

Family Violence and Migration Law

Protecting Immigrant Women's Legal Status

Heli Askola

Extract from *Hansard* (Commonwealth of Australia)

Migration Amendment (Preventing and Responding to Family Violence) Bill 2024

Second Reading

HON HELI ASKOLA: I move:

That this Bill be now read a second time.

Australia has finally woken up to the seriousness of family violence. This Bill deals with an important aspect of our response to family violence – the role of the victim's migration status.

We have seen a greater awareness of the need to tailor responses to family violence so that they address the specific risks experienced by individuals and groups, such as Aboriginal and Torres Strait Islander women or trans people. This Bill deals with an aspect that has been neglected for too long – the way in which many immigrant women are effectively held hostage by immigration rules that make them dependent on their sponsors, a situation preventing them from leaving a violent partner without compromising their migration status.¹

How does this happen? Perverse situations, where women stay with violent partners in order to maintain their right of residence, arise because migration law puts women in vulnerable positions where their visa status can be used to threaten and control them. Migrant partners of Australian citizens and permanent residents are initially placed on a two-year temporary Partner visa. To obtain a permanent visa, they must establish that the relationship is still continuing after the 'probationary period'. Leaving a perpetrator therefore risks their visa status, preventing them from seeking help. Women on other temporary visas are often placed in similar dependent situations.

As part of a package of measures aimed at ensuring the safety and integration of migrant women, this Bill overhauls the current system in three ways. First, it amends the federal *Migration Act 1958* and *Migration Regulations 1994*² to remove the existing two-stage process for Partner visas to ensure migrant partners are granted direct access to permanent residence, as used to be the case. Second, the Bill lays the foundation for effective visa pathways and institutional mechanisms for survivors of family violence who hold temporary visas. Finally, the Bill clarifies that less well-known forms of family violence that disproportionately affect women from culturally and linguistically diverse backgrounds – namely forced marriage and dowry-related economic abuse – constitute family violence in the migration context.

This Bill and the review accompanying it implement a key action flagged by the *Third Action Plan 2016–2019 of the National Plan to Reduce Violence against Women and their Children* to ‘ensure migration rules and eligibility requirements for support services do not disempower victims of violence or discourage them from leaving violent relationships’.³ Unlike the current rules, which prioritise immigration control at the expense of the lives and safety of migrant women, the Bill strikes an appropriate balance between maintaining the integrity of the immigration system and empowering migrant women.

What Are the Problems with the Current Situation?

In Australia, as in many other states, family migration is both significant in scale and highly gendered. Between 40,000 and 50,000 family visas are granted every year, mostly to partners and spouses of Australian citizens and permanent residents.⁴ Two-thirds of these go to women. In addition, tens of thousands of women are granted temporary visas every year as secondary applicants to accompany partners who are primary holders of temporary visas, as students or skilled temporary workers, for instance. Given the high estimated prevalence of family violence in the community, we know that a significant proportion of these women suffer family violence.⁵

The current Regulations require that migrant partners of Australian citizens and permanent residents are placed on provisional visas. A permanent visa is only granted if the relationship is found to be ‘genuine and continuing’ after two years. This probationary period was introduced in the 1990s in response to concerns about ‘sham marriages’ and ‘serial sponsorship’.⁶ There is no support for the claims made at the time that this change would fix those problems – and other measures have been adopted to deal with serial sponsors. Instead, there is plenty of evidence that by making migrants highly dependent on their local partner, the change creates room for abuse of the power differential between spouses.⁷

It is true that the Regulations currently include a so-called ‘Family Violence Exception’, which allows applicants to continue with an application for permanent residency if they can prove that they (or a family member such as

a child) have been victims of family violence perpetrated by the sponsor, even if the marriage or de facto relationship has already ended. But applicants must now meet various cumbersome substantive, evidential and procedural conditions set out in the Regulations.⁸ Problems with these requirements have been outlined by several reviews, including by the Australian Law Reform Commission or the ALRC. These include an unduly narrow definition of family violence, poor institutional mechanisms and overly rigid procedural requirements.⁹

The limited nature of this exception – together with obstacles such as fear, shame, trauma, isolation, lack of access to services, linguistic barriers and limited financial resources – means that only a few hundred women per year are able to make use of it.¹⁰ In addition, the rules currently only apply to victims who hold certain classes of visa – most importantly, Partner visa applicants. Women who are not on designated visas, including secondary temporary skilled visa holders, benefit from no similar pathway, regardless of their length of residence in Australia or prospects of obtaining permanent residence. Women on temporary dependent visas are often in particularly precarious situations and typically have limited rights to work, access to medical care or social support.

Finally, the current system is unable to respond to complex forms of family violence, such as forced marriage and dowry abuse. Forced marriage and dowry-related abuse are now recognised in Victoria as family violence.¹¹ These forms of violence involve manipulation of familial relationships and can be perpetrated by multiple members of the victim's extended family. Yet they are not well understood by decision-makers, which raises problems in relation to the ability of the current family violence provisions to offer sufficient protection.¹² These shortcomings again expose migrant women on temporary partner visas to an unacceptably high risk of visa cancellation.¹³

How Does this Bill Propose to End Dependence and Update the System?

This Bill is part of a suite of measures aimed at providing a genuine opportunity for victims of family violence to leave violent partners without risking the life they have built for themselves in Australia. The Bill amends both the Act and the Regulations, and will be complemented by a subsequent review of the Regulations where visa classes targeted by the changes are set out.

This Bill makes a fundamental change by removing the two-year requirement that currently applies to migrant partners of Australian citizens and permanent residents. Given the compelling force of the argument that women must not feel obliged to remain in abusive relationships due to fears of losing their secure migration status, the Bill directly amends the Regulations by stipulating that partners and spouses immediately obtain permanent residency. The Bill follows the example of Canada, which removed the two-year

requirement in 2017.¹⁴ A new provision – that is, section 39B – makes these changes permanent by precluding Partner visas from being made provisional.

With this change, the current Family Violence Exception will no longer be needed to protect future partner migrants. However, we will maintain and expand the exception so that we can offer secondary visa holders in family violence situations, who are already on a pathway to permanent residence, access to permanent status. The government is currently conducting a comprehensive review of the classes that should be eligible for this pathway. The review will also examine the option of introducing a new temporary visa for migrants currently on temporary visas whose partners have perpetrated family violence. Such a visa would make it easier for women to seek help and remain in Australia while applying for another visa.

To establish the foundation for these changes, this Bill inserts new rules on family violence directly into the *Migration Act*. The changes build on the existing system of Family Violence Exceptions, but improve the current framework in the following ways.

First, the definition of ‘relevant family violence’ currently found in the Regulations is replaced with the definition of family violence from the federal *Family Law Act*. Back in 2011, the ALRC suggested that it was important to establish ‘a common understanding of what constitutes family violence across family violence legislation’ and that family violence ought to be defined as ‘violent or threatening behaviour, or any other form of behaviour, that coerces or controls a family member or causes that family member to be fearful’.¹⁵ The Bill implements this long-overdue change and removes the earlier unduly restrictive definition which relied on the standard of ‘causing the victim to *reasonably* fear . . . or to be *reasonably* apprehensive’.¹⁶ The definition of ‘relevant family violence’ is also broadened in other ways, as I will outline in a moment in relation to forced marriage.

Second, the Bill creates a panel of independent experts to assess cases involving family violence. In the current system, referrals are made to ‘independent experts’ – usually psychologists or social workers – only in so-called ‘non-judicially determined’ cases, where the Department of Home Affairs is not satisfied that an applicant has suffered family violence.¹⁷ However, the quality, consistency and transparency of this mechanism have been questioned.¹⁸

To guarantee uniform application and fairness to applicants, this Bill establishes a panel of genuinely impartial and independent experts, appointed on the basis of their experience in dealing with family violence.¹⁹ The Bill includes detailed provisions on the panel’s membership and functions, as well as the legal effects of the panel’s determinations. The change brings us in line with other common law jurisdictions, which have increasingly introduced specialised assessments.²⁰

Third, the Bill lowers the procedural and evidential hurdles for seeking assistance, especially in relation to so-called ‘non-judicially determined’ claims.

The new section 91ZD allows a broad range of evidence to be put forward in support of an assertion of family violence, replacing the current overly rigid requirements.²¹ The Bill also removes the requirement that the family violence, or part of it, must have occurred ‘while the marriage or de facto relationship existed’ between the victim and the perpetrator.²² Proving this has been shown to be overly onerous, given relationships often fall apart over an extended period of time, victims may have to make several attempts to leave, and violence often escalates or begins at the point of separation.²³

How Does the Bill Respond to Less Common Forms of Family Violence, including Forced Marriage?

I now turn to how the Bill provides further alternatives to migrant victims of complex forms of family violence, such as forced marriage and dowry abuse. These forms of family violence are not considered prevalent in Australia, but are part of immigrant and refugee women’s experiences of violence.²⁴ The family violence provisions must also ensure protection in these cases. I will from here on particularly concentrate on forced marriage, given that is the most well-known of these forms of violence, but much of what I will say also applies, for instance, to dowry abuse.

The essence of forced marriage is that genuine consent of at least one party to the marriage is lacking, typically due to some form of coercion. Coercion can range from physical force to psychological, financial or emotional pressure employed by immediate or extended family members, such as parents.²⁵ In some cases, young women may seem to consent but only do so because of intense pressure, fear of family estrangement and social isolation. The person is often forced to marry to a member of their extended family, such as a cousin, and women involved in forced marriages are at high risk of further family violence perpetrated by their spouse or in-laws.²⁶ We know that in the Australian context, forced marriage often involves a migration element.²⁷ If the person forced to marry is on a dependent visa, they face additional barriers to finding help.

So far, our response to forced marriages has been driven by criminalisation, lumping forced marriage together with serious federal offences such as trafficking and slavery.²⁸ The support mechanism originally developed for trafficking situations, the Support for Trafficked People Program or STPP, now also provides assistance to people in or at risk of a forced marriage. The Australian Federal Police, which investigates forced marriages, has a central role referring individuals to the STPP. The STPP now has a special Forced Marriage Support Stream, providing intensive support for up to 200 days.²⁹ Non-nationals may be eligible for the Human Trafficking Visa Framework through this programme, which may help them remain here lawfully.

However, despite an increase in reports, we know that this approach is limited in its ability to reach likely victims of forced marriage. Forced marriage

was first criminalised to ‘send a clear message to the community’, encouraging victims to speak out.³⁰ Yet individuals in forced marriages are often extremely isolated, unaware of support options and in some cases unwilling to come forward. The role of the Federal Police in screening victims may also discourage reporting among vulnerable women with negative experiences of dealing with authorities. It is therefore likely that some forced marriage victims do not report their circumstances, ‘either through fear for their safety or fear for the unity of their family’.³¹

Importantly, women who do seek help in these situations often reach out to family violence services, which ‘are not equipped to recognise it in a forced marriage context’.³² The family violence system must therefore be improved so as to provide women with an alternative avenue for escaping violent relationships. Migrant women’s vulnerability is often linked with migration status and temporary visas; the Bill therefore proposes to remedy the known problems with the current Family Violence Exception, with specific provisions recognising forced marriage as family violence, along with other less typical forms of violence. It does so in two main ways.

First, as mentioned earlier, the Bill changes the definition of family violence to the one used in the *Family Law Act*, specifically listing dowry abuse as a recognised form of family violence, removing any doubts about whether it would otherwise be covered. This change also removes the current requirement that the perpetrator must be the sponsoring spouse,³³ which helps address situations where violence may be perpetrated by extended family members such as in-laws or a spouse’s siblings. Similarly, the definition covers multi-perpetrator violence in marriages involving domestic labour exploitation.³⁴ The Bill includes a further provision – section 504A – preventing the Regulations from adopting a narrower interpretation.

Second, the Bill addresses a specific legal problem that arises when a migrant woman trapped in a forced marriage seeks to use the Family Violence Exception, which generally requires a marriage that is ‘genuine’.³⁵ The problem arises because women who seek to apply for the exception under the current Regulations must *first* satisfy the definition of ‘spouse’ as outlined in section 5F of the *Migration Act*. This definition requires both the existence of a ‘marriage that is valid’³⁶ and a relationship that is ‘genuine and continuing’. This issue is considered by the Department of Home Affairs in line with the matters listed in Regulation 1.15A. Current case law suggests that if the Department forms the view that the relationship is not valid or genuine and continuing under section 5F, it is not required to consider whether the person had in fact suffered family violence.³⁷

This puts women who are in a relationship founded on a forced marriage in an invidious position. If they raise the fact that the violence perpetrated against them is essentially about, or indeed even *connected* to, entering or remaining in a forced marriage, that marriage will likely be considered either invalid or not genuine. The same conclusion – that a marriage or genuine and

continuing relationship never existed – may also be reached in cases involving dowry-related abuse.³⁸ Likewise, the presence of indicators suggesting an exploitative or servile marriage, where a migrant spouse is effectively treated as a servant,³⁹ might also lead to a conclusion that there *was* no relationship, leaving women with no recourse.

The Bill removes this outrageous injustice, which compounds the mistreatment of migrant women by treating them as having failed to prove their claim of family violence *because of* the form of family violence perpetrated against them. The Bill ensures that women in such situations can access the Family Violence Exception or would not lose any already-granted permanent residence, because of being unable to satisfy the definition of ‘spouse’ or ‘de facto partner’. The Bill does this in two ways – first, by including provisions that separate the existence of family violence from questions regarding the ‘genuineness’ of a relationship; and second, by including a new section 5F(4). This section means marriages that are not otherwise recognised as valid are treated as valid for the purposes of the Family Violence Exception.

In conclusion, immigration laws have for far too long incorporated and enforced the dependency of migrant spouses and given excessive power to the sponsor. This Bill is founded on the idea that migration status ought not prevent people from leaving a violent relationship. The removal of the probationary period gives partner migrants the security they need to build a life in Australia that is free of undue power and control. The Bill lays the foundation for new visa arrangements for women who have been subjected to family violence, removing the technical obstacles that have previously resulted in low numbers of migrant women being able to make use of the Family Violence Exception. The Bill will also provide genuine alternatives to those trapped by specific forms of abuse such as forced marriage.

I commend this Bill to the House.

The Parliament of the Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Migration Amendment (Preventing and Responding to Family Violence) Bill 2024

A Bill for an Act to amend the *Migration Act 1958* (Cth), and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act is the *Migration Amendment (Family Violence) Act 2024*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1 – Family violence***Migration Act 1958*****1 Subsection 5(1)**

Insert:

de facto relationship as it appears in sections 4(1AB) and 4(1AC) of the *Family Law Act* in relation to family violence has the meaning given in section 5CB of the *Migration Act*.

family violence has the meaning given by section 4AB of the *Family Law Act 1975*, and includes using coercion, threats, physical abuse or emotional or psychological abuse to demand or receive dowry, either before or after a marriage.

exposed to family violence, in relation to a child, has the meaning given by subsection 4AB(3) of the *Family Law Act*.

2 After subsection 5CB(2)

Insert:

(2A) The fact that a person is (or their children are) being subjected to or exposed to family violence by any person is irrelevant to the question of whether that person is in a *de facto* relationship for the purposes of the Act.

3 After subsection 5F(2)

Insert:

(2A) The fact that a person is (or their children are) being subjected to or exposed to family violence by any person is irrelevant to the question of whether that person is in a marriage relationship for the purposes of the Act.

4 After subsection 5F(3)

Insert:

(4) for the purposes of determining whether two people are members of the same family in the process of determining whether particular violence is family violence under the *Migration Act* or the *Migration Regulations*, a marriage that is not recognised in Australia as valid because of section 88(2)(d) of the *Marriage Act* is taken to be recognised in Australia as valid despite that provision.

5 Before section 40

Insert:

39B Partner visas not to be provisional

Visas granted on the ground that the person is a spouse, *de facto* partner or dependent child of

- (a) an Australian citizen; or
- (b) the holder of a permanent visa that is in effect; or

- (c) a person who is usually resident in Australia and whose continued presence in Australia is not subject to a limitation as to time imposed by law

must not be provisional.

6 Before Subdivision B of Division 3 of Part 2

Insert:

Subdivision AM – Special provisions relating to family violence

91Z Independent Family Violence Panel

- (1) The Independent Family Violence Panel (the *panel*) is established by this section.
- (2) The function of the *panel* is to make a determination on whether a person has been subjected to, or exposed to, family violence, where such an assertion is made in relation to an application for a visa that includes a prescribed criterion requiring the applicant for the visa, or another person mentioned in the criterion, to have suffered family violence.

91ZA Membership and appointment

- (1) The *panel* consists of:
 - (a) the Chairperson; and
 - (b) not less than four other members.
- (2) Each member of the *panel* is to be appointed by the Minister by written instrument for a minimum term of three years.
- (3) The Minister must not appoint a person as a member of the *panel* unless the Minister is satisfied that the person has:
 - (a) skills, expertise or experience on family violence, and
 - (b) skills, expertise or experience in a relevant field, including law, social work, health care and psychology.
- (4) A member of the *panel* holds office on a part-time basis.

91ZB Performance of the *panel's* functions

- (1) Subject to this section, the *panel* is to carry out its functions in such manner as the *panel* determines.
- (2) In performing its functions, members of the *panel*:
 - (a) must act with as little formality as possible; and
 - (b) must act as quickly as is appropriate given the need properly to consider a matter before it; and
 - (c) may inform itself on anything relevant to the matter before it in any way it thinks fit; and
 - (d) may, in respect of a matter before it, consult such persons as it thinks fit.

91ZC Processing assertions of family violence

- (1) If, as part of an application under this Act, an assertion is made that the applicant, or one of their children, has been subjected to, or exposed to, family violence, the person to whom the application is made must refer the assertion of family violence to the Chairperson of the *panel*.
- (2) The Chairperson must assign the assertion of family violence to either themselves or to another member of the *panel* for determination as soon as is reasonably practicable.
- (3) A *panel* member must make a determination on an assertion of family violence assigned to them by the Chairperson.
- (4) Determinations on assertions of family violence under this Division may only be made by members of the Independent Family Violence Panel.

91ZD Material that can be considered

- (1) Material that can be considered in making a determination includes:
 - (a) judicial findings, including but not limited to:
 - (i) an injunction granted under paragraph 114(1)(a), (b) or (c) of the *Family Law Act 1975*;
 - (ii) an order made by a court under a law of a State or Territory for the protection of a victim from family violence; or
 - (iii) a conviction for offences involving family violence, or a recorded finding of guilt for offences involving family violence;
 - (b) statutory declarations by or on behalf of the victim or by another person, including but not limited to:
 - (i) a medical practitioner or nurse;
 - (ii) a police officer;
 - (iii) a child welfare authority or protection agency;
 - (iv) a member of the Australian Association of Social Workers;
 - (v) a registered psychologist;
 - (vi) a family consultant under the *Family Law Act 1975* (Cth) or family relationship counsellor;
 - (vii) a school counsellor;
 - (c) documents, including but not limited to:
 - (i) a medical or hospital report or discharge summary;
 - (ii) a police report, record of assault or witness statement made to a police officer;
 - (iii) a letter or assessment report from a women's refuge or crisis centre;
 - (iv) any document detailing an incident of family violence.

91ZE Power to obtain information and documents

- (1) If the *panel* has reason to believe that a Department of the Commonwealth or a prescribed authority is capable of giving information or producing documents or other records relevant to the *panel*'s performance of its function, the *panel* may, by notice in writing given to the head of the agency, require the head of the agency, or a person nominated by the head of the agency, to give the information or produce the document or other record to the *panel*.

91ZF Determining an assertion of family violence

- (1) A *panel* member to whom a matter has been assigned by the Chairperson must make a determination as to whether the person to whom the referral relates has been subjected to, or exposed to, family violence.
- (2) A determination must be made as soon as is reasonably practicable.
- (3) The *panel* member must give notice of the finding to the person to whom the application was made and the Chairperson (unless the member deciding the issue is also the Chairperson).
- (4) A *panel* member must give full reasons for their determination.

91ZG Legal effect of determination

- (1) In making a decision under this Act or the Regulations, the panel member's determination on whether a person has been subjected to, or exposed to, family violence must be taken to be correct for the purposes of deciding whether the person satisfies a prescribed criterion for a visa that requires the applicant for the visa, or another person mentioned in the criterion, to have suffered family violence.

7 Before section 505

Insert:

504A Regulations about family violence

- (1) To avoid doubt, it is the intention of the Parliament that:
 - (a) the definition of family violence established by subsection 5(1) is to be used by the Regulations in connection with family violence as generally or otherwise understood; and
 - (b) Regulations made under the Act are not to provide differently (whether using the term 'family violence' or otherwise) for violence that constitutes family violence as generally or otherwise understood.

Note: As an example, Regulations must not include provisions in which, for a particular purpose, violence does not constitute family violence if it occurs in the context of a marriage that is not recognised as valid in Australia because of section 88(2)(d) of the *Marriage Act*.

- (2) Regulations made inconsistent with this intention are invalid.

- (3) Nothing in the section prevents the making of regulations that:
- (a) specify circumstances in which family violence is taken to have occurred; or
 - (b) provide that a question of whether family violence has or has not occurred is to be determined by a particular person or in accordance with a particular procedure, where that procedure is consistent with the definition.

8 After section 507

Insert:

508 Transitional Provisions

- (1) If, immediately before the commencement of section 39B, a person held a Subclass 100 (Partner) visa, that visa is to be taken to be a Subclass 309 (Partner) visa that permits the holder to remain indefinitely in Australia.
- (2) If, immediately before the commencement of section 39B, a person held a Subclass 801 (Partner) visa, that visa is to be taken to be a Subclass 820 (Partner) visa that permits the holder to remain indefinitely in Australia.

Migration Regulations 1994

1 Division 1.5 – Special provisions relating to family violence

Repeal the Division.

2 Heading to Part 309 of Schedule 2

Remove “(Provisional)”.

3 Clause 309.511

Replace content with “Permanent visa permitting the holder to travel to and enter Australia for a period of five years from the date of grant.”

4 Heading to Part 820 of Schedule 2

Remove “(Provisional)”.

5 Clause 820.511

Replace content with “Permanent visa permitting the holder to travel to and enter Australia for five years from date of grant.”

6 Part 100 of Schedule 2

Repeal this part.

7 Part 801 of Schedule 2

Repeal this part.

Notes

- 1 ALRC, 'Family Violence and Commonwealth Laws – Improving Legal Frameworks' (final report, 7 February 2012) chapters 20–2.
- 2 *Migration Act 1958* and *Migration Regulations 1994* as of 1 January 2023.
- 3 Department of Social Services, 'Third Action Plan 2016–2019 of the National Plan to Reduce Violence against Women and their Children 2010–2022' (Action Plan, 2016) 20.
- 4 Department of Home Affairs, *Reports on Migration Programs*. <https://www.homeaffairs.gov.au/research-and-statistics/statistics/visa-statistics/live/migration-program>.
- 5 See, for example, Australian Institute of Health and Welfare, 'Family, Domestic and Sexual Violence in Australia: Continuing the National Story' (media release, 5 June 2019). <https://www.aihw.gov.au/reports/domestic-violence/family-domestic-sexual-violence-australia-2019/contents/summary>.
- 6 R Iredale, 'Patterns of Spouse/Fiance Sponsorship to Australia' (1994) 3 *Asian and Pacific Migration Journal* 547.
- 7 J Maher and M Segrave, 'Family Violence Risk, Migration Status and "Vulnerability": Hearing the Voices of Immigrant Women' (2018) 3 *Journal of Gender-Based Violence* 503; C Vaughan et al., 'Promoting Community-Led Responses to Violence Against Immigrant and Refugee Women in Metropolitan and Regional Australia' (Research Report, ANROWS Horizons, December 2015).
- 8 See div 1.5 – Special Provisions Relating to Family Violence.
- 9 See ALRC (n 1), chapters 20–2; L Gray et al., 'Immigrant Women and Family Violence: Will the New Exceptions Help or Hinder Victims?' (2014) 39(3) *Alternative Law Journal* 167.
- 10 SBS Punjabi, 'Indians Receive Most Number of Visas Under Family Violence Provisions in Australia' (blog post, 1 October 2018, updated 8 April 2021). <https://www.sbs.com.au/language/english/indians-receive-most-number-of-visas-under-family-violence-provisions-in-australia>.
- 11 See s 5 of the *Family Violence Prevention Act 2008* (Vic).
- 12 M Segrave, *Temporary Migration and Family Violence: An Analysis of Victimisation, Vulnerability and Support* (report, Monash University, 2017).
- 13 Australian Institute of Criminology, *When Saying No Is Not an Option: Forced Marriage in Australia and New Zealand* (Research Report No 11, 2018) 58.
- 14 A Borges Jelinic, 'Australia's Family Violence Provisions in Migration Law: A Comparative Study' (2020) 21(2) *Flinders Law Journal* 259.
- 15 ALRC, *Family Violence – A National Legal Response* (Report No 114, 11 November 2010).
- 16 Regulation 1.21.
- 17 Regulation 1.23(10)(c).
- 18 ALRC (n 1) ch 21.
- 19 This solution was discussed in ALRC, *Family Violence and Commonwealth Laws* (Discussion Paper No 76, 2011).
- 20 Borges Jelinic (n 13).
- 21 *Migration Regulations 1994 – Evidentiary Requirements –IMMI 12/116* (F2012L02237).
- 22 Regulation 1.23.
- 23 ALRC (n 1) ch 21.
- 24 Australian Institute of Family Studies, *Intimate Partner Violence in Australian Refugee Communities: Scoping Review of Issues and Service Responses* (review, December 2018). https://aifs.gov.au/cfca/sites/default/files/publication-documents/50_intimate_partner_violence_in_australian_refugee_communities.pdf; Vaughan et al. (n 6).

- 25 H Sowe, 'From an Emic Perspective: Exploring Consent in Forced Marriage Law' (2017) 51(2) *Australian and New Zealand Journal of Criminology* 258.
- 26 Australian Institute of Criminology (n 12).
- 27 Australian Federal Police, 'Stop Human Trafficking Happening in Plain Sight'. <https://www.afp.gov.au/news-media/media-releases/stop-human-trafficking-happening-plain-sight>.
- 28 Divisions 270 and 271 of the *Criminal Code 1995* (Cth).
- 29 Department of Social Services, Support for Trafficked People Program (Support Program, 2023). <https://www.dss.gov.au/women/programs-services/reducing-violence/anti-people-trafficking-strategy/support-for-trafficked-people-program>.
- 30 Attorney-General's Department, *Forced and Servile Marriage* (Discussion Paper, 24 November 2010) 16.
- 31 Australian Institute of Criminology (n 12) 88.
- 32 H Askola, 'Responding to Vulnerability? Forced Marriage and the Law' (2018) 41(3) *University of New South Wales Law Journal* 977, 998.
- 33 This was recommended, eg, by the Victorian *Royal Commission into Family Violence: Report and Recommendations* (Report, March 2016) recommendation 162.
- 34 Australian Institute of Criminology, *Human Trafficking Involving Marriage and Partner Migration to Australia* (Research and Public Policy Series Report, 2014) 124.
- 35 Segrave (n 11).
- 36 With reference to s 12 of the *Migration Act*, which in turn refers to the *Marriage Act* (Cth). According to s 88D(2)(d) of the latter, a foreign marriage is not valid if it lacks real consent, for instance, because of duress or fraud as per s 23B of the *Marriage Act*.
- 37 *Liu v Minister for Home Affairs* [2019] FCA 1925.
- 38 Senate Legal and Constitutional Affairs Committee, *The Practice of Dowry and the Incidence of Dowry Abuse in Australia* (Report, 14 February 2019) 54–6.
- 39 *Shadali v MIAC* [2007] FMCA 1230.