



Law Council
OF AUSTRALIA

Amendments to the migration framework to support visa holders experiencing domestic and family violence

Department of Home Affairs

31 July 2023

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- Law Society of the Australian Capital Territory
- New South Wales Bar Association
- Law Society of New South Wales
- Northern Territory Bar Association
- Law Society Northern Territory
- Bar Association of Queensland
- Queensland Law Society
- South Australian Bar Association
- Law Society of South Australia
- Tasmanian Bar
- Law Society of Tasmania
- The Victorian Bar Incorporated
- Law Institute of Victoria
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Through this representation, the Law Council acts on behalf of more than 90,000 Australian lawyers.

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The Chief Executive Officer of the Law Council is Dr James Pople. The Secretariat serves the Law Council nationally and is based in Canberra.

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Acknowledgments

The Law Council of Australia is grateful to the Migration Law Committee of its Federal Dispute Resolution Section, as well as the Law Society of New South Wales (**LSNSW**), Queensland Law Society (**QLS**), and Law Institute of Victoria (**LIV**).

Executive Summary

1. The Law Council of Australia welcomes the opportunity to make this submission to the Department of Home Affairs' (the **Department's**) consultation on visa reforms for Domestic and Family Violence (**DFV**) victim-survivors.
2. The Law Council welcomes the Department's review of the appropriateness of current policy settings in relation to visas for persons experiencing DFV. The Law Council also welcomes the allocation of funding in the 2023–24 Budget for the expansion of the Family Violence Provisions (**FVPs**) in the Migration Regulations 1994 (Cth) (the **Regulations**).¹ As set out below, this is an issue that the Law Council has highlighted as of concern for several years,² and therefore it welcomes these steps.
3. Visa status and deportation threats by a perpetrator in a domestic or family setting represent acts of DFV.² Temporary migration status creates significant leverage for control and intimidation by an abusive partner. In the experience of practitioners, visa dependence is a key barrier to accessing legal or social support for domestic and family violence. Where a victim of domestic and family violence holds a visa that is conditional upon the existence of the relationship with their perpetrator, the capacity for the victim to access support and escape the violence is limited.
4. The Law Council's key concern is to ensure that DFV victim-survivors do not lose an entitlement to a visa, nor the chance to apply for a visa, as a direct or indirect consequence of the DFV they have suffered. As an overarching consideration, visa applicants and holders who experience DFV should, at a minimum, be no worse off with respect to their visa status if they disclose DFV to the Department.
5. The Law Council also calls for guaranteed access to necessary supports and services, as well as work, study and travel rights, for victim-survivors, and expedited processing of their DFV claims so that they are not compelled to return to situations of danger and/or trauma.
6. In pursuit of these goals, the Law Council supports:
 - the expansion of the FVPs to other permanent visa categories or temporary visas on a clear pathway to permanent residency (including those under which secondary applicants are or can be included as dependants);
 - the introduction of a new temporary visa for temporary visa holders who have not lodged permanent residence applications, but who have experienced DFV and therefore are unable to comply with their current visa conditions and/or are at risk of having, or have had, their visas cancelled;
 - access to the FVPs not being limited to DFV occurring within Australia;
 - the application of the FVPs being expanded to unmarried Subclass 300 (Prospective Marriage) visa holders to enable them to apply for a Subclass 820 (Partner) visa without being married;

¹ See *Increased support to end violence against women and children*, Ministerial Media Release, 9 May 2023: <<https://ministers.dss.gov.au/media-releases/11156>>.

² See the Law Council's *Model Definition of Family Violence*: <<https://lawcouncil.au/policy-agenda/advancing-the-profession/model-definition-of-family-violence>>. Visa-related threats may constitute financial, emotional and/or psychological abuse.

- applicants being able to apply for Subclass 309 (Partner (Provisional)) visas offshore (particularly where there are Australian citizen dependants involved) and/or where the applicants have previously been in Australia;
 - the FVPs being extended to all Subclass 309 applicants in Australia and not limited to those who are under the COVID-19 concession; and
 - changes in evidentiary requirements for partner visas (including not only those already made in the recent transition to the new Migration (Specification of evidentiary requirements-family violence) Instrument (LIN 23/026) 2023 (**LIN 23/026**),³ but also potential further changes as suggested below).
7. Detailed answers to the questions set out in the Department's Consultation Paper *Amendments to the migration framework to support visa holders experiencing domestic and family violence* are set out below. The answers are informed by the experience and insights of practitioners.

Consultation Topics

Part A—Primary issues affecting temporary visa holders experiencing DFV

8. This section outlines the Law Council's positions on the specific questions posed by the Department.
9. Many of the positions taken in this submission reiterate those taken in previous submissions in relation to:
- the *Inquiry into Family, Domestic and Sexual Violence* (2020);⁴
 - the *Development of the National Plan to Reduce Violence against Women and their Children* (2021);⁵ and
 - *Australia's 2022–2023 Migration Program* (2021).⁶
10. In those submissions, the Law Council cited research in support of reform in this area, noting that precarious immigration status is linked to higher rates of DFV.⁷ The same research has also demonstrated that few temporary visa holders are 'confident in relation to knowing the visa they held and their rights connected to that visa in Australia.'⁸ This constitutes an obvious barrier to accessing legal and other relevant support.
11. The Law Council has recommended increasing the availability of the FVPs to additional visa cohorts and reducing the burden on applicants wishing to avail themselves of these provisions.⁹ It therefore welcomes the present consultation.

³ Formerly the requirements were to be found in IMMI 12/116.

⁴ Law Council of Australia, '[Submission to the Inquiry into family, domestic and sexual violence](#)', (7 August 2020).

⁵ Law Council of Australia, '[Submission to the development of the next National Plan to Reduce Violence Against Women and their Children](#)', (13 August 2021).

⁶ Law Council of Australia, '[Submission into Australia's 2022-2023 Migration Program](#)', (10 December 2021). See also Law Council of Australia, *Justice Project – Final Report* (2018), Recent Arrivals chapter (9-10, 30-31) and Persons Experiencing Family Violence chapter (38).

⁷ See e.g. Segrave, Marie; Wickes, Rebecca; Keel, Chloe (2021): *Migrant and refugee women in Australia: The safety and security study*. Monash University Report: <<https://doi.org/10.26180/14863872>>.

⁸ Above n 6, 20-21 [92].

⁹ *Ibid*, 21-22 [95-99].

Main issues

Question 1

What are the main issues specific to visa applicants and holders experiencing DFV that may require amendments to the migration framework?

Please identify the most pressing issue(s) from the list below, and provide reasons for your assessment.

- **'De-linking' the visa status of a secondary visa applicant from a primary applicant perpetrator of violence to protect their privacy**
- **Extending temporary stay in Australia (please indicate what in your view would be the primary reason for/benefit of the extended stay)**
- **Ensuring streamlined eligibility to access support services**
- **Providing a pathway to permanent residence**
- **Preventing DFV victim-survivors from becoming unlawful or losing their visa status as a result of relationship breakdown**
- **Other (please specify)**

12. The Law Council has provided views on reforms it considers important to address each of the issues raised in this question. However, it does not suggest that any one issue should be given priority over another.

The FVPs

13. A number of the issues raised in this question, and in other questions in the Consultation Paper, engage the FVPs. The following overview of the existing FVPs provides a basis for the subsequent discussion of potential reform.
14. Currently, the FVPs allow applicants for some visas which ordinarily require the applicant to be the partner of an Australian citizen to instead satisfy the criteria for a visa, despite the relationship having ended, if they have 'suffered family violence'.¹⁰ In general terms, a person is taken to have suffered family violence where there has been an injunction under the *Family Law Act 1975* (Cth), a court order made by under a law of a State or Territory, a conviction, or in circumstances where there is a 'non-judicially determined claim of family violence'.¹¹
15. The FVPs are available to applicants for a:
- Subclass 309—Partner (Provisional)—a temporary visa available to an offshore applicant who at the time of application is the spouse, de-facto partner or intends to marry an Australian citizen, permanent resident or eligible New Zealand citizen.¹² The FVPs are only available for a select cohort of applicants—namely those applicants who were in Australia during a COVID-19 concession period.¹³ For such persons, the FVPs are available if, at the time of decision, they continue to meet that requirement, except that the relationship has ceased and the applicant or a member of their family unit has suffered family violence.¹⁴

¹⁰ A reference in the Regulations to a person having suffered family violence is a reference to a person being taken, under regulation 1.23, to have suffered family violence: see Regulations sub-reg 1.22(1).

¹¹ Ibid reg 1.23.

¹² Ibid cl 309.211 of Schedule 2.

¹³ Ibid cl 309.221(1)(b) of Schedule 2.

¹⁴ Ibid sub-cl 309.211(3) of Schedule 2.

- Subclass 100 (Partner) visa—a permanent visa available to a holder of a Subclass 309 (Partner (Provisional)) visa, who is or was the spouse or de facto partner of the sponsoring partner, but the relationship has ceased and the applicant or a member of their family unit has suffered family violence.¹⁵
- Subclass 820 (Partner) visa—a temporary visa available to an onshore applicant who:
 - at the time of application is or was the holder of a Subclass 300 (Prospective Marriage) visa, married their sponsoring partner, but the relationship has ceased and the applicant or a member of their family unit has suffered family violence;¹⁶ or
 - at the time of application is the spouse or de-facto partner of an Australian citizen, permanent resident or eligible New Zealand citizen and at the time of decision, would continue to meet that requirement except that the relationship has ceased and the applicant or a member of their family unit has suffered family violence.¹⁷
- Subclass 801 (Partner) visa—a permanent visa available to a holder of a Subclass 820 (Partner) visa, who is or was the spouse or de facto partner of the sponsoring partner, but the relationship has ceased and the applicant or a member of their family unit has suffered family violence.¹⁸
- Subclass 858 (Global Talent) visa—a permanent visa may be available to a person who applied onshore as a secondary visa applicant as a member of a family unit of a primary visa applicant: who has applied for a Global Talent visa; and who appears to satisfy the criteria at the ‘time of application’ for that visa.¹⁹ The FVPs are available if, at the time of decision, the primary visa applicant has been granted the visa, the spousal or de facto relationship has ended, and the secondary visa applicant or member of their family unit has suffered family violence.²⁰

16. The common feature of these current visas is that they are all either permanent visas or temporary visas which, if held at the time of application, will qualify the person to be considered for the grant of a permanent visa.

De-linking

17. The Law Council has previously submitted that visa status and deportation threats represent an act of violence of themselves.²¹ Temporary migration status creates significant leverage for control and intimidation by an abusive partner.²²

18. The Law Council referred in those previous submissions to a Monash University Migration and Inclusion Centre study which surveyed 1392 migrant and refugee women in Australia before and during the March–September 2020 Covid 19 lockdown. The study consistently reported proportionately high levels of DFV, including controlling behaviours, and much higher levels of migration-related abuse

¹⁵ Ibid sub-cll 100.221(1), (4) and (4C) of Schedule 2.

¹⁶ Ibid sub-cll 820.211(8) and (9) of Schedule 2.

¹⁷ Ibid sub-cl 820.221(3) of Schedule 2.

¹⁸ Ibid sub-cl 801.221(6) of Schedule 2.

¹⁹ Ibid sub-cl 858.311 of Schedule 2.

²⁰ Ibid sub-cl 858.321(3) of Schedule 2.

²¹ Above n 4, 31 [150].

²² Above n 4, 35 [147].

and threats.²³ The Law Council also noted from the Monash study that, of the above, only 22 per cent of survey participants who were temporary visa holders and/or who have indicated that they had experienced migration-related controlling behaviours were confident about knowing the visa they held, and their rights connected to that visa in Australia.²⁴

19. The Law Council has submitted that visa dependence is a key barrier to accessing legal support for DFV, where a victim of DFV holds a visa that is conditional upon the existence of a relationship with their perpetrator, the capacity for the victim to access support and escape the violence is limited.²⁵
20. The Law Council has previously noted that secondary applicants granted a visa by virtue of being a spouse of a primary applicant are susceptible to cancellation of their visa if the spousal relationship ends under a power to cancel the visa which arises if a fact upon which a decision to grant the visa was based, wholly or partly, no longer exists.²⁶ As a consequence, a dependent visa holder experiencing family violence may be or feel compelled to either remain in a violent relationship or leave Australia.
21. The Law Council recognises that the Department's policy in relation to the cancellation of visas under section 116 of the *Migration Act 1958* (Cth) requires that delegates consider the circumstances in which the ground for cancellation arose, including:

*whether there were any extenuating circumstances beyond the visa holder's control that led to the grounds existing. If cancellation is being considered because of a relationship breakdown, delegates should consider whether the relationship has broken down as a result of family violence. As a general rule, a visa should not be cancelled where the circumstances in which the ground for cancellation arose were beyond the control of the visa holder.*²⁷

22. However, this is policy only, and should be included in the legislation to offer more substantial protection to temporary visa holders experiencing family violence. Codifying this policy would also avoid such visa holders having to respond to a Notice of Intention to Consider Cancellation,²⁸ which causes unnecessary stress to a visa holder who has experienced DFV. It would also encourage visa holders who have experienced DFV to update their contact address in the knowledge that their visa would not be subject to the visa cancellation process.
23. In addition, the LIV is:

... particularly concerned that for many victim-survivors on temporary visas in Australia the current system provides no pathway to a permanent visa. In many cases this is particularly significant for migrant women who are unable to return to their home country due to a risk of harm, which may fall outside the protection framework or have Australian citizen

²³ Above n 5, 34 [141]-[142], citing Marie Segrave, Rebecca Wickesand Chloe Keel, *Migrant and refugee women in Australia: The safety and security study* (2021) Monash University Report: <<https://doi.org/10.26180/14863872>>.

²⁴ Above n 6, 20 [92].

²⁵ Above n 5, 35 [145]; n 6, 21 [93].

²⁶ Paragraph 116(1)(a) of the Migration Act. Above n 3, 21 [96].

²⁷ Department, *Procedures Advice Manual 3 (PAM 3) – Visa cancellation instructions* (1 July 2017)

²⁸ For example, under section 119 of the Migration Act.

children, especially in circumstances where a family court order prohibits the children from leaving the country.

24. With these submissions in mind, the Law Council supports, conceptually, de-linking the visa status of a secondary visa applicant from that of a primary applicant perpetrator of violence, not only to protect the privacy of the secondary applicant, but also to ensure a separate pathway for victims to navigate the migration system independently.
25. The definition of DFV in the FVPs may need to be expanded because it excludes people who have experienced DFV perpetrated by the sponsor's family members.²⁹ In this context, the Law Council draws attention to the risks facing applicants living in extended family households who are subject to violence or control from other family members (e.g. the parents of the sponsor). In these cases, the applicant is unable to rely on the FVPs, even where the sponsor acquiesces to the violence or prevents the applicant seeking help. Where the violence is perpetrated by multiple family members, evidentiary issues arise in demonstrating that the applicant experienced 'relevant family violence'.³⁰

Providing a pathway to permanent residence

26. The current FVPs were adopted to ensure that visa holders did not feel compelled to remain in violent relationships to be granted permanent residence. However, as discussed above, presently the FVPs only apply to primary partner visa applicants on a permanent residence pathways or secondary applicants for the permanent Global Talent visa.
27. Temporary visa holders, such as dependent, skilled or employer-sponsored visa holders who have made applications for permanent residence based on the relationship with the primary visa holder, must also remain in a relationship with the perpetrator to be eligible for permanent residence. These visa holders face the difficult decision either to remain in a violent relationship or forgo permanent residency.³¹ This, in turn, empowers perpetrators by effectively creating a tool for exercising coercive control. In the Law Council's view, this framework is inconsistent with the commitment of the Australian Government to prevent family violence.³²
28. The Law Council has recommended that, to ensure the safety of these visa holders and to ensure consistency of approach, the family violence provisions should be expanded to provide a pathway to permanent residency for other persons who have applied for permanent residency as a dependent visa holder.³³
29. There is also a gap in the availability of the FVPs within the visa subclasses to which it already applies. The current drafting of the Regulations means that a subclass 300 visa holder who has been in a relationship with their violent partner, but has not yet formally married, is excluded from accessing the FVPs as an applicant for a Subclass 820 visa. The Law Council reiterates its recommendation that the Regulations should be amended to ensure that unmarried subclass 300 visa holders are also subject to the FVPs.³⁴

²⁹ See eg *Bhalla v Minister for Immigration and Border Protection* [2016] FCA 395 at [47].

³⁰ Migration Regulations 1994 (Cth), 1.21 (Definitions).

³¹ Above n 4, 32 [152]; n 5, 35 [147]; n 6, 21 [95].

³² Above n 4, 32 [156]; n 5, 35 [147]; n 6, 21 [96].

³³ Above n 4, 32 [156]; n 5, 36 [150]; n 6, 21-22 [97].

³⁴ Above n 5, 36 [153].

30. In addition, the Law Council suggests that consideration be given to a revised framework providing for a permanent visa pathway for temporary visa holders, with Australian-born children, who have experienced DFV. Practitioners have reported a common scenario whereby a person has not yet applied for a partner visa and the relationship ends because of DFV. The failure to apply is often the result of DFV and/or coercive control. At this point, there is no pathway to apply for a permanent visa. This results in Australian children faced with being separated from their parent, usually their mother, or being compelled to leave Australia with the mother.
31. In addition, the QLS suggests that all secondary applicants should have access to the FVPs. It notes that the existing FVPs for partner visas do not currently extend to secondary applicant children who are experiencing DFV and need to leave the family home. It suggests that these applicants cannot access the provisions if the primary applicant parent is unwilling to leave the relationship. This is because it is a criterion for each of the visas to which the FVPs apply that the relationship has ended.³⁵ The Law Council notes that, currently, children under 18 affected by DFV who come in contact with a child protection state authority may be sponsored by that authority for a Subclass 802 (Child) visa. However, the Law Council would support the expansion of the FVPs to children over the age of 18 who hold a partner visa as a secondary applicant.
32. The Law Council also supports generally the recommendations set out under the Blueprint for Reform: Removing Barriers to Safety for Victims/Survivors of Domestic and Family Violence (the **Blueprint**) for persons who are on temporary visas, prepared by the National Advocacy Group on Women on Temporary Visas Experiencing Violence.³⁶ The Law Council previously endorsed the 2019 version of the Blueprint.³⁷ The Blueprint was updated in 2022, but recommendation 1.3 has largely been carried over from the 2019 version, albeit expanded.³⁸ In relation to this recommendation, the Law Council notes its strong preference for introduction of a permanent visa pathway for all parents of Australian citizen children experiencing DFV.³⁹

Preventing DFV victim-survivors from becoming unlawful or losing their visa status as a result of relationship breakdown

33. The Law Council maintains its previously expressed support for the establishment of a new temporary visa for temporary visa holders who have not lodged applications for permanent visas, but who have experienced DFV and therefore are:
 - unable to comply with their current visa conditions, or
 - at risk of having, or have had, their visas cancelled.⁴⁰
34. The creation of a new temporary visa category would allow dependent temporary visa holders experiencing family violence to remain in Australia for a minimum of one year or longer and to access and consider legal advice, including other possible visa options.⁴¹

³⁵ Above nn 14-18.

³⁶ See Australian Women Against Violence Alliance (AWAVA), *Blueprint for Reform 2022*: <<https://awava.org.au/2022/12/06/research-and-reports/the-blueprint-for-reform-2022>>.

³⁷ Above n 4, 29 [137].

³⁸ Blueprint for Reform 2022, above n 36, 8.

³⁹ Ibid; see also previous recommendation, above n 4, 29 [137].

⁴⁰ Above n 4, 33 [160]; n 6, 23 [105]-[110].

⁴¹ Above n 4, 33 [161].

35. The visa would not create a guaranteed pathway to permanent residency but would allow holders to apply for any further onshore visas they might be eligible to obtain.⁴²
36. Work and study rights would attach to the visa, and holders would be entitled to Medicare and Centrelink benefits.⁴³ Further details are set out below in the response to Question 9.

Other—additional accessibility and availability issues

37. A practitioner has observed that existing FVPs are sometimes overlooked, particularly where the relevant application is lodged by a third party. Measures to ensure awareness on the part of applicants should therefore be considered: for example, access to legal education, as well as legal assistance and interpretation services for migrants (particularly recent arrivals and the increasing numbers of migrants who are settling in regional, rural or remote areas).⁴⁴
38. An additional problem with respect to availability is the potential delay faced by an applicant under the FVPs. The LSNSW reports that its members have seen clients' claims take two to four years to process. The LSNSW observes that, '[i]n some cases, this leaves the visa applicant with no choice but to return to the abusive relationship, particularly in circumstances where there is limited access to social support...' Such delays are self-evidently incompatible with the goal of providing urgent assistance to those experiencing DFV.

Part B—Expanding the Family Violence Provisions (FVPs) to additional permanent visa subclasses

Question 2

Are there any permanent visa subclasses for which access to the FVPs is particularly important? Conversely, are there any particular permanent visa subclasses that you believe are less likely to require access to the FVPs?

39. As noted above, the Law Council has an established position of supporting the expansion of the application of FVPs to other dependent temporary visa holders who have made applications for permanent visas as a dependent applicant based on the relationship with the primary visa holder, who have experienced family violence.⁴⁵
40. The Law Council's constituent bodies have expressed different views as to the further expansion of the FVPs.
41. The LSNSW supports the Law Council's existing recommendations in this regard, but is of the view that the FVPs should also be extended to all family stream visas, including Remaining Relative (subclass 835) and Onshore Carer (subclass 836).
42. The Law Council agrees that reform in this area should also take into account the risks posed to primary applicants for other types of visas who are at risk of being refused because of DFV, for example parent visa applicants who are subject to elder abuse by their sponsoring child.

⁴² Ibid [163].

⁴³ Above n 4, 34 [165]; above n 5, 37 [161].

⁴⁴ See Law Council, *The Justice Project: Final Report*: <<https://lawcouncil.au/justice-project/final-report>>, in particular Chapters on Recent Arrivals to Australia and Rural, Regional and Remote Australians.

⁴⁵ Above n 4, 32 [156]; n 5, 36 [150]; n 6, 21-22 [97].

43. The LIV cites the prevalence of DFV across a wide cross-section of Australian society, including many members' clients, and supports expanding the FVPs to as many visa subclasses (both temporary and permanent) as possible.

Question 3

Should access to the FVPs for secondary applicants be limited to cases where violence has occurred in Australia?

44. The Law Council acknowledges that, in practical terms, it may be difficult for an applicant to satisfy the evidentiary requirements in relation to conduct occurring outside of Australia. As such, the evidentiary threshold would need to be sufficiently low to counter the challenges for victim-survivors in obtaining adequate supporting evidence.
45. Victorian practitioners report that many clients' countries of origin do not have suitable mechanisms in place to report and assist victim-survivors of DFV. As such, they may not be able to provide official records to Australian authorities.
46. Nevertheless, given the protective purposes of the FVPs and the known occurrence of migration-related forms of abuse (which obviously could arise before and during the migration process), imposing a limit on access that is based on the violence occurring in Australia does not appear necessary or appropriate.
47. The Law Council's view is that all prior acts of violence, whether onshore or offshore, are relevant and critical to a holistic approach to determine whether the FVPs are met. In the Law Council's view, it would be more consistent with the Australian Government's commitment to deter DFV, and to help victim-survivors, to place fewer limits of this nature on access to the protective FVPs.

Question 4

To what extent should the FVPs require an applicant to have a link to Australia?

48. The Law Council has received mixed feedback from its constituent bodies about whether a link to Australia should be required of applicants under the FVPs. In addition to persons who experience DFV in Australia:
- the LSNSW supports expansion to include persons who may experience DFV outside Australia but have links to the Australian community, e.g., as a result of having previously resided in Australia;
 - the QLS supports expansion to include persons who have been in Australia as the applicant or holder of the relevant visas; and
 - the LIV opposes the imposition on any requirement to demonstrate a link to Australia, beyond a relationship with the person's sponsor and/or perpetrator.

49. For present purposes, the Law Council suggests that the following considerations might be borne in mind when considering the Department's policy position in this regard:
- some applicants may only be offshore because they have been coerced into leaving Australia by the perpetrator and/or the perpetrator's family;⁴⁶
 - some applicants may lodge a subclass 309 Visa because they cannot lodge a further partner visa onshore, or are unauthorised maritime arrivals and required to go offshore to lodge because they are barred from lodging in Australia;⁴⁷
 - if a link were to be required, it should be broad enough to encompass significant family, social/cultural, academic/education and/or economic/business ties. It should also place appropriate weight on any previous period of residence in Australia, and
 - the nature of DFV may make it difficult for applicants to form the requisite links during the course of the relationship. More specifically, social control and financial control are common characteristics in DFV, and can lead to visa holders or visa applicants being isolated in Australia.
50. In addition, the LIV notes that, in many cases, applicants leave behind all social contacts to come to Australia and have limited ties to the Australian community. Both the QLS and LIV note further that the isolation of the victim-survivor is often a tool that is wielded by the perpetrator in order to control, isolate and restrict the victim-survivor from forming connections in their new community. The proposal to introduce a requirement for the applicant to have additional links to Australia may impose a further procedural burden and make it even more difficult for victim-survivors to end their dependence on their sponsor. In turn, this may prolong the cycle of abuse.

Question 5

What additional groups of Prospective Marriage (subclass 300) visa holders should be given access to the FVPs?

51. The Law Council maintains its previous position that the Regulations should be amended to ensure that unmarried (or not formally married) Subclass 300 visa holders are also subject to the FVPs in making applications for a Subclass 820 (Partner) visa.⁴⁸ Practitioners report that this is a significant gap in the current FVPs.

⁴⁶ See *Blueprint for Reform 2022*, above n 36, 7.

⁴⁷ *Migration Act 1958* (Cth), s46A.

⁴⁸ *Ibid.*

Question 6

Do you have any comments on the extension of the FVPs to applicants for offshore Partner (subclass 309) visas?

52. As noted in the Consultation Paper, and in the discussion above, only applicants for an offshore Partner visa (subclass 309) who are in Australia and can be granted a visa in Australia under the “COVID-19 concession” currently have access to the FVPs.⁴⁹
53. The Law Council supports making these settings permanent by extending the FVPs to all subclass 309 applicants in Australia, as well as applicants who have previously been in Australia or in a relationship with an Australian citizen.
54. Practitioners report that many offshore partner visa applicants travel regularly to and from Australia, and could therefore be subjected to DFV in a number of locations. Victim-survivors should not be precluded from accessing the FVPs due to an arbitrary geographic restriction, and should not feel compelled to travel to Australia if that would place them at greater risk of harm. Subclass 309 FVP eligibility criteria should also ensure that children are not separated from their applicant parent due to the application.

Part C—Temporary visa for victim-survivors of DFV

Question 7

- **What should a new visa aim to achieve that current policy and visa settings cannot or do not achieve? Is a new temporary DFV visa the only or best way to address these issues?**

55. The availability of a further visa option for victims of family violence should aim to limit the use of migration status as a means to coerce and control relevant persons. LIV members report that:

... in various cases, perpetrators of DFV with an awareness of the Australian migration framework may refrain from physical abuse to protect their own immigration status but may continue to engage in less obvious family violence behaviours, such as coercive control or financial abuse.

56. The new temporary visa would allow dependent visa holders to take control of their own visa status and migration pathway, and addresses the dangerous power imbalance that exists between primary and dependent visa holders.⁵⁰
57. The visa would allow victims of DFV time to secure their own and their family member’s safety and to seek the support they need, including legal support.⁵¹ The LIV notes that DFV victim-survivors from culturally and linguistically-diverse (**CALD**) backgrounds may have been completely dependent on the perpetrator of the DFV to

⁴⁹ Consultation Paper, 3. Migration Regulations cl 309.221(1)(b) of Schedule 2.

⁵⁰ Above n 4, 33 [162]; n 5, 37 [160]; n 6, 23 [107].

⁵¹ Above n 6, 23 [108].

navigate Australian support systems. Such systems under a new DFV visa, therefore, should be designed with accessibility for this cohort in mind.

58. The visa would not create a guaranteed pathway to permanent residence but would allow holders to apply for any further onshore visas that they might be eligible to obtain.⁵²
59. Finally, the Law Council recommends that this new visa be titled generically to avoid possible stigma attached to a name such as 'DFV Visa', and to encourage more victim-survivors to apply for it without fear of judgement.

Question 8

- **Who should be eligible for a new temporary DFV visa?**
 - **For example, eligibility could include secondary holders of a temporary visa; visa holders who were in a relationship with an Australian citizen or permanent resident; or anyone who does not hold a permanent visa.**

60. The Law Council position, as outlined above, is that this new temporary visa should be available to temporary visa holders who have not lodged applications for permanent visas (or who withdraw such applications), but who have experienced family violence and therefore:
 - are unable to comply with their current visa conditions; or
 - are at risk of having, or have had, their visas cancelled.
61. By way of example only, two key categories of holders that practitioners suggest urgently require access to such a new visa are:
 - parents of Australian citizen children in Australia without access to a permanent visa pathway, and
 - visa holders who have been residing in Australia on a series of temporary visas (e.g. visitor visas), who are in an established spousal/de facto relationship with an Australian citizen/permanent resident, but where no partner visa was ever lodged.
62. The QLS adds, in this context:

We emphasise that new provisions for a temporary DFV visa should be carefully drafted and considered in the context of existing visa pathways that visa applicants and visa holders experiencing DFV may be on or have applied for. There should be consultation with specialist immigration services to avoid unintended consequences of applicants electing to pursue the new visa, to ensure it doesn't override previously lodged applications or processes that may be more beneficial.

⁵² Ibid.

Question 9

- **The Stakeholder Consultation Report on the National Plan to End Violence against Women and Children 2022–2032 notes recommendations by stakeholders to introduce a new temporary DFV visa, with access to work rights, healthcare and other support services.**
- **What support services/payments should holders of a new temporary DFV visa have access to?**

63. As noted above, the Law Council has recommended that the new temporary visa should allow work and study rights, as well as entitlement to Medicare benefits. The QLS and LIV further recommend that it should allow for access to the childcare and housing subsidies, and specialist immigration legal advice and representation, and not be linked to the supports available under the applicant's previous visa.
64. The Law Council has further suggested that temporary visa holders who are DFV victims should be able to access appropriate housing and financial support through Centrelink and be granted visa extensions through any family law proceedings. In this context, the LSNSW observes that:

The fact that temporary visa applicants are often ineligible for different forms of government support (both at the state and Commonwealth level) can lead to financial dependency on the perpetrator and limit options to leave the violent relationship.⁵³

65. The Law Council has previously commented that women from CALD backgrounds are particularly vulnerable to financial abuse, including dowry abuse.⁵⁴ The inability for temporary visa holders to access social supports can exacerbate the impacts of this abuse. Financial dependence is particularly problematic where a person experiencing violence is ineligible for Centrelink support.⁵⁵ The LSNSW adds:

We consider it would be helpful for all DFV visas to explicitly state that any victims' support obtained through statutory compensation schemes in relation to DFV should not negatively affect the rights and benefits granted under such a visa. Our members have cited cases where their clients are on temporary visas and receiving special benefits with Centrelink. These clients then have those benefits cancelled once criminal compensation is granted, which counteracts the beneficial intent of the legislation. While this can be remedied through advocacy with Centrelink, this takes time and can leave victim-survivors without such benefits for a significant period of time.

66. The Law Council also recommends that holders of the new temporary DFV Visa should be able to travel in and out of Australia—particularly if such travel is necessary to access support and/or services that may not be available in their place of residence.

⁵³ See further the *Blueprint for Reform 2022*, above n 36, 12-13.

⁵⁴ Above n 4, 29 [135]; n 5, 34 [141]. See Department of Social Services, *Dowry Abuse factsheet*, 15 February 2019: <<https://www.dss.gov.au/women-publications-articles-reducing-violence/dowry-abuse-factsheet>>. See also, Law Council of Australia, Submission to the Senate Legal and Constitutional Affairs References Committee, 'The practice of dowry and the incidence of dowry abuse in Australia' (19 September 2018) <[link](#)> [16]-[17].

⁵⁵ Above n 4, 29 [135]; n 5, 34 [141].

Question 10

- **What evidence should be required to demonstrate that a temporary visa holder has experienced or is experiencing DFV?**

67. The efficacy of a new temporary DFV visa would be dependent on it being accessible and flexible. Such accessibility would require recognition that people fleeing relationships characterised by violence may not have access to documents commonly used to evidence strict visa criteria. This reality must be taken into account in developing eligibility criteria so that visa extensions are readily available to those who need them.⁵⁶
68. In this context, it may be appropriate for lower evidentiary requirements to apply to this temporary DFV visa, compared to those that apply in applications for permanent visas.
69. To be eligible for the grant of a permanent visa under the current family violence exceptions in Division 1.5 of the Regulations, the applicant must provide evidence that the family violence occurred. As noted in the Consultation Paper, this may be either through judicially determined evidence such as an injunction, court order or conviction, or 'non-judicially determined' evidence, which includes either a joint undertaking made in court in relation to proceedings or a statutory declaration outlining the nature of the violence, accompanied by at least two documents prescribed in LIN 23/026.
70. If an applicant provides evidence in line with the 'non-judicially determined' requirements and the decision-maker is not satisfied that the applicant suffered family violence, the decision-maker must seek the opinion of an independent expert as to whether the applicant has suffered family violence and take that opinion as correct.⁵⁷
71. As the Law Council has previously submitted, legal practitioners have reported examples in which genuine survivors of extreme forms of family violence have not met the evidentiary requirements. This may be a result of language barriers, fear of authorities, or an inability to access or afford medical assistance or legal advice.⁵⁸ As the QLS observes:

This reality must be taken into account in developing eligibility criteria so that visa extensions are readily available to those who need them and with a view to expedited visa processing.

In determining what evidentiary requirements may be appropriate, consideration should be given to the very limited resources of family violence services. We emphasise that those limited resources should be allocated to ensuring safety of those in need, not in time spent preparing extensive documentation to meet strict evidentiary requirements.

72. The LIV cites an example from a like-minded jurisdiction:

By way of example, in Canada, victim-survivors may meet the evidentiary threshold for the Canadian Temporary Resident Permit (TRP) for Victims of Family Violence by providing a range of informal sources of

⁵⁶ Above n 4, 23 [109].

⁵⁷ Migration Regulations 1994, 1.23(10)(c).

⁵⁸ Above n 4, 33 [158]; n 5, 37 [156]; n 6, 22 [103].

information, such as photos of injuries, copies of emails and text messages, and a letter or supporting statements from friends, family members, co-workers or other witnesses. The LIV recommends the adoption of a similarly expanded range of admissible evidence to simplify the application process for survivors of DFV.

73. The Law Council acknowledges the evidentiary reforms in LIN 23/026 compared with the previous IMMI 12/116, including the addition of additional potential sources of documentary evidence and alternatives to statutory declarations and acknowledges they are step forward. However, the Law Council reiterates its recommendation for an amendment to the Regulations which would provide for a discretionary power for a decision-maker to refer an applicant to an independent expert where the documentary evidence has not been provided in strict compliance with the legislative requirements, and where the decision-maker is satisfied that there are compelling and compassionate circumstances that warrant the referral to an independent expert.⁵⁹

74. Finally in relation to independent experts, the QLS notes that:

... there is the need for significant reform to the independent expert framework to ensure experts are appropriately qualified, and to provide for transparency throughout the independent expert process.

75. In relation to partner visas, the Law Council has further submitted that applications under the FVPs are sometimes stymied by a failure to make out the 'genuineness of the relationship' requirement.⁶⁰ The Law Council and the QLS submit that the Department ought to consider evidence of a genuine relationship in the context of the violence that is claimed to have occurred during the course of the relationship, in acknowledgement of how the dynamics of domestic and family violence can affect an applicant's ability to obtain and produce evidence. It is further submitted that the Department should not require a visa applicant claiming the family violence exception to provide further evidence of the relationship, particularly after the relevant visa has been granted as sometimes occurs.⁶¹

Question 11

- **What would be an optimal validity period for a new temporary DFV visa and why?**

76. The Law Council's position is that the creation of a new temporary visa category should allow dependent temporary visa holders experiencing DFV to remain in Australia for a minimum of one year to access and consider legal advice, including other possible visa options.⁶²

77. The process for applying for the visa should be simple with minimal criteria, and it should not impose any criteria that assess whether the applicant is a genuine temporary entrant.

⁵⁹ Above n 4, 33 [159]; n 6, 22-23 [103].

⁶⁰ Law Council, *Management of Migration to Australia – Family Reunion and Partner Related Visas*, Submission to Australian National Audit Office, 25 October 2022: <[link](#)>, [78]-[88].

⁶¹ Ibid.

⁶² Above n 4, 33 [161]; n 5, 37 [159]; n 6, 23 [106].

78. The Law Council also endorses an LIV suggestion that an extension should be available depending on the individual applicant's circumstances, particularly where certain issues, such as parental matters before a family law court, must be resolved before further visa applications can be progressed or finalised. The visas should not be subject to any conditions that prevent renewal onshore (such as condition 8503 being imposed).⁶³

Question 12

- **Do you have any de-identified data around the need for a temporary visa for persons experiencing DFV that you would be open to sharing with the Department?**
- **We would appreciate any data you may have to substantiate the reasons for your responses to the questions above.**

79. The Law Council does not have access to such data. But the expert advisory committees and Constituent Bodies that contributed to this submission have drawn on their considerable experience in migration legal practice to support the answers given above.

⁶³ Migration Regulations 1994, Schedule 8, Condition 8503, 'The holder will not, after entering Australia, be entitled to be granted a substantive visa, other than a protection visa, while the holder remains in Australia'.