



Answer to question:

## PARLIAMENTARY JOINT STANDING COMMITTEE ON MIGRATION

### MIGRATION, PATHWAY TO NATION BUILDING INQUIRY

#### QUESTION:

**Ms Fowler:** It's also interesting that the migration system assesses how healthy a relationship is. Making sure that the relationship is genuine is important to avoid trafficking and all those sorts of things. But they have a very heteronormative nuclear family view of what a relationship is. If for some reason that relationship doesn't fit the boxes that Immigration has put together, there may be credibility issues around the relationship, which is really interesting when you compare it to other legal systems. We see in family violence and in the family law system no-one's assessing how good or bad your relationship is. It's just, 'Were you in a relationship—yes or no.' That's sufficient to then move to the next step. But Immigration has a lot of criteria. You have to demonstrate that you and the sponsor were in a continuing and ongoing relationship for this period and that you had shared common interests and a commitment to a life together.

**CHAIR:** ... So it's a very complex picture. You've certainly given us—I'm just thinking about this and how you'd proceed knowing full well that at all times there have to be boxes that need to be ticked. I don't know whether Home Affairs—we'll talk to Home Affairs about this and whether they need additional assistance, perhaps, to understand nuances. But at some point someone's got to say 'Yes' or 'No'. An action has to be taken. So it's a very difficult area, isn't it?

**Ms Fowler:** Yes, I completely agree. It's just that rigidity. If there was a bit more flexibility in the system, that's something we would really welcome.

**CHAIR:** We might see where we can go with what flexibility looks like. **If you can come back to us with some further ideas on what flexibility might look like that don't actually compromise the ultimate establishment of the bona fides** then I'm sure the committee would be very interested in that.

#### ANSWER:

In the migration system, if a person who is not the primary visa holder wants to leave a relationship involving Domestic or Family Violence (DFV) they are left in a precarious and unsafe visa situation, at no fault of their own.

We acknowledge the Department wants to support Victim-survivors to leave abusive relations, noting the Department states:

*You do not need to remain in an abusive relationship in order to stay in Australia.*

*If you have experienced domestic and family violence (family violence), and you are no longer in a relationship with your sponsor, you may be able to be considered for the family violence provisions under migration legislation. You may be eligible for a permanent visa.*

*The family violence, or part of the family violence, must have occurred while your relationship existed with your sponsor (or alleged perpetrator).*

*The family violence you have experienced must have been perpetrated by your sponsor.*

However, in the migration system, to access the special provisions a victim-survivor of family violence must demonstrate that they were in a continuing and ongoing relationship with their sponsor when the family violence occurred and that during that period, they shared common interests and a commitment to a life together.

We submit that the requirements do not support gender equity, are onerous and unsafe. Further the concept of assessing the genuineness of a relationship prior to accepting applications under the DFV provisions is inconsistent and out of step with how the legal system deals with DFV across Australia. For example, there is no requirement to prove that a genuine relationship existed to obtain a family/domestic violence intervention order unless the Respondent argues that they were not in a relationship with the Applicant.

### **Recommendations**

In relation to an approach to the family violence special provisions which don't compromise the establishment of bona fides, we recommend the Department:

1. **Prima facie accept** that a genuine relationship exists where a visa has already been granted **for three visa classes**: Temporary Partner visa (subclass 820), Provisional Partner visa (subclass 309), Prospective Marriage visa (subclass 300), unless adverse information about the relationship not being genuine has arisen since the visa grant.
2. Adopt a policy that starts from the basis of **assuming the relationship is genuine** unless adverse information about the relationship not being genuine has been provided prior to allegations of family violence.
3. If adverse information about the relationship is received, **assess family violence before** assessing the genuineness of the relationship. Family violence itself often limits the evidence available to victim-survivors to prove that a genuine relationship exists in accordance with the Department's requirements guidelines (see below). Additionally, forcing victim-survivors to gather/keep evidence of the relationship can be retraumatising and can create risks to safety.
4. If genuineness of a relationship is to be assessed, consider **less onerous and gender equitable requirements** and adopting an approach that is **consistent** with existing

legal definitions such as those of *Family Member* or *Domestic Partner* under Family Violence legislation<sup>1</sup>

5. Provide **ongoing and comprehensive DFV training** for those assessing genuine relationships when there is DFV, so they can better implement the Special provisions relating to family violence and fully utilise their discretion and flexibility appropriately for the context.<sup>2</sup>

### Further information

Currently, women hoping to utilise the family violence provisions in the migration system have to follow a 4-step process. This process requires the applicant to notify the Department the relationship has ended, provide evidence for a Relationship assessment, provide evidence for a Family Violence assessment, and then await requests for further evidence requirements from the Department.<sup>3</sup>

In addition to the potentially unsafe evidentiary requirements, we strongly recommend **reviewing** the Department's requirements for relationship assessment (shown below) **through a gender equity lens**. We submit that an assessment of a commitment to a joint life together should not expect or require an applicant to cease financial or social independence or take up homemaker responsibilities to satisfy the Department's criteria.

### The requirements for step 2, Relationship assessment

*Before we assess your claim of family violence, we must be satisfied that you were in a genuine and ongoing relationship with your former sponsor, prior to your relationship ceasing.*

*We may ask you to provide evidence about your relationship. This request will be sent to you via email. You may need to show evidence of:*

- *the financial aspects of your relationship – you could give us:*
  - *household bills in both names*
  - *joint bank account statements*
  - *joint loan documents for major assets like homes, cars or major appliances*
  - *joint mortgage or lease documents*
- *your household and domestic arrangements – you could give us:*
  - *a statement about how you shared housework*
  - *household bills in both names*
  - *mail or emails addressed to you both*

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<sup>1</sup> See for example Sections 8 and 9 of the *Family Violence Protection Act 2008* (Vic).

<sup>2</sup> Procedural Instruction on Division 1.5 – Special provisions relating to family violence state: *When exercising powers or making decisions under legislation, officers should give policy documents due weight, but should not apply policy inflexibly and instead consider the merits of each individual case. In order to make a fair, reasonable and lawful decision, it may be necessary to adopt an approach that differs from the approved policy and procedures, depending on the facts of the particular case.*

<sup>3</sup> <https://immi.homeaffairs.gov.au/visas/domestic-family-violence-and-your-visa/family-violence-provisions>

- *documents that show joint responsibility for children*
- *documents that prove your living arrangements*
- *the social aspects of the relationship – you could give us*
  - *joint invitations or evidence you used to go out together*
  - *proof you had friends in common*
  - *proof you had told government, public or commercial bodies about your relationship*
  - *proof you did joint sporting, cultural or social activities together*
  - *proof you travelled together*
- *your commitment to each other – you could give us:*
  - *proof you have knowledge of each other's background, family situation or other personal details*
  - *proof you did combine your personal matters*
  - *the terms of your wills*
  - *proof you stayed in touch when apart*
  - *proof of day to day communication*

*You may also like to provide a statutory declaration to give a detailed account of your relationship with your former partner.*

*We understand it may be difficult to gather this evidence, so we will provide you additional time to submit these documents if it is required.*

*Once we have assessed your relationship to have been genuine, your family violence claims will then be assessed.*