



# Migration Amendment (Family Violence and Other Measures) Commencement Proclamation 2019

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I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council and under item 2 of the table in subsection 2(1) of the *Migration Amendment (Family Violence and Other Measures) Act 2018*, fix **17 April 2019 as the day on which Schedule 1 to that Act commences.**

Signed and Sealed with the  
Great Seal of Australia on

04 April 2019

Peter Cosgrove  
Governor-General

By His Excellency's Command

David Coleman  
Minister for Immigration, Citizenship and Multicultural Affairs

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# **Migration Amendment (Family Violence and Other Measures) Act 2018**

**No. 162, 2018**

**An Act to amend the *Migration Act 1958*, and for  
related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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# Migration Amendment (Family Violence and Other Measures) Act 2018

No. 162, 2018

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**An Act to amend the *Migration Act 1958*, and for related purposes**

[Assented to 10 December 2018]

The Parliament of Australia enacts:

## **1 Short title**

This Act is the *Migration Amendment (Family Violence and Other Measures) Act 2018*.

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## 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. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	10 December 2018
2. Schedule 1	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	17 April 2019 (F2019N00035)

Note: This table relates only to the provisions of this Act as originally enacted.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—Sponsored family visas

### Part 1—Amendments

#### *Migration Act 1958*

##### **1 Subsection 5(1)**

Insert:

**approved family sponsor** means a person:

- (a) who **has been approved** under section 140E as a family sponsor in relation to a class prescribed by the regulations **for the purpose of subsection 140E(2)**; and
- (b) whose approval has not been cancelled under section 140M, or otherwise ceased to have effect under section 140G, in relation to that class.

##### **2 Subsection 5(1) (definition of *approved sponsor*)**

Repeal the definition, substitute:

**approved sponsor** means:

- (a) an **approved family sponsor**, or
- (b) an approved work sponsor.

##### **3 Subsection 5(1)**

Insert:

**approved work sponsor** means:

- (a) a person:
  - (i) who has been approved under section 140E as a work sponsor in relation to a class prescribed by the regulations for the purpose of subsection 140E(2); and
  - (ii) whose approval has not been cancelled under section 140M, or otherwise ceased to have effect under section 140G, in relation to that class; or
- (b) a person (other than a Minister) who is a party to a work agreement.

Note: A partnership or an unincorporated association may be an approved work sponsor: see subsections 140ZB(1) and 140ZE(1) respectively.

#### **4 Section 140AA (heading)**

Repeal the heading, substitute:

#### **140AA Purposes of this Division**

#### **5 Section 140AA**

Before “The purposes”, insert “(1)”.

#### **6 Section 140AA**

After “of this Division”, insert “, to the extent it applies in relation to the temporary sponsored work visa program,”.

#### **7 Paragraph 140AA(a)**

Omit “a temporary sponsored work visa program”, substitute “the program”.

#### **8 Subparagraph 140AA(b)(ii)**

Omit “temporary sponsored work visa”.

#### **9 Paragraph 140AA(d)**

Before “sponsors”, insert “work”.

#### **10 At the end of **section 140AA****

Add:

- (2) The purposes of this Division, to the extent it applies in relation to the sponsored family visa program, are:
  - (a) to strengthen the integrity of the program; and
  - (b) to place greater emphasis on the assessment of persons as family sponsors; and
  - (c) to improve the management of family violence in the delivery of the program.
- (3)** The purposes referred to in subsection (2) are to be achieved by establishing a framework that:

- (a) requires the approval of persons as family sponsors before any relevant visa applications are made; and
- (b) imposes obligations on persons who are or were approved family sponsors; and
- (c) provides for sanctions if such obligations are not satisfied; and
- (d) facilitates the sharing of personal information in accordance with this Division.

## **11 Subdivision B of Division 3A of Part 2 (heading)**

Repeal the heading, substitute:

### **Subdivision B—Approval of sponsors**

## **12 Section 140E (heading)**

Repeal the heading, substitute:

### **140E Minister to approve work and family sponsors**

## **13 Subsection 140E(1)**

Before “sponsor in”, insert “work”.

## **14 Subsection 140E(1) (note)**

Repeal the note, substitute:

Note: A person (other than a Minister) who is a party to a work agreement is an approved work sponsor and does not need to be approved as a work sponsor under this section (see paragraph (b) of the definition of *approved work sponsor*).

## **15 Before subsection 140E(2)**

Insert:

- (1A) The Minister must approve a person as a family sponsor in relation to one or more classes prescribed for the purpose of subsection (2) if prescribed criteria are satisfied.

## **16 Subsection 140E(2)**

Before “sponsor”, insert “work sponsor or family”.

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**17 Paragraphs 140E(3)(b) and (c)**

Before “sponsor”, insert “work sponsor or family”.

**18 Section 140F (heading)**

Repeal the heading, substitute:

**140F Approval process**

**19 Subsections 140F(1) and (2)**

Before “sponsor”, insert “work sponsor or family”.

**20 Section 140G (heading)**

Repeal the heading, substitute:

**140G Terms of approval**

**21 Subsections 140G(1) and (4)**

Before “sponsor”, insert “work sponsor or family”.

**22 Section 140GA (heading)**

Repeal the heading, substitute:

**140GA Variation of terms of approval**

**23 Subsections 140GA(1) and (3)**

Before “sponsor”, insert “work sponsor or family”.

**24 After section 140GA**

Insert:

**Subdivision BA—Approval of nominations made by approved  
work sponsors**

**25 Subsections 140GB(1), (2) and (3)**

After “approved”, insert “work”.

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**26 Paragraph 140GB(4)(b)**

Before “sponsor”, insert “work”.

**27 Subsections 140GBA(1), (3), (5), (6) and (6A)**

After “approved” (wherever occurring), insert “work”.

**28 Subsection 140GBA(7) (definition of *eligible temporary visa holder*)**

After “approved” (wherever occurring), insert “work”.

**29 Subsection 140GBB(1)**

After “approved”, insert “work”.

**30 Subsection 140GBB(2)**

Omit “a sponsor”, substitute “an approved work sponsor”.

**31 Subsections 140GBB(4) and 140GBC(1), (2) and (3)**

After “approved”, insert “work”.

**32 Section 140GC (note)**

After “approved”, insert “work”.

**33 Paragraph 140H(6)(b)**

Before “sponsor”, insert “work sponsor or family”.

**34 Subsection 140HA(1)**

After “following matters”, insert “to the extent they relate to a person who is or was an approved work sponsor”.

**35 Paragraph 140HA(1)(e)**

Omit “an approved sponsor, a former approved sponsor”, substitute “the person”.

**36 Paragraph 140HA(1)(g)**

Omit “an approved sponsor”, substitute “the person”.

**37 Paragraphs 140HA(1)(h) and (i)**

Omit “an approved sponsor or former approved sponsor”, substitute “the person”.

**38 Paragraphs 140HA(2)(a) and (b)**

After “approved” (wherever occurring), insert “work”.

**39 After subsection 140HA(2)**

Insert:

**(2A)** Subject to subsection (2B), the Minister must take all reasonable steps to ensure that regulations made under section 504 for the purposes of subsection 140H(1) include obligations in relation to the following matters to the extent they relate to a person who is or was **an approved family sponsor**:

- (aa) **paying prescribed medical, hospital, aged care or other health-related expenses incurred by a visa holder or a former visa holder;**
- (a) complying with prescribed requirements to keep information and provide information to the Minister;
- (b) **notifying the Minister of prescribed changes in the circumstances** of the person, a visa holder or a former visa holder.

**(2B)** For any particular matter mentioned in subsection (2A), the Minister must take all reasonable steps to ensure that the obligations in the relevant regulations apply in relation to:

- (a) all approved family sponsors or former approved family sponsors; or
- (b) a specified class (or classes) of approved family sponsors or former approved family sponsors.

**40 Subsection 140HA(3)**

Omit “Subsection (1) does”, substitute “Subsections (1) and (2A) do”.

**42 Subparagraph 140K(1)(a)(ii)**

Before “sponsor”, insert “work sponsor or family”.

**43 Subparagraph 140K(1)(a)(iv)**

Omit “section 119”, substitute “section 114”.

Note: This item fixes an incorrect cross-reference.

**44 Subparagraph 140K(1)(a)(v)**

Omit “section 120”, substitute “section 115”.

Note: This item fixes an incorrect cross-reference.

**45 Subparagraph 140K(2)(a)(i)**

After “approval”, insert “as a work sponsor or family sponsor”.

**46 Subparagraph 140K(2)(a)(iii)**

Omit “section 119”, substitute “section 114”.

Note: This item fixes an incorrect cross-reference.

**47 Subparagraph 140K(2)(a)(iv)**

Omit “section 120”, substitute “section 115”.

Note: This item fixes an incorrect cross-reference.

**48 Subparagraph 140K(3)(a)(i)**

Omit “a sponsor”, substitute “an approved sponsor”.

**49 Subparagraph 140K(3)(a)(ii)**

Before “sponsor”, insert “work sponsor or family”.

**50 Paragraph 140L(3)(b)**

Before “sponsor”, insert “work sponsor or family”.

**51 Paragraphs 140M(1)(a) and (b)**

Omit “as a sponsor”, substitute “as a work sponsor or family sponsor”.

**52 Paragraph 140M(1)(c)**

After “approvals”, insert “as a work sponsor or family sponsor”.

**53 Paragraph 140M(1)(d)**

Before “sponsor in”, insert “work sponsor or family”.

**54 Subsection 140M(2)**

Before “sponsor in”, insert “work sponsor or family”.

**55 Section 140N (heading)**

Repeal the heading, substitute:

**140N Process for cancelling approval or barring approved sponsor**

**56 Subsections 140N(1) and (3)**

Before “sponsor”, insert “work sponsor or family”.

**57 Paragraphs 140O(4)(b) and 140P(2)(b)**

Before “sponsor”, insert “work sponsor or family”.

**59 Paragraph 140X(a)**

After “complied with”, insert “by a person who is or was an approved work sponsor”.

**60 Paragraph 140X(aa)**

Omit “required under subsection 140H(1) to satisfy a sponsorship obligation”, substitute “or was an approved work sponsor”.

**61 Subsection 140ZH(1)**

Repeal the subsection, substitute:

*Personal information about approved work sponsors etc.*

- (1) The Minister may disclose personal information of a prescribed kind about a person mentioned in column 2 of an item of the following table to a person or body mentioned in column 3 of the item:

<b>Disclosure of personal information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>If the personal information is about ...</b>	<b>then, the Minister may disclose that personal information to the following ...</b>
1	a person who is a holder of, or former holder of, a visa of a prescribed kind (however described)	(a) an approved work sponsor of the person; (b) a former approved work sponsor of the person; (c) an agency of the Commonwealth, or of a State or Territory, prescribed by the regulations
2	an approved work sponsor of, or former approved work sponsor of, a person mentioned in item 1 of this table	(a) the person; (b) an agency of the Commonwealth, or of a State or Territory, prescribed by the regulations

*Personal information about approved family sponsors etc.*

- (1A) The Minister may disclose personal information of a prescribed kind about a person mentioned in column 2 of an item of the following table to a person or body mentioned in column 3 of the item:

<b>Disclosure of personal information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>If the personal information is about ...</b>	<b>then, the Minister may disclose that personal information to the following ...</b>
1	a person who proposes to apply for a visa of a prescribed kind (however described)	(a) an applicant for approval as a family sponsor in relation to the person; (b) an approved family sponsor of the person; (c) an agency of the Commonwealth, or of a State or Territory, prescribed by the

**Schedule 1** Sponsored family visas  
**Part 1** Amendments

<b>Disclosure of personal information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>If the personal information is about ...</b>	<b>then, the Minister may disclose that personal information to the following ...</b>
		regulations
2	a person who is an applicant for, or a holder or former holder of, a visa of a prescribed kind (however described)	(a) an approved family sponsor of the person; (b) an agency of the Commonwealth, or of a State or Territory, prescribed by the regulations
3	an applicant for approval as a family sponsor	(a) a person who proposes to apply for a visa if the applicant is approved as a family sponsor; (b) an agency of the Commonwealth, or of a State or Territory, prescribed by the regulations
4	an approved family sponsor of a person mentioned in item 1 or 2 of this table	(a) the person; (b) an agency of the Commonwealth, or of a State or Territory, prescribed by the regulations
5	a former approved family sponsor of a person who is an applicant for, or a holder of, a visa of a prescribed kind (however described)	(a) the person; (b) an agency of the Commonwealth, or of a State or Territory, prescribed by the regulations

*Regulations may prescribe circumstances for disclosure etc.*

**62 At the end of subsections 140ZH(2) and (3)**

Add “under subsection (1) or (1A)”.

**63 Before subsection 140ZH(4)**

Insert:

*Notice of disclosure*

**64 Subsection 140ZH(4)**

After “subsection (1)”, insert “or (1A)”.

**65 Subsection 140ZJ(1)**

After “approved”, insert “work”.

**66 Section 245AQ (definition of *sponsor class*)**

Omit “of sponsor”, insert “of work sponsor or family sponsor”.

**67 Section 245AQ (paragraphs (a) and (b) of the definition of *sponsorship-related event*)**

Before “sponsor under”, insert “work sponsor or family”.

## Part 2—Transitional and application provisions

### 68 Definitions

In this Part:

*commencement* means the commencement of this item.

*Migration Act* means the *Migration Act 1958*.

### 69 Existing approvals of sponsors

- (1) This item applies if:
  - (a) a person was approved as a sponsor under section 140E of the Migration Act before commencement; and
  - (b) immediately before commencement, the approval is in effect.
- (2) The person's approval continues to have effect (and may be dealt with), after commencement, as if it were an approval of the person as a work sponsor under section 140E of the Migration Act, as amended by this Schedule.
- (3) Despite the amendments of sections 140G and 140GA of the Migration Act made by this Schedule, a term of the person's approval:
  - (a) continues to have effect after commencement; and
  - (b) may be varied after commencement in accordance with section 140GA of that Act, as amended by this Schedule.

### 70 Continuation of bars placed on persons

- (1) This item applies if:
  - (a) before commencement, a person was barred, under section 140M of the Migration Act, from doing a thing for a particular period; and
  - (b) immediately before commencement, that period has not ended.
- (2) Despite the amendments of sections 140K, 140L and 140M of the Migration Act made by this Schedule, the bar:
  - (a) continues to have effect after commencement; and

- (b) may be waived after commencement in accordance with sections 140O and 140P of that Act, as amended by this Schedule.

**71 Application—subsections 140ZH(1) and (1A) of the Migration Act**

Subsections 140ZH(1) and (1A) of the Migration Act, as inserted by this Schedule, apply in relation to the disclosure of personal information after commencement, whether the information was collected before or after commencement.

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*[Minister's second reading speech made in—  
House of Representatives on 1 September 2016  
Senate on 10 October 2016]*

(94/16)

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## BILLS DIGEST

BILLS DIGEST NO. 21, 2016–17

11 OCTOBER 2016

# Migration Amendment (Family Violence and Other Measures) Bill 2016

Elibritt Karlsen and Moira Coombs  
Law and Bills Digest Section

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**Date introduced:** 1 September 2016

**House:** House of Representatives

**Portfolio:** Immigration and Border Protection

**Commencement:** Sections 1 to 3 upon Royal Assent, Schedule 1 on 1 July 2017.

**Links:** The links to the [Bill, its Explanatory Memorandum and second reading speech](#) can be found on the Bill’s home page, or through the [Australian Parliament website](#).

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the [Federal Register of Legislation website](#).

**All hyperlinks in this Bills Digest are correct as at October 2016.**

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## History of the Bill

A version of this Bill was introduced into the 44th Parliament on 16 March 2016.<sup>1</sup> That Bill had not been debated when Parliament was prorogued. The Bill lapsed on prorogation of Parliament. The current Bill is identical in substance to the earlier Bill.

## Purpose of the Bill

The purpose of the Migration Amendment (Family Violence and Other Measures) Bill 2016 (the Bill) is to amend the [Migration Act 1958](#) (Cth)<sup>2</sup> (*the Act*) to introduce a sponsorship framework for the sponsored family visa program. The proposed changes will:

- separate sponsorship assessment from the visa application process
- 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 as family sponsors and provide for enforceable sanctions if such obligations are not satisfied
- 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 to the application and the program more generally.

## Background

### *Why is this Bill needed?*

According to the Minister for Immigration and Border Protection, Peter Dutton, there appear to be two integrity issues with the sponsored family visa program which this Bill aims to address. The amendments are designed to firstly protect vulnerable Australian sponsors who are targeted by **non-genuine visa applicants who simply want a permanent visa outcome**. Secondly, the changes will address the current situation where **Australian sponsors who have a violent history, including against family members, are able to sponsor non-citizens without having to disclose details of their past to either the Department or other parties to the visa application**.<sup>3</sup>

The Department's submission to the Senate Legal and Constitutional Affairs Committee inquiry on the previous version of the Bill does not pick up on the issue of vulnerable *sponsors* but rather identifies additional issues with existing arrangements that leave non-citizen visa applicants potentially vulnerable to family violence. The Department claims:

- 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
- 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**
- 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.<sup>4</sup>

**The amendments will initially apply to partner visas**. However, the Department has foreshadowed that the sponsorship framework will be **extended to other visas in the family program** following its implementation in partner visas.<sup>5</sup>

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1. Parliament of Australia, '[Migration Amendment \(Family Violence and Other Measures\) Bill 2016 homepage](#)', Australian Parliament website.  
2. [Migration Act 1958](#).  
3. P Dutton, '[Second reading speech: Migration Amendment \(Family Violence and Other Measures\) Bill 2016](#)', House of Representatives, *Debates*, 1 September 2016, pp. 287–88.  
4. Department of Immigration and Border Protection (DIBP), [Submission](#) to Senate Legal and Constitutional Affairs Committee, *Inquiry into Migration Amendment (Family Violence and Other Measures) Bill 2016*, 2016, pp. 3–4.  
5. For statement of Compatibility with Human Rights see [Explanatory Memorandum](#), Migration Amendment (Family Violence and Other Measures) Bill 2016, p. 22.

## What are the current arrangements?

### Sponsorship

Sponsorship is a fundamental concept underpinning family migration. The sponsor undertakes to ensure that their family member is supported during their initial settlement in Australia and hence does not become a burden on the wider Australian community.<sup>6</sup> More explicitly, sponsors are required to give undertakings that they will 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.<sup>7</sup> However, these undertakings are largely unenforceable because there are no consequences for non-compliance.<sup>8</sup>

To sponsor a fiancé or partner visa applicant, the person must be an Australian citizen, an Australian permanent resident or eligible New Zealand citizen and the sponsor must be 18 years of age or older.<sup>9</sup>

Currently all partner visas require a sponsor (there are two types of partner category visas: the partner visa and the prospective marriage visa). The sponsor must be prepared to sponsor the visa applicant and any dependent family members who are included in the application and who are also migrating with the applicant. The sponsor usually has a fiancé or partner relationship with the visa applicant.<sup>10</sup>

### The sponsorship process

Currently, there are no separate provisions in the Migration Regulations 1994 under which an Australian citizen or permanent resident must apply, and be approved, as a sponsor for a partner visa. Rather, a citizen or permanent resident applies to be a sponsor by filling out a sponsorship application form, which is then submitted to the Department along with the partner visa application. This means that the 'sponsorship approval is dealt with as part of the visa approval process, treating the sponsor and the visa applicants essentially as joint parties to the same application'.<sup>11</sup>

More explicitly:

The sponsorship relationship assessment is a two-stage interrelated process:

- the undertaking given by the sponsor is assessed under regulation 1.20 and
- the relationship of the sponsor to the applicant, and the sponsorship, are assessed as Schedule 2 visa criteria.

These two separate but interrelated processes "merge" when assessing Schedule 2 time of decision criteria for the visa applicant. Officers cannot decide whether regulation 1.20 sponsor requirements are met unless a valid visa application has been made. This is because:

- the power to approve or not approve a sponsorship lies within the relevant Schedule 2 sponsorship criterion and
- s47(3) of the Act precludes officers from considering visa applications (and it follows, associated requirements) unless the application is valid ...

Sponsorship is part of the decision to grant or not grant the visa. It is not a separate "decision".

If an officer is not satisfied that the sponsor is eligible or can fulfil the sponsorship undertaking, the visa applicant does not satisfy Schedule 2 time of decision criteria relating to sponsorship, and accordingly, must be refused a visa ...

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6. DIBP, 'PAM3: Div 1.4 - Form 40 sponsors and sponsorship', Legend database.

7. [Migration Regulations 1994](#), Regulation 1.20.

8. DIBP, Submission to Senate Legal and Constitutional Affairs Committee, *Inquiry into Migration Amendment (Family Violence and Other Measures) Bill 2016*, op. cit., p. 3.

9. DIBP, '[Sponsorship for a partner to migrate to Australia](#)', Form 40SP, DIBP website.

10. DIBP, '[Partner migration](#)', DIPB website, p. 14.

11. Australian Law Reform Commission (ALRC), [Family violence and Commonwealth laws: improving legal frameworks](#), Report, 117, Chapter 20, Migration law: the family violence exception, ALRC, Sydney, 8 February 2011, p. 507.

A decision to refuse a visa on the basis that the sponsorship has not been approved is merits reviewable (refer to s337 and s338 of the Act).<sup>12</sup>

## **Existing protections for visa applicants**

### *The family violence exception*

The family violence provisions allow **certain people applying for permanent residence in Australia to continue with their application after the breakdown of their married or de facto relationship, if they or a member of their family unit have experienced family violence by their partner.** The provisions were introduced in response to concerns that some partners might remain in an abusive relationship because they believe they may be forced to leave Australia if they end their relationship.<sup>13</sup>

Partners of Australian citizens, Australian permanent residents and eligible New Zealand citizens who apply to live permanently in Australia undergo a two-stage visa application process. If the applicant's relationship breaks down after they have applied for permanent residence, the applicant can still be considered for permanent residence if they provide acceptable evidence that they or their dependants have been the victim of family violence committed by their Australian partner.<sup>14</sup>

Relevant family violence is defined as:

conduct, whether actual or threatened, towards:

- the alleged victim
- a member of the family unit of the alleged victim
- a member of the family unit of the alleged perpetrator
- the property of the alleged victim
- the property of a member of the family unit of the alleged victim
- the property of a member of the family unit of the alleged perpetrator

that causes the alleged victim to reasonably fear for, or to be reasonably apprehensive about, his or her own wellbeing or safety.<sup>15</sup>

Relevant family violence is not limited to physical harm. It may also include other forms of abuse such as psychological and/or financial abuse, which is consistent with the above definition.

### *Limitations on sponsorship*

**There are currently some limitations on sponsorship. A sponsor who has previously sponsored a partner or prospective marriage visa applicant cannot sponsor another applicant until at least five years have passed. A person may sponsor only two partner or prospective marriage visa applicants in total.**<sup>16</sup> In addition, sponsors cannot sponsor a child where they have an unresolved charge or a conviction for a 'registrable offence'.<sup>17</sup> The

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12. DIBP, 'PAM3: Div 1.4 - Form 40 sponsors and sponsorship', Legend database.

13. DIBP, [Family violence provisions](#), fact sheet, DIBP website.

14. Ibid.

15. 'Relevant family violence' is defined in Migration Regulations 1994, Regulation 1.21.

16. DIBP, [Family stream migration: partners](#), fact sheet, DIBP website.

17. DIBP, Submission to Senate Legal and Constitutional Affairs Committee, *Inquiry into Migration Amendment (Family Violence and Other Measures) Bill 2016*, op. cit., p. 7. Migration Regulations 1994, Regulation 1.20KB(13) defines 'registrable offence' as: (1) a registrable offence within the meaning of, or an offence that would be registrable under the following Acts if it were committed in that jurisdiction: *Child Protection (Offenders Registration) Act 2000* (NSW); *Sex Offenders Registration Act 2004* (Vic); *Child Sex Offenders Registration Act 2006* (SA); *Crimes (Child Sex Offenders) Act 2005* (ACT); or (2) a reportable offence within the meaning of the following Acts: the *Child Protection (Offender Reporting) Act 2004* (Qld); *Community Protection (Offender Reporting) Act 2004* (WA); *Community Protection (Offender Reporting) Act 2005* (Tas); *Child Protection (Offender Reporting and Registration) Act* (NT).

ALRC is of the view that these existing limitations provide ‘a measure of protection for victims of family violence’.<sup>18</sup>

### *Assessment of a sponsor’s character*

Under Departmental policy, the sponsor’s character is generally not a relevant factor in assessing whether they can be approved as a sponsor. However, the sponsor’s character is relevant if the sponsor is claiming eligibility to sponsor as an eligible New Zealand citizen or a child under the age of 18 is included in a child or partner category visa application and the sponsor (or the sponsor’s partner in child category applications) has a conviction or outstanding charge for offences against children.

To determine whether a sponsor, or the spouse or de facto partner of a sponsor, has been charged with, or convicted of, a registrable offence, the Minister may request the sponsor, or the spouse or de facto partner of the sponsor, to provide a police check from:

- a) a jurisdiction in Australia or
- b) a country in which the sponsor or the spouse or de facto partner has lived for a period, or a total period, of at least 12 months.<sup>19</sup>

The Minister must refuse to approve a sponsorship if the sponsor has been charged or convicted of a ‘registrable offence’<sup>20</sup> unless none of the applicants is under 18 at the time of the decision on the application or any charge has been disposed of without conviction or the conviction quashed or otherwise set aside.<sup>21</sup>

There are circumstances where the Minister may nonetheless decide to approve the sponsorship. For example:

- the sponsor has completed the imposed sentence more than five years before the date of the application for approval of the sponsorship
- if the sponsor has been charged with a registrable offence since the sponsor completed that sentence — the charge has been withdrawn, dismissed or otherwise disposed of without the recording of a conviction, and
- there are compelling circumstances affecting the sponsor or the applicant.<sup>22</sup>

### *Family Safety Pack*

The Australian Government has developed a Family Safety Pack for men and women coming to Australia. It includes information on Australia’s laws regarding domestic and family violence, sexual assault and forced marriage, and a woman’s right to be safe. The pack includes four factsheets on: domestic and family violence; sexual assault; forced and early marriage; and family violence and partner visas. The pack also includes important information about essential services and emergency contacts in Australia and is translated into 46 languages. The family safety pack is a key initiative of the Second Action Plan of the *National Plan to Reduce Violence against Women and their Children 2010–2022*.<sup>23</sup>

### **Sponsor undertakings**

Paragraph 1.20(2)(c) of the Migration Regulations relevantly provides that a sponsor of a partner visa undertakes to assist the applicant, to the extent necessary, financially and in relation to accommodation:

- (i) if the applicant is in Australia—during the period of 2 years immediately following the grant of the provisional or temporary visa; or

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18. ALRC, *Family violence and Commonwealth laws*, op. cit., p. 506.

19. [Migration Regulations 1994](#), subregulation 1.20KB(11).

20. ‘Registrable offence’ is defined in subregulation 1.20KB(13).

21. Migration Regulations 1994, subregulations 1.20KB(2) and (3).

22. Migration Regulations 1994, subregulation 1.20KB(5).

23. Department of Social Services (DSS), ‘[Family Safety Pack](#)’, DSS website, last updated 5 April 2016. DSS, [The National Plan to Reduce Violence against Women and their Children 2010–2022](#), DSS website, last updated 12 January 2015.

- (ii) if the applicant is outside Australia—during the period of 2 years immediately following the applicant's first entry into Australia after the grant of the provisional or temporary visa.<sup>24</sup>

Current Departmental policy is that when assessing a sponsorship in relation to a partner or prospective marriage visa application, it is generally accepted that, by signing form 40 SP sponsorship undertaking, a sponsor agrees to undertake the obligations required of them as stipulated in regulation 1.20. If officers have doubt about a sponsor's intention to comply, however, it is open to them to request more information or supporting documents.<sup>25</sup>

### **Recent Regulation change to strengthen integrity and improve support for vulnerable applicants**

On 1 September 2016, the same day the current Bill was introduced into Parliament, the Governor-General made [Migration Legislation Amendment \(2016 Measures No. 3\) Regulation 2016](#).<sup>26</sup> Schedule 6 amends Division 1.4B of Part 1 of the Migration Regulations relating to family violence and commences on 18 November 2016. This Schedule amends the Migration Regulations to implement part of the [National Plan to Reduce Violence against Women and their Children 2010–2022](#),<sup>27</sup> developed by Commonwealth, state and territory governments and the community to reduce violence against women and their children. More explicitly, it implements action item 11 from the [Second Action Plan 2013–16](#),<sup>28</sup> which requires additional information disclosure by the Australian husband or fiancé:

#### **Action 11 - Reducing violence against women in CALD [culturally and linguistically diverse] communities**

During the First Action Plan, changes were made to the Migration Regulations 1994 to improve the operation and accessibility of the family violence provisions. Following this, under the Second Action Plan, 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; and
- development of resource materials to inform and support these overseas spouses, including information about essential services and emergency contacts in Australia.

Opportunities to assist women on other visas who are experiencing violence will also be explored further.<sup>29</sup>

These regulatory amendments are designed to support applicants for temporary<sup>30</sup> partner visas by:

- providing the Minister with the power to request a police check from the sponsor from a jurisdiction in Australia and/or foreign country (provided the sponsor has lived in a foreign country for more than 12 months and less than 10 years prior to the date of the request)<sup>31</sup> and to refuse to approve the sponsorship of all visa applicants if a requested police check is not provided
- requiring the Minister to refuse to approve the sponsorship of each applicant for the visa if the sponsor has been convicted of a 'relevant offence'<sup>32</sup> and, as a result of those convictions, has a 'significant criminal

24. Migration Regulations 1994, subregulations 1.20KB(2).

25. DIBP, 'PAM3: Div 1.4 - Form 40 sponsors and sponsorship', Legend database.

26. [Migration Legislation Amendment \(2016 Measures No. 3\) Regulation 2016](#).

27. DSS, [The national plan to reduce violence against women and their children 2010–2022](#), 2011, DSS website.

28. DSS, [Moving ahead: the Second Action Plan 2013–16 of the National Plan to reduce violence against women and their children 2010–2022](#), [September 2014], DSS website.

29. *Ibid.*, p. 27.

30. As the changes in Schedule 6 are intended to apply to new visa applications made on or after the commencement date, and given that a person can only be granted a permanent partner visa (that is, a Partner (Migrant) (Class BC) visa or a Partner (Residence) (Class BS) visa) if they first hold a temporary partner visa, it is sufficient for this regulation to apply to temporary partner visa applications: Statement of Compatibility with Human Rights, [Migration Legislation Amendment \(2016 Measures No. 3\) Regulation 2016](#), p. 34.

31. Migration Regulations 1994, subregulation 1.20KC(5).

32. 'Relevant offence' is broadly defined to include the types of offences which are indicative of a sponsor's propensity to violence, other abusive behaviours and offences committed against potentially vulnerable people: Migration Regulations 1994, subregulation 1.20KC(2).

record'.<sup>33</sup> However, the Minister may approve the sponsorship if he considers it reasonable to do so, having regard to matters such as the length of time that has elapsed since the sponsor completed the sentence for the relevant offence, the best interests of any children and the length of the relationship between the sponsor and the applicant.<sup>34</sup>

- allowing the Department to disclose any conviction of the sponsor for a relevant offence to each visa applicant included in the sponsorship, with the sponsor's consent.<sup>35</sup>

This regulatory change will undoubtedly strengthen the integrity of the programme and improve support for applicants by giving the Department the ability to share the sponsor's relevant offences with the applicant so they can decide whether to continue with the visa application process and by refusing to approve the sponsorship for people with serious and violent criminal pasts, and thereby preventing a visa from being granted to potentially vulnerable people.<sup>36</sup>

### **Australian Law Reform Commission's previous consideration of the need for a sponsorship framework for the sponsored family visa program**

In 2011 the Australian Law Reform Commission (ALRC) released a Discussion Paper asking whether there was a need to amend the *Migration Act* and Migration Regulations to provide for a separate and reviewable criterion for the grant of a visa:

It was envisaged that such a reform may provide a framework in which to assess the character of the sponsor. Parallels were drawn with the requirements for sponsorship of a child, whereby a sponsor must undergo a character assessment, and the sponsorship must be refused for people who have a conviction or have committed a registrable offence. [Footnotes omitted].<sup>37</sup>

In its 2011 Report which followed that Discussion Paper, [Family Violence and Commonwealth Laws—Improving Legal Frameworks](#),<sup>38</sup> the ALRC did not recommend any changes to the sponsorship requirements 'in light of the difficulties in implementing a separate sponsorship criterion without breaching Australia's international obligations, and adequate framing of procedural fairness and privacy obligations to the sponsor'.<sup>39</sup> It relevantly observed:

#### **The problematic nature of regulating sponsorship**

20.75 Stakeholders considered the introduction of a separate criterion for sponsorship in partner visas to be problematic. DIAC [Department of Immigration and Citizenship] submitted that:

*Such measures could lead to claims that the Australian Government is arbitrarily interfering with families, in breach of its international obligations. It could also lead to claims that the Australian government is interfering with relationships between Australians and their overseas partners in a way it would not interfere in a relationship between two Australians.*

20.76 The LIV [Law Institute of Victoria] argued that 'issues of procedural fairness to the alleged perpetrator, privacy and discrimination outweigh any potential gains from disclosure to the applicant'.

20.77 On the other hand, some stakeholders supported having a separate criterion for sponsorship, 'as it would prevent many potential victims from being sponsored initially'. There were concerns that despite the current limitations on sponsorships, 'there are a number of ways to subvert the existing protections such as marrying within

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33. 'Significant criminal record' includes a sentence of imprisonment of 12 months or more (or two or more terms of imprisonment where the total of those terms is 12 months or more): Migration Regulations 1994, subregulation 1.20KD(1).

34. Migration Regulations 1994, subregulation 1.20KC(4).

35. If the prospective sponsor does not provide the consent, then the visa applicant would not meet the criteria for the grant of visa: Migration Regulations 1994, subclauses 300.222(2) and 309.222(2).

36. Statement of Compatibility with Human Rights, [Migration Legislation Amendment \(2016 Measures No. 3\) Regulation 2016](#).

37. ALRC, *Family violence and Commonwealth laws*, op. cit.

38. Ibid.

39. Ibid., p. 506.

the newly arrived migrant sector/community as opposed to re-sponsoring from outside Australia'. The Refugee and Immigration Legal Service (RAILS) stated that:

*sponsors should submit to a police check in relation to past family violence convictions or protection orders when making an application to sponsor a spouse/de facto partner and that there be a discretionary power for the decision maker to refuse approval of the sponsorship on that basis.*

20.78 DIAC noted that there may be a 'risk that Australian sponsors could be disadvantaged by previous conduct that occurred a long time ago'.

20.79 The ALRC reiterates its view expressed in *Equality Before the Law*, that the 'Australian government has a special responsibility to immigrant women who are particularly vulnerable to abuse and the consequences of abuse'. Rather than instituting a separate criterion for sponsorship, the ALRC considers that the safety of victims of family violence can be promoted through targeted education and information dissemination. [Footnotes omitted].<sup>40</sup>

The Government's Statement of Compatibility with Human Rights notes the following with respect to the right to family and rights relating to children:

Any limitations on the right to family, through the ability to refuse sponsorship for a family visa, are reasonable and necessary for the safety and welfare of prospective migrants and minor children, who are among the most vulnerable in the community ... The continuation of existing waiver and appeal provisions ensure that children will not be arbitrarily denied access to their parents.<sup>41</sup>

With respect to the right not to be tried or punished twice, the Government's statement relevantly observes:

Under the proposed sponsorship framework, sponsor applicants will be subject to refusal as a result of certain past convictions. The refusal authority will be a discretionary power that will balance the relevant past history of the sponsor applicant with both their right of access to other family members and possible risk to other family members. Those sponsors refused will be afforded natural justice and can seek merits review of the decision.<sup>42</sup>

Finally, with respect to the right to privacy, the Government notes:

Any limitations to privacy are required to ensure all parties to an application are fully aware of their prospective partner's history, especially with regards to instances of family violence or previous sponsorships. Personal information collected, used, stored and disclosed during this process will be treated in accordance with the *Privacy Act 1988*.<sup>43</sup>

On the basis of this cursory analysis, it is arguable that the Government's assessment does not adequately address Australia's international obligations, especially with respect to the concerns raised by the Department itself when the issue was being considered by the ALRC.<sup>44</sup>

### ***What are the main concerns/issues with the Bill?***

The main concerns raised by interest groups who made submissions to the Senate Legal and Constitutional Affairs Legislation Committee's inquiry into the earlier Bill include:

- the measures proposed represent a fundamental change to Australia's family migration program with consequences extending beyond family violence<sup>45</sup>

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40. *Ibid.*, pp. 506–508. For further information about education, training and information dissemination see paragraphs pp. 508–12 of the ALRC report.

41. Statement of Compatibility with Human Rights, *op. cit.*, pp. 24–25.

42. Statement of Compatibility with Human Rights, *op. cit.*, p. 25.

43. Statement of Compatibility with Human Rights, *op. cit.*, p. 24.

44. See also Law Council of Australia, [Submission](#) to Senate Legal and Constitutional Affairs Committee, *Inquiry into Migration Amendment (Family Violence and Other Measures) Bill 2016*, (March 2016 Bill), 18 April 2016, p. 7.

45. Australian National University (ANU) College of Law Migration Law Program, [Submission](#) to Senate Legal and Constitutional Affairs Committee, *Inquiry into Migration Amendment (Family Violence and Other Measures) Bill 2016*, (March 2016 Bill), 14 April 2016.

- family violence victims are already afforded a measure of protection by the sponsorship limitations and the ‘family violence exception’ which allows a person to leave a violent relationship without jeopardising their visa status<sup>46</sup>
- the proposed amendments have the potential to conflict with Australia’s international human rights obligations including the principle of non-interference with the family unit and non-discrimination. Given the protections already in place, the provisions are not reasonable or proportionate to achieve a legitimate objective and there is no basis for the Government’s interference<sup>47</sup>
- aligning family sponsorship with temporary work sponsorship has no explained merit and may run counter to the objectives of the Bill (which includes protecting vulnerable women and children) because family sponsors are different from work sponsors in that the facts of the relationship are inextricably linked to the assessment of the sponsorship<sup>48</sup>
- the amendments make the administration of the migration system more onerous by adding another layer to the decision-making process. The sponsorship approval process should be part of the visa application process so that processing periods are shortened (first stage processing can currently take in excess of 24 months) and so visa applicants can remain in Australia while the sponsor pursues merits review of an adverse decision<sup>49</sup>
- the Bill does not specify the criteria to be satisfied by a sponsor but any such criteria should be directed solely to the welfare and safety of a visa applicant and not involve consideration of the sponsor’s character or criminal history because having a criminal past does not necessarily mean that they pose an unacceptable risk to the visa applicant and could lead to discrimination and double punishment. Also, no provision appears to have been made for a disclosure exception under the Commonwealth’s Spent Convictions Scheme under which an individual is permitted not to disclose certain criminal convictions in particular circumstances. The ability to cancel an approved sponsorship means that a visa applicant will no longer be eligible to be granted a visa or liable for visa cancellation and removal which may in turn deter full disclosure which would be counterproductive to the aims of the Bill<sup>50</sup>
- existing powers largely address many of the concerns surrounding inappropriate use of the program, serial sponsors, and protection of children<sup>51</sup>
- the Migration Regulations 1994 could easily be amended to explicitly require that sponsors for a family visa must supply a police check. However, there are inherent difficulties in relying on police checks as evidence of previous behaviour because different countries and their respective legal systems have different understandings and laws concerning family violence which means incidents may not be recorded by the police, just as family violence is under-reported in Australia<sup>52</sup>
- the imposition of statutory obligations and sanctions has not been defined, justified or explained. Depending on the nature of the obligations to be imposed, they have the potential to place greater hardship on applicants and prevent applicants achieving the basic right to companionship and family life. For example, requiring a sponsor to meet minimum financial thresholds for sponsorship (as was done in the United Kingdom) could prevent newly arrived migrants (such as refugees) and other lower-income citizens from sponsoring their partners<sup>53</sup>
- it may be inappropriate to impose sanctions if the failure to comply with an obligation is due to family violence (manipulative or controlling behaviour) as sanctioning a sponsor may place the applicant at a

46. Ibid.

47. Law Council of Australia, [Submission](#) to Senate Legal and Constitutional Affairs Committee, *Inquiry into Migration Amendment (Family Violence and Other Measures) Bill 2016*, (March 2016 Bill), 18 April 2016.

48. Migration Institute of Australia (MIA), [Submission](#) to Senate Legal and Constitutional Affairs Committee, *Inquiry into Migration Amendment (Family Violence and Other Measures) Bill 2016*, (March 2016 Bill), 11 April 2016.

49. Law Council of Australia, *Submission to Senate Legal and Constitutional Affairs Committee*, op. cit.

50. Ibid.; Immigration Advice and Rights Centre (IARC), [Submission](#) to Senate Legal and Constitutional Affairs Committee, *Inquiry into Migration Amendment (Family Violence and Other Measures) Bill 2016*, (March 2016 Bill), 13 April 2016.

51. ANU College of Law Migration Law Program, *Submission to Senate Legal and Constitutional Affairs Committee*, op. cit.

52. Federation of Ethnic Communities’ Councils of Australia (FECCA), [Submission](#) to Senate Legal and Constitutional Affairs Committee, *Inquiry into Migration Amendment (Family Violence and Other Measures) Bill 2016*, (March 2016 Bill), 11 April 2016.

53. ANU College of Law Migration Law Program, *Submission to Senate Legal and Constitutional Affairs Committee*, op. cit.

greater risk of harm. If the failure to comply is because of severe financial hardship then the imposition of sanctions will only add to the existing hardship and deter people from seeking aid and assistance<sup>54</sup>

- the provisions are intended to prevent people from entering into relationships where there is a risk of family violence but such decisions ought to be made by the individuals themselves, rather than by the Government<sup>55</sup>
- information sharing should not extend to prior migration-related activities or matters that are not relevant to the safety and welfare of the visa applicant. Also it is not clear why it is reasonable or necessary for the information to be disclosed to other agencies. Provisions enabling the sharing of information need to undergo rigorous scrutiny to ensure that the prescribed information that can be shared does not infringe the privacy of the Australian sponsor or the visa applicant<sup>56</sup>
- a Privacy Impact Assessment (PIA) should have been prepared to provide an additional safeguard and scrutiny mechanism. Greater certainty about the privacy impacts of the new framework could be achieved by specifying some of the detail in the Bill (such as some kinds of personal information that the Minister may disclose) with the possibility of further prescriptions being made in the Regulations. A requirement that the Minister notify an individual that personal information about them has been disclosed and a requirement that the Minister consider the privacy of individuals before disclosing personal information could extend the protection of an individual's privacy<sup>57</sup>
- there are alternative methods to strengthen the integrity of Partner visas and the protection for family violence victims<sup>58</sup>
- far greater resources and initiatives are required to genuinely improve the management of family violence in the visa program, and these must go beyond the refusal of the sponsor's application<sup>59</sup>
- the Government should take further action to provide support to migrants who have experienced family violence, by broadening the definition of family violence in the Migration Regulations, as recommended by the Victorian Royal Commission into Family Violence. This would allow a person who experiences violence perpetrated by a family member other than the person's spouse to apply for the 'family violence exception' and by adopting the recommendations made by the ALRC that the family violence exception be expanded to cover secondary applicants for onshore permanent visas, and holders of a Prospective Marriage (Subclass 300) visa who have experienced family violence but who have not married their Australian sponsor.<sup>60</sup>

## Committee consideration

### ***Senate Legal and Constitutional Affairs Legislation Committee***

The earlier version of this Bill was referred to the Senate Legal and Constitutional Affairs Legislation Committee for inquiry and report by 10 May 2016.<sup>61</sup> However, this inquiry lapsed upon dissolution of the Senate and the House of Representatives on 9 May 2016 for the general election on 2 July 2016.<sup>62</sup> The Committee received nine submissions.<sup>63</sup> The views expressed therein are summarised above under the heading '[What are the main concerns/issues with the Bill?](#)'.

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54. IARC, Submission to Senate Legal and Constitutional Affairs Committee, op. cit.

55. ANU College of Law Migration Law Program, Submission to Senate Legal and Constitutional Affairs Committee, op. cit.

56. IARC, Submission to Senate Legal and Constitutional Affairs Committee, op. cit.

57. Law Council of Australia, Submission to Senate Legal and Constitutional Affairs Committee, op. cit.; Office of the Australian Information Commissioner, [Submission](#) to Senate Legal and Constitutional Affairs Committee, *Inquiry into Migration Amendment (Family Violence and Other Measures) Bill 2016*, (March 2016 Bill), 12 April 2016.

58. ANU College of Law Migration Law Program, Submission to Senate Legal and Constitutional Affairs Committee, op. cit.

59. Coalition Against Trafficking in Women Australia (CATWA), [Submission](#) to Senate Legal and Constitutional Affairs Committee, *Inquiry into Migration Amendment (Family Violence and Other Measures) Bill 2016*, (March 2016 Bill), 6 April 2016.

60. ANU College of Law Migration Law Program, Submission to Senate Legal and Constitutional Affairs Committee, op. cit.; Law Council of Australia, Submission to Senate Legal and Constitutional Affairs Committee, op. cit.

61. Senate Legal and Constitutional Affairs Legislation Committee, [Inquiry into Migration Amendment \(Family Violence and Other Measures\) Bill 2016](#), The Senate, Canberra, 2016.

62. Ibid.

63. Submissions to the Senate Legal and Constitutional Affairs Committee, *Inquiry into Migration Amendment (Family Violence and Other Measures) Bill 2016*, (March 2016 Bill), op. cit.

On 15 September 2016, the Senate again referred the Bill to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 10 October 2016.<sup>64</sup> The Committee recommended that the Senate pass the Bill.<sup>65</sup> On the basis of ‘significant concerns’ about the Bill raised by submitters, the Australian Greens issued a dissenting report recommending that the Senate reject the Bill and calling for ‘increased education on rights and supports available to respond to family violence for Spouse Visa and Partner Visa holders’.<sup>66</sup>

## Senate Standing Committee for the Scrutiny of Bills

The Senate Standing Committee for the Scrutiny of Bills considered the earlier version of the Bill and commented on the delayed/uncertainty of commencement.<sup>67</sup> However, the commencement of this Bill has been changed to 1 July 2017, thereby arguably negating the Committee’s previous concerns.

## Policy position of non-government parties/independents

At time of writing it is not known whether the Opposition and the crossbenchers will support or oppose the Bill.

## Position of major interest groups

While the majority of submitters to the Senate Legal and Constitutional Affairs Legislation Committee’s inquiry into the earlier Bill supported the broad policy objective of improving the management of family violence in the delivery of the program, they largely opposed the measures contained in the earlier Bill (as drafted) and supported the recommendations of the ALRC (as discussed above).<sup>68</sup>

## Financial implications

The Explanatory Memorandum notes that the financial impact of the Bill is low. Any costs associated with the implementation of the proposed amendments will be met from within existing resources of the Department of Immigration and Border Protection.<sup>69</sup>

## Statement of Compatibility with Human Rights

As required under Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible.<sup>70</sup>

## Parliamentary Joint Committee on Human Rights

The Committee examined the earlier Bill in its Thirty-seventh report of the 44th Parliament. It concluded that the Bill did not raise human rights concerns.<sup>71</sup>

## Key provisions

### Definitions

Currently the *Migration Act* applies a sponsorship framework only in relation to the temporary sponsored work visa program. As discussed above, **the Bill proposes to extend this framework to the sponsored family visa program. Items 1 to 3 of the Bill make changes to the definitions in section 5 of the Act to facilitate this change. Currently section 5 contains a definition of ‘approved sponsor’, which will be repealed and replaced by item 2 of the Bill to encompass an ‘approved family sponsor’ and an ‘approved work sponsor’.** Definitions of these terms will be inserted by **items 1 and 3** respectively.

An **‘approved family sponsor’ (item 1)** will be a person approved by the Minister as a family sponsor under section 140E of the Act whose approval has not been cancelled under section 140M or ceased to have effect

64. Senate Standing Committee for Selection of Bills, [Report](#), 6, 2016, The Senate, 15 September 2016, p. 3.

65. Senate Legal and Constitutional Affairs Legislation Committee, [Inquiry into Migration Amendment \(Family Violence and Other Measures\) Bill 2016](#), The Senate, Canberra, 10 October 2016.

66. Australian Greens, [Dissenting report](#), Senate Legal and Constitutional Affairs Legislation Committee, *Inquiry into Migration Amendment (Family Violence and Other Measures) Bill 2016*, The Senate, Canberra, 10 October 2016, pp. 29–30.

67. Senate Standing Committee for the Scrutiny of Bills, [Alert digest](#), 5, 2016, The Senate, 3 May 2016.

68. Submissions to the Senate Legal and Constitutional Affairs Committee, *Inquiry into Migration Amendment (Family Violence and Other Measures) Bill 2016*, (March 2016 Bill), op. cit.

69. [Explanatory Memorandum](#), Migration Amendment (Family Violence and Other Measures) Bill 2016, p. 1.

70. The Statement of Compatibility with Human Rights can be found at page 22 of the Explanatory Memorandum to the Bill.

71. Parliamentary Joint Committee on Human Rights, [Thirty-seventh report of the 44th Parliament](#), 2 May 2016, p. 1.

under section 140G. (Sections 140E, 140G and 140M will be amended by **items 12 to 17, 20 to 21 and 51 to 54**, as discussed below.)

An **'approved work sponsor'** (**item 3**) will be a person approved by the Minister as a work sponsor under section 140E of the Act whose approval has not been cancelled under section 140M or ceased to have effect under section 140G.

### ***Changes to Division 3A of Part 2 of the Act—Sponsorship***

Section 140AA of the Act currently sets out the purposes of the temporary sponsored work visa program, as contained in Division 3A of Part 2 of the Act. As the Bill will amend Division 3A of Part 2 so that it encompasses both work sponsorship **and family sponsorship**, section 140AA needs to be amended to reflect the purposes of both types of sponsorship. This is achieved by **items 4 to 10** of the Bill.

The current purposes of the Division will become the purposes of the temporary sponsored work visa program in new subsection 140AA(1) (**items 5 to 9**). The purposes of the sponsored family visa program are set out at **proposed subsections 140AA(2)** as:

- strengthening the integrity of the program
- placing greater emphasis on the assessment of persons as family sponsors and
- improving the management of family violence in the delivery of the program.

**Proposed subsection 140AA(3)** provides that these purposes are to be achieved by establishing a framework:

- **requires the approval of persons as family sponsors before any visa applications are made**
- imposes obligations on persons who are or were approved family sponsors
- provides for sanctions if obligations are not met and
- facilitates the **sharing of personal information**.

### ***Minister to approve family sponsors***

The Minister currently approves sponsors in connection with the temporary sponsored work visa program under section 140E. **Items 12 to 17** of the Bill propose amendments so that section 140E will cover approval of family sponsors as well. Work sponsors will continue to be approved under subsection 140E(1), as amended by **items 13 and 14**. **Item 15** inserts **proposed subsection 140E(1A)**, which will cover family sponsors. It will require the Minister to approve a family sponsor in relation to one or more classes set out in the regulations for the purposes of section 140E(2), if prescribed criteria have been satisfied. Subsection 140E(2), as amended by **item 16**, will provide that the regulations must prescribe classes in relation to which a person may be approved as a work sponsor or a family sponsor.<sup>72</sup> Subsection 140E(3), as amended by **item 17**, will allow the regulations to prescribe different criteria for different kinds of visa, different classes of approved work sponsor or family sponsor, and different classes of people within those classes.

### ***Minister's responsibility in relation to sponsorship obligations***

Section 140 of the Act requires a person who is approved as a sponsor to satisfy the sponsorship obligations prescribed by the Regulations. **Item 33** will amend section 140 so that it will cover both work sponsors and family sponsors and allow different kinds of obligations to be prescribed for each. Section 140HA of the Act requires the Minister to take all reasonable steps to ensure that the regulations made for the purpose of section 140 include specific obligations, such as the requirement to pay a market salary rate, pay the costs of locating and removing a former visa holder from Australia and ensuring that the visa holder participates in an occupation, program or activity nominated by the sponsor. **Items 34 to 38** amend section 140HA to specify that the obligations currently listed in that section are relevant only to work sponsors.

**Item 39** inserts **proposed subsections 140HA(2A) and (2B)** which refer specifically to approved family sponsors.

**Proposed subsection 140HA(2A)** requires the Minister to ensure that regulations made under section 504 (the regulation making power in the Act) include obligations to keep and provide information to the Minister and to notify the Minister of any changes in the circumstances of the person, a visa holder or a former visa holder.

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72. Regulation 2.58 of the Migration Regulations sets out the classes of sponsor for the purposes of current subsection 140E(2).

**Proposed subsection 140HA(2B)** provides that these obligations may apply to all approved family sponsors or specified classes of sponsors.

### ***Disclosure of personal information***

Section 140ZH of the Act sets out the parties to whom the Minister may disclose personal information about visa holders and sponsors. The information that may be disclosed and the circumstances under which such disclosures may be made are set out in the regulations.<sup>73</sup> The regulations also prescribe the circumstances under which the recipient may use or disclose the provided personal information.<sup>74</sup> Currently, these disclosures concern only the sponsored work visa program.

**Item 61** repeals and replaces existing subsection 140ZH(1) with **proposed subsections 140ZH(1) and 140ZH(1A)**. **Proposed subsection 140ZH(1)** will maintain the current parties to whom information may be disclosed in relation to work sponsors and related visa holders, but has been redrafted.

**Proposed subsection 140ZH(1A)** will set out the parties to whom information relating to a family sponsor or related visa applicant may be disclosed. It will provide for the following disclosures in Table 1:

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73. Regulations 2.103 and 2.104 of the Migration Regulations.

74. Regulation 2.105 of the Migration Regulations.

**Table 1: Disclosure of personal information**

Disclosure of personal information		
Column 1	Column 2	Column 3
Item	If the personal information is about ...	then, the Minister may disclose that personal information to the following ...
1	a person who proposes to apply for a visa of a prescribed kind (however described)	(a) an applicant for approval as a family sponsor in relation to the person; (b) an approved family sponsor of the person; (c) an agency of the Commonwealth, or of a State or Territory, prescribed by the regulations
2	a person who is an applicant for, or a holder or former holder of, a visa of a prescribed kind (however described)	(a) an approved family sponsor of the person; (b) an agency of the Commonwealth, or of a State or Territory, prescribed by the regulations
3	an applicant for approval as a family sponsor	(a) a person who proposes to apply for a visa if the applicant is approved as a family sponsor; (b) an agency of the Commonwealth, or of a State or Territory, prescribed by the regulations
4	an approved family sponsor of a person mentioned in item 1 or 2 of this table	(a) the person; (b) an agency of the Commonwealth, or of a State or Territory, prescribed by the regulations
5	a former approved family sponsor of a person who is an applicant for, or a holder of, a visa of a prescribed kind (however described)	(a) the person; (b) an agency of the Commonwealth, or of a State or Territory, prescribed by the regulations

Source: **proposed subsection 140ZH(1A)** of the *Migration Act*, at **item 61** of the Bill.

This provision will allow disclosure of the prescribed personal information about an applicant for approval as a family sponsor to the prospective visa applicant. The Minister has indicated that this personal information will include police checks.<sup>75</sup> The circumstances in which such disclosures may be made may be set out in the

75. Dutton, 'Second reading speech: 'Migration Amendment (Family Violence and Other Measures) Bill 2016', op. cit.

regulations (subsection 140ZH(2) as amended by **item 62** of the Bill). **Item 71** of the Bill provides that new subsections 140ZH(1) and (1A) apply in relation to the disclosure of personal information after the Bill commences, regardless of whether that information was collected before or after that time.

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