

Submission to ‘A Migration System for  
Australia’s Future’: Department of Home  
Affairs, Departmental Review

15<sup>th</sup> December 2022

Northern Community Legal Centre

## Summary of submission

This submission recommends amendment to the family violence provisions under the *Migration Regulations 1994* to allow any person including those on skilled/business innovation streams who have experienced family violence to access pathways to permanent residence. It is recommended that new permanent visa pathways are introduced for victim survivors of family violence on temporary visas who have Australian citizen or permanent resident children. This submission further calls on the broadening of the definition of family violence under the *Migration Regulations 1994* to cover conduct that has been perpetrated by extended family members as well as conduct committed outside of Australia.

## Introduction and background

Northern Community Legal Centre (NCLC) thank you for the opportunity to make a submission to the Migration System for Australia's Future departmental review. NCLC provides free and confidential legal advice and assistance to people who live, work, or study in Victoria's Merri-bek, Hume, and Mitchell Shire Council Local Government Areas. NCLC provide wrap-around legal services, community education and advocacy to the communities of Melbourne's North West. We prioritise the legal needs of people living with multiple forms of disadvantage and marginalisation, such as those with mental illness and other forms of disability, victims/survivors of family violence, young people under 25, and newly arrived and refugee people.

NCLC operates the Safe Landing Project in partnership with South-East Monash Legal Service, providing legal and social support women on temporary visas experiencing family violence. The Safe Landing Project is a multi-site project implementing a scaled-up program of NCLC's pilot 'Indian Women's Family Violence Project' (2019-21). The pilot provided holistic legal (family, family violence and migration) assistance to Indian women experiencing family violence on temporary visas.

## Submission

This submission directly addresses question 4 of the Key Questions for review, 'What reforms are needed to ensure the migration system can meet the challenges and opportunities that lie ahead?'

### I. Amend the Family Violence Provisions, *Migration Regulations 1994*

NCLC reiterates previous recommendations from the [Australian Law Reform Commission](#), the [National Advocacy Group on Women on Temporary Visas Experiencing Violence](#) and NCLC's own [Indian Women's Family Violence Project](#) to broaden the existing family violence provisions under the *Migration Regulations 1994*.<sup>1</sup> Amendments should be made to include all other temporary visa holders and applicants and all permanent visa applicants within Australia including skilled stream applicants who do not currently possess, or may lose access to, permanent visa pathway in case of separation due to family violence. We emphasise that the provisions were available to secondary applicants for certain permanent visas in the skilled stream including Employer Nomination Scheme for applications made before 1 July 2009.

During NCLC's Indian Women's Family Violence Project the majority of NCLC's casework clients arrived on visitor visas (32%) and student visas (23%). Of NCLC's current casework clients under the Safe Landing Project 85% arrived on visitor, student or other temporary visas. This is significant as these clients are ineligible to access permanent residency in Australia on the basis of experiencing family violence.

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<sup>1</sup> The existing family violence provisions cover individuals who have applied for Temporary Partner visa (subclass 820); Provisional Partner visa (subclass 309) and are in Australia holding a visa granted during the COVID-19 visa concession; Dependent Child (subclass 445); Distinguished Talent (subclass 858). Also eligible are individuals who hold a Temporary Partner Visa (subclass 820); Provisional Partner Visa (subclass 309); Prospective Marriage visa (subclass 300)

### **Case Study**

Zainab\* experienced multiple forms of high-risk family violence during her 9-year marriage to Mohammad, including abuse during pregnancy which led to her son being born with medical complications. Police in Saudi Arabia would not assist. She also suffered financial abuse and was not allowed to work or have any control over their finances.

Zainab and daughter arrived in Australia in 2021 as dependents of Mohammad, who was granted a subclass 188 Business Innovation and Investment (Provisional) visa to start a new business in Australia. One night, Zainab woke up finding Mohammad choking her and the violent abuse continued into the following day. Zainab called police who arrested Mohammad and applied for an intervention order for Zainab and her son. Mohammad has been charged with multiple criminal offences.

Zainab and her son fled their home with little money and have since been in extreme financial hardship; they have limited access to services that would usually be available for victim/survivors of family violence. Zainab tried to apply for Status Resolution Support Services but was told that she was not eligible as she had a substantive visa. They stayed in a high security refuge for approximately 10 months but constantly received pressure to leave as refuges are not long-term housing options. Zainab tried to work at a café but was unable to keep her job as she had no one to look after her son who has complex medical issues.

NCLC assisted Zainab to lodge an urgent protection visa application. While Zainab and her son are now on bridging visas, they remain vulnerable to visa cancellation as dependents of Mohammad, particularly if his visa is cancelled due to committing family violence (under Section 140). NCLC also assisted with family law intervention order proceedings to ensure that Zainab and her son received the protection of an intervention order, as well as assisting with tenancy matters. She continues to wait for the outcome of her protection visa application, which can take a long time to be processed.

## **2. Introduction of new visa pathways for victim-survivors of family violence with Australian citizen and permanent resident children**

NCLC further submits that new permanent visa pathways should be introduced for victim survivors of family violence on temporary visas who have Australian citizen or permanent resident children.

## **3. Amend the definition of family violence under the *Migration Regulations 1994* to cover conduct that has been perpetrated by extended family members as well as conduct committed outside of Australia**

NCLC submits that a more expansive definition of family violence should be adopted under the *Migration Regulation 1994* to capture violence perpetrated by extended family members and violence committed outside of Australia. Currently the family violence provisions only recognise family violence committed by the applicant's spouse or de facto partner. However, NCLC's Indian Women's family Violence Project revealed that in 44% of cases, family violence was perpetrated by extended family members.