



THE LAW SOCIETY  
OF NEW SOUTH WALES

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Dr James Popple  
Chief Executive Officer  
Law Council of Australia  
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By email: [matthew.wood@lawcouncil.au](mailto:matthew.wood@lawcouncil.au)

Dear Dr Popple,

**Consultation Paper: Amendments to the migration framework to support visa holders experiencing domestic and family violence**

The Law Society appreciates the opportunity to contribute to the Law Council's submission to the Department of Home Affairs (**Department**) on its consultation paper, *Amendments to the migration framework to support visa holders experiencing domestic and family violence*. The Law Society's Human Rights Committee has contributed to this submission.

We support the Department's review of the appropriateness of current visa settings, including measures to further support visa holders experiencing domestic and family violence (**DFV**). Further, we welcome the allocation of funding in the 2023-24 Budget for the expansion of the Family Violence Provisions (**FVPs**) in the *Migration Regulations 1994* (Cth).

As a general comment, we note that the consultation paper focuses on secondary applicants. While this cohort is important, it is critical that reforms take into account the risks posed to primary applicants for other types of visas who are at risk of being refused because of DFV e.g., parent visa applicants who are subject to elder abuse by their sponsoring child.

We have responded to some of the questions raised in the Consultation Paper below.

**Q1: What are the main issues specific to visa applicants and holders experiencing DFV that may require amendments to the migration framework?**

We consider the issues set out below should be prioritised for reform.

Firstly, the framework should ensure all permanent visa applicants are not denied a visa or lose visa pathways in circumstances where they no longer meet a criterion for the visa because of DFV. This is important in light of the fact that victim-survivors of DFV may be at risk of or have had their visas cancelled as a result of the actions of the perpetrator or may be unable to comply with the conditions of their visa because of the impacts of DFV. Such

applicants may be offshore because they were coerced into leaving Australia by the perpetrator and/or the perpetrator's family.<sup>1</sup>

Secondly, the framework should provide for a permanent visa pathway for parents of Australian children who have experienced DFV. A common scenario observed by our members arises in circumstances where a person has not yet applied for a partner visa and the relationship ends because of DFV. The failure to apply is often the result of DFV and/or coercive control. At this point, there is no pathway to apply for a permanent visa. This results in Australian children faced with being separated from their parent, usually their mother, or being compelled to leave Australia with them.

Thirdly, it is necessary to ensure access to income support and other services such as housing. The fact that temporary visa applicants are often ineligible for different forms of government support (both at the state and Commonwealth level) can lead to financial dependency on the perpetrator and limit options to leave the violent relationship. The *Blueprint for Reform* report details current barriers to services including lack of access to social security payments through Centrelink and Medicare; residency rules around access to childcare subsidies; lack of access to free legal advice and representation; inability to afford further education because of applicants being classed as international students; and lack of access to interpreting services.<sup>2</sup> One of our members noted an example of a client unable to obtain support from a women's refuge because they were holding a bridging visa.

Fourthly, the definition of DFV, which is limited to acts perpetrated by the sponsor, needs to be expanded. The current definition excludes people from the FVPs who have experienced DFV perpetrated by the sponsor's family members: see *Bhalla v Minister for Immigration and Border Protection* [2016] FCA 395 at [47]. In this context, we draw attention to the risks facing applicants living in extended family households who are subject to violence or control from other family members (e.g., the parents of the sponsor). In these cases, the applicant is unable to rely on the FVPs, even where the sponsor acquiesces to the violence or prevents the applicant seeking help. Where the violence is perpetrated by multiple family members, evidentiary issues arise when making out that the applicant experienced 'relevant family violence'.

Finally, we emphasise the importance of prioritising the processing of DFV claims. Our members have noted the processing time of partner visa applications with claims of DFV can take between 2 to 4 years. In some cases, this leaves the visa applicant with no choice but to return to the abusive relationship, particularly in circumstances where there is limited access to social support (as outlined above).

**Q2: Are there any permanent visa subclasses for which access to the FVPs is particularly important? Conversely, are there any particular permanent visa subclasses that you believe are less likely to require access to the FVPs?**

The Law Society supports the Law Council's previous recommendations to amend the Regulations to ensure access to the FVPs for:

- persons experiencing DFV on prospective marriage visas (subclass 300) who are unmarried prior to relationship breakdown, and their dependants; and
- persons who have applied for a permanent visa as a secondary applicant, and their dependants.

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<sup>1</sup> National Advocacy Group on Women on Temporary Visas Experiencing Violence, *Blueprint for Reform. Removing Barriers to Safety for Victims/Survivors of Domestic and Family Violence Who Are on Temporary Visas* (December 2022) 7.

<sup>2</sup> *Ibid.*, 12-13.

However, in our view, the FVPs should also be extended to all family stream visas to cover scenarios where the sponsor (or member of their family/household) has perpetrated DFV against the applicant, including persons experiencing DFV who apply for a Remaining Relative (Subclass 835) Visa or Onshore Carer (Subclass 836) Visa.

**Q3: Should access to the FVPs for secondary applicants be limited to cases where violence has occurred in Australia?**

In our view, access to the FVPs for secondary applicants should not be limited to cases where violence has occurred in Australia. We note there may be circumstances where a person is compelled to stay in a relationship where violence has occurred overseas in order to maintain their visa pathway in Australia e.g., where Australian children are included in the application and separation is a possibility. We do acknowledge, however, that evidentiary issues could present a barrier for these types of cases.

**Q4: To what extent should the FVPs require an applicant to have a link to Australia?**

We support expanding the FVPs to visa applicants who have experienced, or are experiencing, DFV in Australia or who may experience DFV outside Australia but have links to the Australian community, e.g., as a result of having resided in Australia previously.

**Q6. Do you have any comments on the extension of the FVPs to applicants for offshore Partner (subclass 309) visas?**

As noted in the Consultation Paper, applicants for an offshore Partner visa (subclass 309) who are in Australia and can be granted a visa in Australia under the “COVID-19 concession” currently have access to the FVPs. We support making these settings permanent by extending the FVPs to all subclass 309 applicants in Australia.

**Q9: What support services/payments should holders of a new temporary DFV visa have access to?**

We consider it would be helpful for all DFV visas to explicitly state that any victims’ support obtained through statutory compensation schemes in relation to DFV should not negatively affect the rights and benefits granted under such a visa. Our members have cited cases where their clients are on temporary visas and receiving special benefits with Centrelink. These clients then have those benefits cancelled once criminal compensation is granted, which counteracts the beneficial intent of the legislation. While this can be remedied through advocacy with Centrelink, this takes time and can leave victim-survivors without such benefits for a significant period of time.

Thank you for the opportunity to contribute to the Law Council’s submission. Questions at first instance may be directed to Sophie Bathurst, Policy Lawyer, at (02) 9926 0285 or [sophie.bathurst@lawsociety.com.au](mailto:sophie.bathurst@lawsociety.com.au).

Yours sincerely,



Cassandra Banks  
**President**

**Encl.**