the Minister under the *Migration Regulations*.

These amendments will also make the administration of the migration system more onerous by adding a layer to the decision-making process.

Effectiveness to assist potential victims of family violence

The explanatory memorandum states that all sponsors in the Partner visa program will be required to undertake a police check. Family violence is under-reported in Australia.⁷ Despite initiatives to increase awareness of the crime and improve pathways for women to report violence and access support, many incidents of family violence are not recorded by police, or necessarily result in criminal charges. Further, if the individual who seeks to be a sponsor is a new citizen or permanent resident, it may be difficult to access information about any previous history of violence in their country of origin. Different States and their respective legal systems have different understandings and laws concerning family violence, which may mean that incidents are not recorded by police.

FECCA questions the effectiveness of the proposed amendments to assist potential victims of family violence, given the difficulties with relying on police checks for evidence of previous behaviour in these circumstances.

³ Ibid.

⁴ Ibid.

⁵ *Migration Regulations 1994* (Cth), regulation 1.20J.

⁶ Ibid.

⁷ Victorian Government, *Royal Commission into Family Violence* (March 2016), 47.

Many individuals apply for a Partner visa onshore, when they are already residing in Australia on another visa. Adding a sponsorship framework to the family visa program may result in additional barriers for visa applicants who are already experiencing family violence, and thus leave them in a position where they are more vulnerable. The report of the Royal Commission into Family Violence recently acknowledged that the immigration status of women who experience family violence has a significant impact on their experience of that violence and their ability to leave a violent relationship.⁸

Alternative solutions to assist migrants who experience family violence

FECCA commends the Government on its introduction of the Family Safety Pack, which is included in relevant grant letters by the Department of Immigration and Border Protection for men and women coming to Australia on a Partner visa, Student visas and Temporary Work (subclass 457) visas. The pack aims to address violence against migrant women by providing information about Australia's laws and a women's right to be safe. FECCA considers this an important initiative and congratulates the Government on making the pack available in 46 languages.

FECCA recommends that the Government take further action to provide support to migrants who have experienced family violence, by:

- broadening the definition of family violence in the *Migration Regulations 1994* (Cth), as recommended by the Victorian Royal Commission into Family Violence. This will allow a person who experiences violence perpetrated by a family member other than the person's spouse to apply for the family violence exception; and
- adopting the recommendations made by the ALRC in its 2011 report, *Family Violence and Commonwealth Laws – Improving Legal Frameworks*, in relation to migration law. The ALRC recommended that the family violence exception be expanded to cover secondary applicants for onshore permanent visas, and holders of a Prospective Marriage (Subclass 300) visa who have experienced family violence but who have not married their Australian sponsor.

Conclusion

FECCA identifies the need to better support migrant women who experience family violence, and to prevent this violence where possible, including through migration policy. We commend the Government on its efforts on this issue. However, we object to the extension of the sponsorship framework as outlined in this Bill, and thus do not support the Bill in its current form.

⁸ Ibid, 109.

Recommendations

FECCA recommends that the *Migration Amendment (Family Violence and Other Measures) Bill 2016* is not passed in its current form.

We recommend that the Government consider alternative amendments to strengthen existing protections for migrants who experience family violence, including:

- broadening the definition of family violence in the *Migration Regulations 1994* (Cth), as recommended by the Victorian Royal Commission into Family Violence. This will allow a person who experiences violence perpetrated by a family member other than the person's spouse to apply for the family violence exception; and
- adopting the recommendations made by the Australian Law Reform Commission (ALRC) in its 2011 report, *Family Violence and Commonwealth Laws – Improving Legal Frameworks*, in relation to migration law. The ALRC recommends that the family violence exception be expanded to cover secondary applicants for onshore permanent visas, and holders of a Prospective Marriage (Subclass 300) visa who have experienced family violence but who have not married their Australian sponsor.