



Tuesday, 20 September 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 Settlement Council of Australia (SCoA) welcomes the opportunity to provide input into the Senate Legal and Constitutional Affairs Legislation Committee's inquiry into the Migration Amendment (Family Violence and Other Measures) Bill 2016 ("Bill").

SCoA is the national peak body for settlement, representing over 80 agencies providing settlement support services directly to people of refugee and migrant backgrounds across Australia. Our membership is comprised of the vast majority of organisations delivering federally funded settlement programs to recently arrived migrants and refugees.

The strengths that families bring to the settlement process are well documented.¹ Family provides significant support during the challenging process of settlement, leading to long-term personal, social, community and economic benefits. Families can be a built-in social network reducing isolation and providing emotional support. They can share economic burdens such as cost of housing. They support each other to navigate new cultural and government systems. The role of the family in Australia's settlement programme therefore cannot be underestimated.

In light of the above, SCoA is takes a particular interest in the proposed amendments to aspects of the family migration programme as put forward in the Bill.

While SCoA acknowledges the Government's commitment to the eradication of family violence and commends its efforts in this regard, it is concerned that the proposed changes contained in the Bill are not the most effective way to combat family violence and may inadvertently act to limit access to family visa options in unintended and unforeseen ways.

The Bill attempts to create further protections against family violence for partner visa applicants by imposing a new framework for approval of sponsors and requiring that a sponsor is approved before a partner visa application can be lodged.

The Bill and its explanatory memorandum do not specify detailed criteria that may be used in the assessment of a sponsor, except that circumstances in which a sponsor may be refused *include*

¹ For further discussion of the importance of family in the settlement of migrants please see SCoA's Issues Paper on Family Reunion at <http://scoa.org.au/research-and-publications/issues-paper-refugee-family-reunion>.

where the sponsor has convictions for paedophilia or other sexual offences against children or “offences relating to violence”.

SCoA has a number of concerns with this proposal:

1. It is not an exhaustive list and leaves open the possibility for extended criteria/grounds for refusal in the future;
2. Family violence (the primary objective of these amendments) is historically underreported, thus rendering the criteria ineffective at precluding sponsors who may have committed family violence in their past, where those actions have not resulted in a conviction;
3. The term “offences relating to violence”, while as yet undefined, has the potential to be wide in scope and may be used to penalise sponsors who have historical offences that are in no way relevant to, nor an indicator of, family violence; and
4. The requirement for a sponsor to be approved before a visa application can be lodged will add to the already lengthy processing times of partner visa applications and lead to potentially higher costs and greater evidentiary burdens for applicants and their families.

Furthermore, the Bill provides for the sanctioning of a sponsor and/or cancellation of a sponsorship where there is “inappropriate use” of the programme. This could have a significant detrimental effect on the sponsored visa holder, affecting their eligibility for the visa itself and potentially rendering them liable to cancellation of their visa. This would likely have the opposite effect of that intended by the Bill, influencing victims to stay silent for fear of serious consequences for themselves.

SCoA takes the view that the proposed amendments are unlikely to be effective in combating family violence and fail to add any greater security for applicants beyond the current system, but could have much broader consequences, ultimately denying sponsorship rights to Australian citizens and/or permanent residents and interfering with fundamental human rights concerning the family.

SCoA is particularly concerned that the effect of these changes may be to limit access for an already vulnerable cohort of Australian permanent residents and citizens: those who are humanitarian entrants themselves. Often these people desperately seek to be reunited with family from overseas and may, by virtue of the sponsorship approval process, face further barriers preventing them from doing so, in addition to those identified by SCoA in our briefing paper on Family Reunion.²

SCoA therefore endorses and recommends to the Committee the findings of the Australian Law Reform Commission’s Report “Family Violence and Commonwealth Laws – Improving Legal Frameworks”³ which considered the implementation of a sponsorship approval process, but dismissed it, concluding: “[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

SCoA notes that the decision to dismiss a sponsorship approval process was supported by the submission of the then Department of Immigration and Citizenship which stated:

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

² Ibid.

³ Australian Law Reform Commission, *Family Violence and Commonwealth Laws – Improving Legal Frameworks* (2011).

⁴ Ibid., p508.

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.⁵

There are more effective ways of enhancing the protections against family violence, including by adopting the ALRC's recommendation for greater dissemination of information, above, and also extending the definition and scope of family violence and the availability of protections against it under the Migration Act as recommended by the ALRC and the Victorian Royal Commission on Family Violence.⁶

SCoA supports efforts that will be effective in minimising the impact of family violence on Australia's migrant communities, including wherever possible, the implementation of effective migration policies which protect against family violence. However, SCoA is concerned that the Bill does not provide an adequate mechanism for providing such protections and, instead, may have unintended consequences that outweigh any potential gains. As such, SCoA does not support the introduction of a framework for sponsorship approvals for partner visas as outlined in the Bill.

Recommendation

SCoA therefore recommends that the Bill is not passed in its current form and that other alternatives for reducing family violence be considered in its place.

⁵ Ibid, p507.

⁶ See: Ibid, Rec 20-1, 20-2, 20-5, 20-6 and 21-3 among others; and State of Victoria, *Royal Commission into Family Violence: Final Report*, Parl Paper No 132 (2014–16), Rec 162