



Australian Government
**Department of Immigration
and Border Protection**

Inquiry into the Migration Amendment (Family Violence and Other Measures) Bill 2016

Senate Legal and Constitutional Affairs Committee

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Introduction

The Department of Immigration and Border Protection welcomes the opportunity to provide comment to the Senate Legal and Constitutional Affairs Legislation Committee inquiry into the Migration Amendment (Family Violence and Other Measures) Bill 2016, following the introduction of this Bill into the House of Representatives on 16 March 2016.

Detailed information on the specific provisions in the Bill is included in the explanatory memorandum ('the EM') to the Bill. This submission provides additional information.

Inquiry Terms of Reference

The reasons provided in the Selection of Bills Committee report for the referral / principal issues for consideration are:

- To further investigate potential impacts and unintended consequences of the Bill; and
- To examine the disclosure of personal information provisions and Ministerial power to cancel or bar a family sponsor where family violence is involved.

Background

Current arrangements for sponsorship

Under current arrangements, the sponsorship assessment in family sponsored visas forms a part of the visa application. As such, there is only a limited assessment of the sponsor's suitability to sponsor the visa applicant. Arrangements vary across family visa products, but under current settings for most visas there is little focus on the character of the sponsor, or responsibility that attaches to their sponsorship.

For the Partner visa program, police checks of sponsors are currently conducted for the protection of children. Sponsors are only required to provide police checks in cases where the application includes a minor child. For visa applicants however, full character checks are a mandatory requirement.

In all instances under the existing arrangements, sponsors are required to give undertakings, however these are considered to be "unenforceable" because there are no consequences for non-compliance with these undertakings. Generally, these undertakings require the sponsor to assist the visa applicant, to the extent necessary, financially and in relation to accommodation, for two years from the date of grant of the visa or from the applicant's first entry into Australia as the holder of the visa.

Current sponsorship settings in the family visa program have a range of issues including that:

- sponsors are often in a position of power with little accountability. It is the sponsor who has knowledge of Australia, its laws and environment. The undertaking to assist the visa applicant financially and in relation to accommodation can be used by manipulative sponsors to control vulnerable visa applicants; and
- in situations where the department has information that suggests the sponsor has a violent past, this information cannot be shared with the visa applicant, nor can it be a refusal consideration; and

- where the assessment of the sponsor leads to a refusal, it is the visa application that is refused. However, the lack of a sponsorship assessment that is separate from the visa application means the visa application has to be submitted and visa application charge paid before the sponsor assessment can be made.

Protecting the vulnerable

Newly arrived migrants are among the more vulnerable people in our community because they are less likely to:

- have an established support network;
- have an English speaking background, or
- know how to seek assistance in Australia.

These aspects may result in a situation where the sponsor is in a position of significant power over the visa applicant. This can be problematic where the visa applicant appoints their sponsor as the authorised recipient to receive communication on their behalf. While not an issue in most situations, it can result in the sponsor gaining sole control over the visa application process, which does exacerbate power imbalances, especially in domestic violence situations. As a result, family program visa applicants, especially in the partner visa program, are more susceptible to unscrupulous sponsors. Action item 11 from the Second Action Plan, which is part of the National Plan to Reduce Violence against Women and their Children, pledges that:

overseas spouses entering Australia will receive strengthened support by requiring additional information disclosure by the Australian husband or fiancé applying for an overseas spouse visa;

Currently, all visas in the family stream have a sponsorship requirement as part of the criteria for the grant of the visa. However, claims of family violence in the program and the lack of current sponsorship enforcement mechanisms means that Government is moving to improve program integrity and to provide more suitable visa options for victims of family violence.

The Bill seeks to address these shortcomings by extending the sponsorship framework that currently applies to the temporary work sponsored visa program to the family sponsored visa program as well. Amongst other things, this framework requires the assessment and approval of sponsors; imposes statutory obligations on sponsors; provides for civil penalties and administrative sanctions for breaches of sponsorship obligations; and facilitates the sharing of information between relevant parties.

Consultation

In developing the Bill, the following Commonwealth agencies were consulted:

- the Attorney-General's Department;
- the Office of the Information Commissioner; and
- the Office of Best Practice Regulation.

The Bill

Overview of the Bill

The Bill proposes amendments to the *Migration Act 1958* (the Act) to extend aspects of the existing sponsorship framework contained in Division 3A of Part 2 of the Act (which currently only applies to the temporary sponsored work visa program) to apply to the sponsored family visa program. In particular, the amendments will establish a sponsorship framework for family sponsored visas to:

- require the approval of persons as family sponsors before any relevant visa applications are made;
- impose statutory obligations on persons who are or were approved family sponsors;
- provide for civil penalties and administrative sanctions if such obligations are not satisfied; and
- facilitate the sharing of personal information between a range of parties associated with the sponsored family visa program.

There are some provisions in the existing Division 3A framework that are not applicable (or appropriate) to be extended to the sponsored family visa program. These include nominations, inspector powers and skilled migration provisions, all of which relate to the employer/employee relationship and sponsorships that are employment based. The Bill makes a series of consequential amendments to ensure that these provisions will only continue to apply to the temporary sponsored work visa program.

As part of the implementation of the extended framework, amendments will be required to the *Migration Regulations 1994* (the Regulations) to:

- prescribe details for and in relation to the operation of the framework for the sponsored family visa program (including aspects such as sponsorship approval criteria; processes and terms of approval; sponsorship obligations; circumstances and processes in which the Minister may take action against a sponsor; and the kinds of personal information that may be disclosed about parties associated with the program);
- amend family sponsored visas to apply this new framework; and
- make consequential amendments to the existing framework for the temporary sponsored work visa program to reflect new terminology referred to in the Bill.

The amendments will initially only apply to partner visas during 2017. The sponsorship framework will later be extended by Regulatory amendment to other family sponsored visas.

Aims and targets of the Bill

The introduction of an assessable sponsorship framework for family sponsored visas will improve the integrity of the family sponsored visa program as it will:

- replace the current unenforceable sponsorship framework insofar as it relates to family sponsored visas;
- place greater emphasis on the assessment and approval of family sponsors;

- require the approval of persons as family sponsors before any relevant visa applications are made;
- separate sponsorship assessment from the visa application process to ensure, amongst other things, that sponsorship obligations (rather than undertakings) are imposed and enforceable with civil penalties and administrative sanctions;
- allow the Minister to refuse a sponsorship application; and cancel and / or bar a family sponsor where inappropriate use of the program or serious offences are detected – especially those involving violence; and
- improve the sharing of personal information between parties identified in the sponsorship application and the program more generally.

All prospective sponsors for family visas will be required to satisfy criteria prescribed in the regulations before their sponsorship application can be approved. If police checks that are required in this process reveal adverse information, such as serious criminal convictions for offences relating to violence, or if the prospective sponsor refuses to provide the required police checks, the sponsorship application may be refused.

New sponsorship obligations

The new sponsorship obligations will largely reflect existing sponsorship undertakings but, as obligations, they will have a greater legal basis. This will allow greater flexibility in terms of defining when obligations cease to apply and the Department will be better placed to take administrative or civil penalty action when breaches occur. The kinds of obligations that are intended to be prescribed in the regulations will require family sponsors to:

- keep evidence (records/information) supporting the existence of the relationship with the visa applicant(s);
- provide above records/information when requested; and
- provide information to the Department when there is a change of circumstances.

The principle is that a sponsor would need to provide evidence to support claims made in their application or subsequently to support the visa application as it is processed. Additionally it underlines the importance of advising the department of any material change in their circumstances, such as the ending of the partner relationship.

Failure to meet obligations under the new sponsorship requirements may result in a range of civil penalties and administrative sanctions including cancellation and/or barring.

Breaches of sponsorship obligations

If sponsors breach their obligations they may be liable to a range of discretionary civil penalties or administrative sanctions that will be prescribed in the supporting Regulations. The severity of the sanction will depend on the nature of the breach(es) and the visa subclasses involved. Natural justice will be provided prior to a final decision to sanction a sponsor.

Bars and waiver provisions

Existing sponsorship bars and waiver provisions will be maintained, including that sponsors:

- must not have been a sponsor, or have been sponsored, in the past five years before application;
- may sponsor a maximum of two times;
- cannot sponsor a child where they have an unresolved charge or a conviction for a registrable offences.

Depending on the requirements of the visa program, additional bars and waiver provisions may be introduced, however the circumstances by which a sponsor may be barred from sponsoring would vary depending on the visa program, Again, natural justice will be provided prior to a final decision to sanction a sponsor.

Disclosure of personal information

The underlying principle is that relevant information in these areas be shared between parties to the application. Where this is not occurring, the Department will be authorised to disclose relevant information between the parties and/or refuse the application.

The information sharing provisions that currently exist in Division 3A of Part 2 of the Act will be extended, where relevant, to Family visas. In making their applications, sponsors and visa applicants will agree to the results from their Police checks, and for details of relevant migration-related activities, to be shared with other parties to the application and prescribed Commonwealth, State and Territory agencies where relevant. The purpose of these provisions is to encourage the sharing of relevant information so that both applicants and sponsors can make fully informed decisions before committing to the visa application processes.

Personal information collected, used, stored and disclosed during this process will be treated in accordance with the *Privacy Act 1988*.

Refusal/Cancellation of sponsorship

Sponsorship applications will be subject to refusal in limited circumstances. These include where the sponsor has convictions for:

- registrable offences; or
- offences relating to violence.

Convictions for offences in these areas will not lead to a mandatory refusal. Any refusals will be discretionary and consider a range of factors including: the length of the relationship; the type of offence; how recently the offence occurred; relevance to the family relationship; and any mitigating circumstances. Natural justice will be provided prior to a final decision to refuse the application being taken by the Department. Refused applicants will have access to merits review by the Administrative Appeals Tribunal.