



HARMONY ALLIANCE
MIGRANT & REFUGEE WOMEN FOR CHANGE

inTouch

Multicultural Centre
Against Family Violence



Public consultation on the English language requirement and the new sponsorship framework for the Partner visa program

Submission by Harmony Alliance, inTouch Multicultural Centre Against Family Violence and Monash Gender and Family Violence Prevention Centre.

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Introduction

We welcome the opportunity to provide feedback to this public consultation on the proposed English language requirement and new sponsorship framework for the Partner Visa program. As organisations that research, work with, and represent people from migrant and refugee backgrounds, there are a number of considerations we request the Department of Home Affairs makes prior to the implementation of any such policies and programs.

It is our view that English language proficiency requirements, as well as the new sponsorship framework for the Partner visa program, may in fact have a range of negative and unintended consequences on many of the women that we work with. Women who are being sponsored through Partner visa programs are often already in established relationships with the sponsors. These new changes may in fact be detrimental to these women and heighten barriers to support and safety of victim-survivors of family violence. We believe that these amendments run counter to the commitments made via the *National Plan to Reduce Violence against Women and their Children 2010 – 2022*, where women's safety must be the first and foremost priority and where systems that empower perpetrators must be identified and modified. We are of the view that these proposals and more generally plans that are designed to 'protect' women and prioritise women's safety are co-designed with experts in the field including researchers, service providers and key advocates. The concerns we have are informed by a significant base of expert knowledge and we offer our views in the spirit of drawing attention to impacts and implications that may not be anticipated or understood.

We welcome the opportunity to discuss any aspects of this submission, including our wider research on domestic and family violence further.

Sana Ashraf, Ela Stewart and Marie Segrave,
On behalf of Harmony Alliance, inTouch Multicultural Centre Against Family Violence, Monash Gender and Family Violence Prevention Centre.

About Us

Harmony Alliance: Migrant and Refugee Women for Change

Harmony Alliance is one of the six National Women's Alliances funded by the Australian Government to promote the views of all Australian women, to ensure their voices are heard in decision-making processes. Harmony Alliance's purpose is to provide a national inclusive and informed voice on the multiplicity of issues impacting on experiences and outcomes of migrant and refugee women, and to enable opportunities for women from migrant and refugee backgrounds to directly engage in driving positive change.

We adopt an intersectional, feminist, and human rights-based approach in promoting the voice and participation of women from migrant and refugee backgrounds in Australian society. We acknowledge the diversity of experiences of women from migrant and refugee backgrounds and recognise the inherent value of each person, of all backgrounds, genders, ages, abilities, social standings, sexual orientations, or religions. We promote the principles of dignity, equity, autonomy, non-discrimination, and mutual respect.

The Harmony Alliance membership comprises over 140 organisations and individuals representing, and working for the advancement and inclusion of, migrant and refugee women. Several of our members--including Advance Diversity, Ishar Multicultural Women's Health Services, Pacificwin, Pronia, Refugee Council of Australia, and Australian Muslim Women's Centre for Human Rights--have directly contributed to this submission.

inTouch Multicultural Centre Against Family Violence

inTouch Multicultural Centre Against Family Violence (inTouch) provides integrated, culturally responsive services to migrant and refugee communities. Over the past 35 years, we have addressed the specific needs of communities and helped over 20,000 women experiencing family violence. In the 2019-20 financial year, inTouch provided services to 1311 women from 98 different countries, and 1277 of their children.

We have become a critical piece in Victoria's family violence response system. In 2016, the Royal Commission into Family Violence in Victoria recommended that the government fund inTouch to better support the sector in meeting the needs of individuals from refugee and migrant backgrounds experiencing family violence. The reach and impact of inTouch's work has significantly increased due to this support.

inTouch works across the family violence continuum, from prevention and early intervention, to crisis intervention, post-crisis support and recovery. Our services and programs include:

- An integrated, culturally responsive model based on *inLanguage, inCulture* case management. Our culturally diverse case managers offer direct client services in over 25 languages. They have a unique understanding of a client's lived migration experience, cultural influences, and the barriers they face when trying to seek help.
- An in-house accredited community legal centre, the only one of its kind in a specialist family violence service, which provides legal advice, court advocacy and immigration support to inTouch clients.
- Capacity building of specialist and non-specialist family violence providers and community organisations to better deliver support to refugee and migrant women experiencing family violence. This includes a public training calendar.
- An early intervention program, Motivation for Change, working directly with men from culturally and linguistically diverse communities who use violence towards their families.
- A recovery program, inSpire, helping women and children move on from experiencing family violence.
- A victim-survivor advisory group called Inspire for Change, comprised of former inTouch clients. This advisory group guides and informs many of our programs, policy and initiatives.

Monash Gender and Family Violence Prevention Centre

The Monash Gender and Family Violence Prevention Centre [The Centre] is at the forefront of research and education aimed at preventing family violence. The Centre is contributing to transformative social change by providing an evidence base for policy change that better supports and protects those experiencing family violence and addresses the cultural and economic drivers that underpin it. The Centre's track record includes ground-breaking research, engagement with government and civil society stakeholders and innovative educational offerings across the international, national and state and territory-level.

The Centre's distinctive approach engages with the full continuum of prevention, from primary prevention – preventing violence before it occurs; secondary prevention – early intervention to stop violence reoccurring; and tertiary intervention and response – to prevent long-term harm from violence. Our research is grounded in qualitative and quantitative methods, combined with a well-developed understanding of the contemporary policy landscape. The Centre has a number of core pillars of research expertise, including a major focus on temporary migration and family violence led by Associate Professor Marie Segrave. For further details about current and recently completed research projects, please visit the Centre Research webpage.

PART A: English Language Requirement

Our organisations support the provision of free English language classes for all those who are being sponsored to come to Australia. The ability to access free English language classes provides an opportunity to assist people who arrive in Australia to improve their English language literacy as well as providing an opportunity to build and/or expand social connections and community. It empowers migrant and refugee women by facilitating their participation in economic and social lives. **We strongly support this initiative as free service, available to all, absent of constraints or negative impacts if people are unable to/choose not to partake of the opportunity.**

English language proficiency is dependent on many factors, including age and gender of the applicant and the level of education they attained in their country of origin. For many people, access to English language classes in their home countries can depend on their socio-economic status and the financial resources they have access to. They may also face barriers due to their geographical location. People may need to rely on informal methods of learning English - such as their interactions with family members and friends, if they cannot access formal education institutions.

Whilst we see the value of the provision of free English language classes, **we do not support the implementation of policies or laws that would require a level of English language proficiency for visa applications or approvals.** Establishing a requirement for English language literacy and proficiency can be discriminatory towards those who are unable to access classes due to their circumstances.

We note that in the Consultation Document it states:

“Migrants who do not have sufficient English language skills may be more vulnerable to family violence and other exploitation. They are less likely to have an established support network or be aware of Australia’s laws and how to seek help. Only 13 percent of those with no English skills are employed.... The new English language requirement will further support and enhance English acquisition for all partners, including more vulnerable people who do not have adequate English skills to function effectively in Australian society.” (p2)

We have noted that this is a flawed position: our research demonstrates that women with limited language proficiency are engaging with services and our view is that we should increase accessibility and inclusion via strategies to reach women, rather than placing the responsibility on women to improve their English proficiency to access support¹.

We strongly urge more careful interrogation of the factors that create *vulnerability* to domestic and family violence. **We note first and foremost that the introduction of further barriers to accessing partner visas in fact reduces women’s access to support and safety because they have no claim to the Family Violence Provisions. This, in fact, leaves them at greater risk of harm and less able to access support.** We are deeply concerned that the implicit message is that English language proficiency is required to access safety and support: in fact our research demonstrates that women with limited proficiency in English are currently being supported by specialised domestic and family violence services and our goal as a nation should be to increase the inclusivity and reach of these support networks². This will not be achieved via the addition of *conditions* to visa access.

1. English language proficiency level

Consultation Question:

¹ Burke, L (2020) Partner visa changes won't protect women: Expert who wrote report, *Sydney Morning Herald*, 22 October 2020. Online: <https://www.smh.com.au/politics/federal/partner-visa-changes-won-t-protect-women-expert-who-wrote-report-20201021-p566zz.html>; Segrave, M. & Pftizner, N. (2020) *Family violence and temporary visa holders during COVID-19*. Monash University. Online resource. <https://doi.org/10.26180/5f6b1218b1435>

² Segrave, M. & Pftizner, N. (2020) *Family violence and temporary visa holders during COVID-19*. Monash University. Online resource. <https://doi.org/10.26180/5f6b1218b1435>

What level of English language proficiency and skills would Partner visa applicants and permanent resident sponsors need to function independently in Australian society, including to access essential services and employment?

A useful level of English language proficiency for those being sponsored should be basic and functional, that would assist the person to navigate day-to-day life activities and tasks, such as shopping for groceries, understanding amounts of money, catching public transport, and accessing essential services.

Navigating the Australian employment market would require a higher level of English language proficiency and general systems literacy - this would be beyond a functional level of English and **should not be included as a requirement for partner visas**.

2. Reasonable effort to learn English

Consultation Questions:

What should constitute a reasonable effort to learn English in the context of AMEP participation?

What other types of evidence could be accepted for the purposes of assessing whether an applicant has made a reasonable effort to learn English?

Establishing a reasonable effort creates the potential for a significant additional administrative burden on the Department, particularly when considering the level of evidence required to demonstrate this and/or to demonstrate reasonable effort subject to opportunity. We are very concerned that this will impact already delayed decision-making waiting times. We are also concerned to clarify whether the determination of 'reasonable effort' can be subject to appeal. **Given the noted concerns around vulnerability to domestic and family violence, we are also concerned that this requirement may give rise to further leverage for abusive partners who sponsor women to ensure they cannot access the partner visa via refusing to allow them to attend classes.**

If this moves ahead with the 'reasonable effort' clause in place, we would argue that a reasonable effort to learn English should be assessed case by case. This effort will be highly dependent on a range of factors, including the applicant's existing commitments such as commitments to work, family, and children. There are many barriers to full participation in AMEP programs, including family and caring responsibilities, as well as the effects of trauma and other past experiences. It is not appropriate to require a set number of hours of AMEP in order to demonstrate attempts to learn English. There must be appropriate discretionary assessments to account for special circumstances that recognise people's individual experiences and barriers to learning English. It is unclear how this will be managed: we have concerns that if managed poorly, women who are already unsafe or experiencing violence and abuse will be further marginalised.

Given our concerns, in order to ensure that the ability to access English language classes does not become a barrier to stay in Australia, enrolment in an English language course should be enough to constitute a reasonable effort to learn English in the context of AMEP participation.

Alongside enrolment into a course, other forms of evidence that should be accepted for the purposes of assessing whether an applicant has made a reasonable effort to learn English should include evidence of past qualifications and previous English language proficiency tests, proof of community participation such as volunteering and employment, as well as the applicants' interactions in other more informal settings. Those who have received formal education in their home countries with some English language education should also be considered to have made a "reasonable effort to learn English".

3. Other means of meeting the requirement and supporting evidence

Consultation Question:

What evidence should be accepted to satisfy the English language proficiency requirement for Partner visa applicants and permanent resident sponsors?

As noted above, **satisfying the English language proficiency requirements for Partner visa applicants should be broad and flexible.** Alongside documentation reflecting previous education or qualifications where “all” instruction was in English, those who have received functional English language lessons as part of their previous education and qualifications should also meet the requirements. Furthermore, letters of support from community leaders or members, teachers, mentors, faith leaders, non-government organisations, and social and sporting clubs should also be accepted as supporting evidence.

4. Exemptions

Consultation Question:

In what circumstances should a person be exempt from needing to meet the English language requirement? What evidence should be accepted to support a claim for an exemption?

As stated earlier, our organisations support the offer and provision of free English language classes to all partner visa applicants. **We do not believe there should be an English language proficiency requirement attached to their visa application.**

If this is to be implemented, however, there are a number of applicants and circumstances which should be exempt from fulfilling the English language requirement. This includes:

- Older migrants
- Migrants with disabilities including intellectual and learning disabilities
- Victim-survivors of family violence
- Migrants with mental health concerns or previous experiences of trauma
- People with little to no formal education
- People already in the workforce or study in Australia

Furthermore, applicants who have previously reflected English language proficiency as part of other visa applications should not be required to go through this process again.

Whilst these groups of people should be offered free English language classes, **they should not be required to undertake any formal English language study, nor should they be subjected to the English language proficiency requirement as part of their visa application.**

5. Implementation

Consultation Question:

What other strategies can the Department adopt to support prospective Partner visa applicants and permanent resident sponsors to prepare for the introduction of the English language requirement, both in the lead up to and after the implementation of the new requirement?

We recommend that the Department makes this a free program, accessible to all in this stream and focused on encouraging participation, rather than suggesting there will be a punitive outcome for non-participation.

We recommend that the Department invests in the development of a culturally appropriate communication strategy to ensure awareness among migrant and refugee communities regarding these changes. This campaign should be developed in multiple languages and disseminated across various platforms, including social media, ethnic media outlets and through community organisations. Importantly, any requirements and exemptions should be clearly communicated, as well as key dates for policy change.

We also suggest the establishment of a national reference group comprising community organisations and peak bodies to advise the Department on the introduction and implementation of the English language requirement and identify supports that prospective Partner visa applicants and permanent resident sponsors may need.

We strongly support independent research to examine the impact of this change within the Migration System and within Home Affairs, as well as for members of the community who are impacted by this new requirement.

PART B: New Sponsorship Framework for Partner Visa Program

Consultation Questions:

What types of adverse information should be subject to disclosure under the new sponsorship framework?

Are there other issues that should be considered in the development and implementation of the new sponsorship framework for the Partner visa program?

We respond to the second question with six key points.

1. It is critical for our policy makers to understand that **by the time a couple are considering a Partner visa application, they have already been in a relationship for some time, and for many, are already married and may even have children together.** Women who are on temporary visas who experience family violence in Australia face multiple barriers to accessing safety, support and stability³. **Our organisations are concerned about the way in which these new laws may impact women and in particular, women who have experienced family violence.** We note that this has been raised previously as a policy and was unsupported across the sector⁴.
2. Separating sponsorship application processing times will add to already long waiting periods for applicants (up to several years in the case of Partner visas). This has serious consequences for applicants who are in long-term relationships, are already married to and/or have children with their sponsors. Increased waiting periods will mean higher dependency on their sponsors, which is often linked to higher risk of control, abuse and violence, with longer periods of time spent where the applicant is unable to earn an income and gain financial independence. The barriers to safety and support that women on temporary visas experiencing family violence face have been documented.⁵ Lengthening the processing time of Partner visa applications will cause further disadvantage to these women.
3. **The New Sponsorship Framework may also discourage women from disclosing family violence.** Migration status is often used by a perpetrator of family violence, as “leverage” for violence and control.⁶ A woman may be fearful of reporting the violence she is enduring by her partner, in case he won’t be permitted to sponsor her in the future, and she may face deportation, separation from her children, and judgement and shame from her community. This is a very real concern and consequence and can cause victim-survivors to remain in a dangerous situation and relationship.

Case study example

Adam is an Australian citizen, and marries his partner Laura in her home country overseas. After their wedding celebrations and the exchange of a dowry, Adam wants to sponsor Laura to migrate to Australia with him.

Adam’s application to sponsor Laura has been refused by the Department meaning that he cannot sponsor her to move to Australia. This has wide reaching impacts on Laura’s standing in her family and the rest of their community. She has been ostracised, her family feel she has shamed them and she will be unable to remarry.

³ Segrave, Marie (2018): Temporary Migration and Family Violence: An analysis of victimisation, vulnerability and support. Monash University. Report. <https://doi.org/10.26180/5bb43ca925327>, Segrave, M. & Pftizner, N. (2020) *Family violence and temporary visa holders during COVID-19*. Monash University. Online resource. <https://doi.org/10.26180/5f6b1218b1435>,

⁴ Segrave, MT & Burnett-Wake, C 2017, 'Addressing Family Violence through Visa Sponsor Checks: A Step in the Right Direction? ', *Current Issues in Criminal Justice*, vol. 29, no. 2, pp. 155-165. Online: <http://www.austlii.edu.au/au/journals/CICrimJust/2017/20.html>

⁵Segrave, Marie (2018): Temporary Migration and Family Violence: An analysis of victimisation, vulnerability and support. Monash University. Report. <https://doi.org/10.26180/5bb43ca925327>.

⁶ Segrave, Marie (2018): Temporary Migration and Family Violence: An analysis of victimisation, vulnerability and support. Monash University. Report. <https://doi.org/10.26180/5bb43ca925327>, p. 1.

4. Currently the Migration Act and regulations enable a pathway for victim-survivors of family violence through the family violence provisions. Through the provisions, women who hold the requisite temporary visa and who have experienced family violence still hold the opportunity to continue their lives in Australia free from violence. **These provisions encourage women to report incidents of family violence, and remove some of the leverage of power and control a perpetrator has over a woman's migration status. The New Sponsorship Framework for Partner Visa Program may stop women from accessing the migration amendments.**
5. International evidence regarding disclosure schemes, such as via the introduction of Clare's law in the UK, point to significant concerns regarding the effectiveness of disclosure schemes in improving women's safety. **A key concern being that the focus and emphasis is on a woman's responsibility to leave and to manage their own safety.**⁷ Research has found consistently that women who attempt to leave or end relationships are at the highest risk of fatal violence⁸ and we urge caution on creating this system in the absence of any attention to risk assessment and/or case management⁹. Critically, women who hold temporary visas are least likely to be able to access the full suite of service for domestic and family violence, and when visa issues are involved we remain concerned that this would heighten women's risk. We are of the view that this form of disclosure scheme in the context of visa applications creates further incentive for women not to report and will impact on women's safety rather than preventing men's violence.
6. Sanctions for sponsors who enact violence. We welcome a review of how this has been undertaken to date and a clear articulation of how this process would proceed.

If these sponsorship changes are to progress, we recommend the following:

1. Sponsor applications should be kept to minimum processing times (not exceeding 3 months) and applicants should be given an option to receive an independent bridging visa if they require while waiting for their sponsors to be assessed.
2. There needs to be free legal and migration support provided to those whose partners are denied the right to sponsor them. Access to a bridging visa would be critical for this group if they have no further visa pathway, to enable access to support if necessary.
3. Clear pathways for women who experience domestic and family violence who are sponsored but, for example, hold a provisional visa that requires a marriage to have taken place in order to move to a visa that would enable access to the family violence provisions.

⁷ Fitz-Gibbon K and Walklate S (2017) 'The Efficacy of Clare's Law in Domestic Violence Law Reform in England and Wales' *Criminology and Criminal Justice*. 17(3): 284-300.

⁸ Dekeseredy, W.S., Dragiewicz, M. and Schwartz, M. D. (2017) *Abusive Endings*, Oakland, Calif: University of California Press.

⁹ Monash Gender and Family Violence Prevention Centre (2019): *Understanding Domestic Violence Disclosure Schemes ('Clare's Law')*. Monash University. Online resource. <https://doi.org/10.26180/5d198e59e2bf1>