

17 December 2021

Committee Secretary
Senate Legal and Constitutional Affairs Committee
By email: legcon.sen@aph.gov.au

Dear Committee Secretary

RE: Migration Amendment (Strengthening the Character Test) Bill 2021

We write to endorse the submission of the Visa Cancellations Working Group to the Legal and Constitutional Affairs Legislation Committee's Inquiry into the provisions of the Migration Amendment (Strengthening the Character Test) Bill 2021 (the Bill).

About Safe and Equal

Safe and Equal is the peak body for specialist family violence services that provide support to victim survivors in Victoria. We are an independent, non-government organisation that leads, organises, advocates for, and acts on behalf of our members – with a focus across the continuum from primary prevention through to response and recovery. We work towards a world beyond family and gender-based violence, where women, children and all people from marginalised communities are safe, thriving and respected.

Introduction

Safe and Equal share the concerns raised by the Visa Cancellations Working Group that the Bill will have unintended consequences for 'vulnerable individuals' and will increase the risk of harm to victim-survivors of family violence. The Bill fails to recognise the complex nature of family violence and poses serious risks to the safety of migrant and refugee victim-survivors, who are often subject to complex forms of violence due to their visa status¹. Therefore, it is important that the Bill is not passed by the Senate until safeguards and unintended consequences for victim-survivors of family violence are fully considered.

We share the concerns raised by the Visa Cancellations Working Group about the considerable risk and impact of the proposed Bill for victim-survivors and are particularly concerned that the introduction of the amendments to the Migration Act 1958 (Cth) and the Migration Regulations 1994 (Cth) will result in:

- Victim-survivors who are misidentified as perpetrators of family violence being subject to adverse migration outcomes, including visa cancellations and refusals.
- Victim survivors not reporting family violence or seeking assistance due to the fear of serious consequences for perpetrators and for themselves.
- Increased risk of retribution for the victim-survivor by the perpetrator, where the perpetrator may use this law to inflict further harm on victim-survivors.

¹ Fourth Action Plan. 2019. National Plan to Reduce Violence Against Women and their Children 2010-2022. <
<https://www.dss.gov.au/women-publications-articles-reducing-violence/fourth-action-plan> >

- Victim-survivors losing income/means of survival or becoming homeless because of their financial dependency on the perpetrator whose visa is cancelled due to family violence offending.

Further to those points raised by the Visa Cancellations Working Group, we are also concerned that the inclusion of 'aiding, abetting, counselling or procuring the commission of an offence'² in the Bill could have serious consequence for victim-survivors experiencing coercive control. We note section 125 of the Family Violence Protection Act (FVPA) 2008 in Victoria which limits the operation of the Crimes Act 1958 so "a protected person is not involved in the commission of an offence against this Act, and is not punishable as a principal offender, because the protected person encourages, permits or authorises conduct by the respondent that contravenes the family violence intervention order or family violence safety notice"³. This change was made to the FVPA following a recommendation made by the Victorian Law Reform Commission "that the legislation remove liability for aiding and abetting so that a respondent could not intimidate a protected person by suggesting that reporting a breach would result in both of them being charged"⁴.

Given the complexities outlined above and the harmful unintended consequences that may arise, we recommend that the Bill should be rejected. If the Bill does progress, deeper consideration of the unintended consequences for victim-survivors of family violence is critical to ensure appropriate safeguards are introduced to prevent further harm.

Yours sincerely,

Tania Farha
Chief Executive Officer

² Migration Amendment (Strengthening the Character Test) Bill 2021. Provision 501(7AA)(a)(v).
https://www.aph.gov.au/Parliamentary_Business/Bills_LEGislation/Bills_Search_Results/Result?bld=r6816

³ Family Violence Protection Act (2008), s125

⁴ Judicial College of Victoria (2010-2014). Section 4.1.1.6 Consent of the Protected Person
<<https://www.judicialcollege.vic.edu.au/eManuals/FVBBWeb/index.htm#34482.htm>>; Victorian Law Reform Commission (2006). Review of Family Violence Laws Report. Melbourne <<https://www.lawreform.vic.gov.au/wp-content/uploads/2021/07/Review-of-Family-Violence-Laws-Report.pdf>>