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Concerns Relating to the Migration Amendment (Family Violence and Other Measures) Act 2018

About us

inTouch Multicultural Centre Against Family Violence (inTouch) is a not for profit organisation that provides integrated, culturally appropriate services to migrant and refugee communities experiencing family violence across Victoria. Over the past 35 years, we have addressed the specific needs of these communities and have helped over 18,000 women experiencing family violence. In the 2018-19 financial year, inTouch provided services to over 1400 women from 101 different countries, and their 1,300 children.

We have become a critical piece in Victoria's family violence response system. In 2016, the Royal Commission into Family Violence in Victoria recommended that the government fund inTouch to better support the needs of people from refugee and migrant backgrounds experiencing family violence. As a leading expert with these communities, the reach and impact of inTouch's work has significantly increased since then.

inTouch works across the family violence continuum, from prevention and early intervention, to crisis intervention, post crisis support and recovery. Our services and programs include:

- an integrated, culturally responsive model based on *inLanguage*, *inCulture* case management. Our 18 case managers are highly diverse, offering direct client services in over 20 languages. They have a unique understanding of a client's lived migration experience, cultural influences, and the barriers faced when trying to seek help.
- an in-house accredited community legal centre, the only one of its kind in a specialist family violence service, which provides legal advice, court advocacy and immigration support.
- capacity building of specialist and non-specialist family violence providers, and community organisations to better deliver support to refugee and migrant women experiencing family violence. This includes a public training calendar and providing secondary consultations.
- an early intervention program, Motivation for Change, working directly with men from culturally and linguistically diverse communities who use violence towards their families.

What is the Migration Amendment (Family Violence and Other Measures) Act 2018?

The *Migration Amendment (Family Violence and Other Measures) Act 2018* has been implemented to screen sponsors who are seeking to apply for partner visas (including subclass 820, 801, 309, 100). The changes separate the application for approval to be a sponsor from the partner visa application.

The determination of a sponsorship application depends on a number of factors, including prior convictions for criminal activity and also, if the sponsor has previously been found to commit family violence against a spouse, de facto partner, or prospective spouse. The outcome of the

sponsorship application is then shared with both the applicant as well as the person they are wanting to sponsor.

The Amendment has been adopted to “strengthen the integrity” of the migration program, to “place greater emphasis on the assessment of persons as family sponsors”, and to “improve the management of family violence in the delivery of the program.” (*Migration Amendment (Family Violence and Other Measures) Act 2018 s140AA(2)*).

We commend the Commonwealth Government for their intention and commitment to deter family violence.

As a service that works with migrant and refugee women who have experienced family violence, we have concerns about the way in which these new laws may affect women and in particular, women who have experienced family violence. We believe, as detailed below, these changes may further disadvantage women by no longer giving them the option of being sponsored, of accessing the family violence provisions, and may discourage women from disclosing family violence perpetrated by their partner. Furthermore, the separation of the sponsor’s application from the partner visa – without any mitigating actions being implemented - will extend the processing times and place women in uncertain and vulnerable positions for extended periods of time.

The family violence provisions provide migrant and refugee women who have experienced family violence with the opportunity to continue their lives in Australia free from violence. We believe that this principle should inform all future amendments to migration laws and regulations. The recent amendments need to take into consideration individual needs and circumstances of each case and this should influence decisions on determination of sponsorship.

Issues for onshore applicants

inTouch works with a large number of women who are on temporary visas and we are acutely aware of the immense barriers and complexities these women face when experiencing family violence, as has been previously documented:¹

“Temporary migration status matters in the context of family violence because, in addition to the acknowledged levers of financial, emotional, technological, physical and sexual abuse that occur across situations of family violence, uncertainty of migration status creates additional leverage for violence and control.”²

We are concerned that the new sponsorship application requirements will discourage women from disclosing and reporting incidents of family violence in case they face deportation, separation from their children, and shame by their communities. Women can also face such similar consequences if their partner’s sponsorship application is refused due to an incident of family violence perpetrated by their partner in the past.

¹ See Marie Segrave (2017), *Temporary Migration and Family Violence: An Analysis of Victimisation, Vulnerability and Support*, Melbourne: School of Social Sciences, Monash University.

² See Marie Segrave (2017), *Temporary Migration and Family Violence: An Analysis of Victimisation, Vulnerability and Support*, Melbourne: School of Social Sciences, Monash University, p. 1.

Case study example

Linda is on a student visa and has been living in Australia. She is in a relationship with Tim who is an Australian citizen. As Linda's student visa is scheduled to expire soon, Tim has offered to sponsor her.

Tim's application to sponsor Linda is refused by the Department due to a family violence offence in the past.

Furthermore, in the current system, bridging visas are issued when a combined partner visa application is lodged. These bridging visas allow access to Medicare and can provide the visa recipient with the right to work and study in Australia whilst their application is being processed.

With the new changes, bridging visas will not be provided to individuals who are waiting to be sponsored and whose partner's sponsorship application is being processed. This will have considerable ramifications on women, who will have to apply for other visa streams in order to stay in Australia, a process that may be unattainable or unaffordable. They may also be forced to return to their home country whilst waiting, potentially separating them from their children and other family members. Access to health care and other rights in Australia may also be restricted while they wait.

Issues for offshore applicants

A significant number of our clients marry their partners overseas and apply to migrate to Australia from overseas. Where a marriage or prospective marriage has been decided upon, not having the option to migrate to Australia due to a failed application to become a sponsor may have wide reaching ramifications on women. Not only will it leave the woman in an uncertain and precarious situation regarding her future, she may also be ostracised from her community, and conflict may arise in relation to dowries.

Case study example

Adam is an Australian citizen, and marries his partner Laura in her home country overseas. After their wedding celebrations and the exchange of a dowry, Adam wants to sponsor Laura to migrate to Australia with him.

Adam's application to sponsor Laura has been refused by the Department meaning that he cannot sponsor her to move to Australia. This has wide reaching impacts on Laura's standing in her family and the rest of their community. She has been ostracised, her family feel she has shamed them and she will be unable to remarry.

Lengthy processing periods

At present, the time required for processing partner visas can be lengthy. The new laws add an additional step to the process, with the sponsor having to apply to be approved first. As such, a considerable amount of time is added to the whole application process. This may place women in

a vulnerable, unstable position in their relationship and with their families for a longer period of time. These issues are further exacerbated if access to health care and work or study rights are restricted due to the absence of a bridging visa (as discussed above). As such, women may feel increasingly dependent on their partner and their partner's family. This is particularly problematic and dangerous for women who are experiencing family violence.

Conclusion

The family violence provisions provide pathways for women who are on partner visas and have experienced family violence to continue with their lives in Australia. The provisions encourage women to disclose incidents of family violence. The family violence provisions are also effective in reducing the ability for sponsors to use their partner visa sponsorship as a method of control and coercion against their spouse. These amendments may stop women from accessing the family violence provisions if they cannot be sponsored in the first place. Additional visa processing time and the removal of bridging visas being issued, would also impact women who may no longer be able to access Medicare and have no rights to study or work in Australia, placing them in vulnerable and uncertain positions for extended periods of time.

As a service that works specifically with migrant and refugee women, we believe that these changes will have negative impacts for many women that we work with. The amendments would serve their intended purpose if cases were assessed based on their individual needs and circumstances and if exemptions are outlined and considered.

Contact us

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