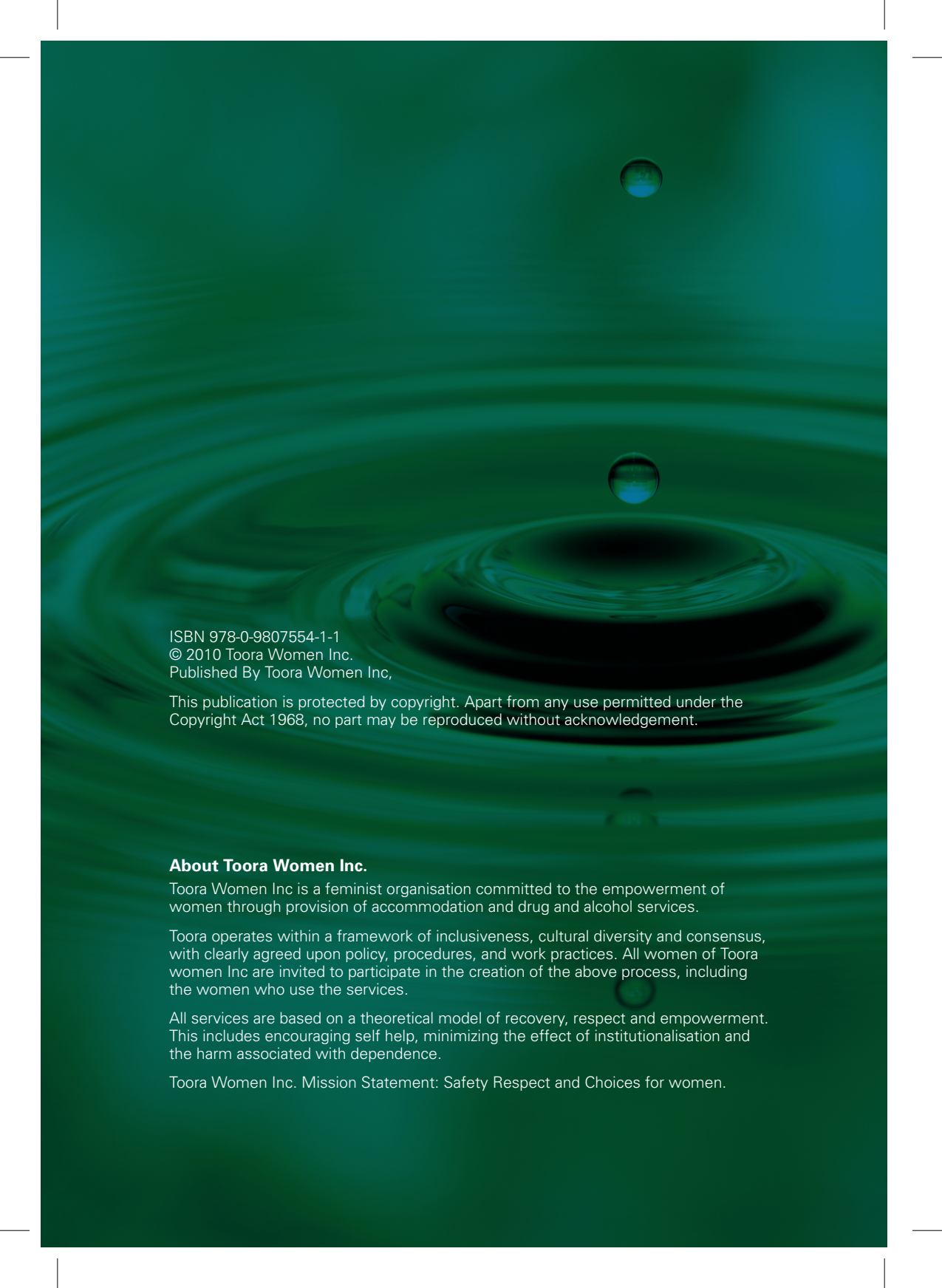


Research project with ACT Women's Services Network

A call for justice towards immigrant women: Amending Australia's Domestic/Family Violence Provisions

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About Toora Women Inc.

Toora Women Inc is a feminist organisation committed to the empowerment of women through provision of accommodation and drug and alcohol services.

Toora operates within a framework of inclusiveness, cultural diversity and consensus, with clearly agreed upon policy, procedures, and work practices. All women of Toora women Inc are invited to participate in the creation of the above process, including the women who use the services.

All services are based on a theoretical model of recovery, respect and empowerment. This includes encouraging self help, minimizing the effect of institutionalisation and the harm associated with dependence.

Toora Women Inc. Mission Statement: Safety Respect and Choices for women.



A Call for Justice towards immigrant women:

Amending Australia's
Domestic/Family
Violence Provisions



FOR SEVERAL YEARS the members of the Women's Services Australian Capital Territory (ACT) Network have raised concerns for the health and well being of immigrant women escaping family violence who have recently arrived in Australia principally on family sponsorship visas. In March 2010 on the instigation of Toora Women Inc a report, *A case for justice: Immigrant women's experience with Australian migration law* was published. This report provided an overview of domestic/family violence (D/FV) provisions in Australian migration law and reviewed its impact on immigrant women and support services.

Following the wide interest in the issues raised by the report, the Women's Services ACT Network commissioned this position paper to raise awareness and advocate for policy and structural changes in Australia's immigration law based on the findings of 'A case for justice' report and other relevant research. The position paper raises the social justice concerns facing immigrant women escaping domestic/family violence and concludes with a call for action.

The Women's Services ACT Network comprises of services and organisations that support women in the ACT and region. While not restricting their services only to women, these community-based organisations are committed to advancing the status of women and providing an environment where women may become empowered in their lives and in their communities. The primary audiences for the position paper are parliamentarians and the bureaucracy, both federal and states, and community groups for migrant women and health matters in the ACT and across Australia.

Defining what we mean by immigrant women

The target group for the paper are immigrant women who are recent immigrants experiencing family violence and are eligible under the D/FV provisions to continue with their application for permanent residence. These women are in the following visa categories: family (partner, spouse, and interdependency), skilled (business) and other (spouse of main applicant for a resolution of status).

The D/FV provisions under Australia's Migration Regulations are designed to ensure that visa applicants do not remain in abusive relationships in order to obtain permanent residence (FaHCSIA 2009a).

Main findings of 'A case for justice'

Problems & inadequacies of current system

The migration legislation and regulations covering D/FV provisions are complex- they are onerous, costly and time consuming for the applicants. They are also beyond the emotional and financial resources of most immigrant women.

To access FV provisions the applicant needs a court order or statutory declarations from themselves as well as two 'competent' persons specified by the regulations¹. This process is outlined in Appendix 1. To fulfill the evidence requirements women need considerable assistance including legal assistance. These women are extremely vulnerable as victims of domestic violence and as recent migrants. In many cases the perpetrator of the violence is also the women's 'sponsor' and the new migrants are often threatened with the retraction of their sponsorship or deportation if they report the abuse to authorities. Yet depending on their visa status the women and services supporting them have limited or no entitlements to public funds.

The application process for permanent residency, administrated by the Department of Immigration and Citizenship (DIMAC) can take 6 to 12 months. This is a long time to have limited or no access to Centrelink payments or Medicare, no legal right to work and no right to housing. Even after the decision is made (which in most cases is favorable to the applicant) the women have to wait a further 6 to 12 months for public housing. Under the current system, an application for permanent residency under the D/FV provisions and then public housing can take up to 18 months or longer to go through.

Social justice concerns

Applications against D/FV provisions are increasing. In 2008/09 there were 708 applications. Ninety percent of these applications were successful (Athaide 2010).

Bagshaw et al. (2000) indicated that women who are sponsored by Australian citizens and residents are particularly vulnerable to abuse due to the threat of deportation. In 1990s the concern related predominantly to the abuse of Filipino women. More recently concerns have increased for women sponsored from other countries such as Russia, Thailand, Indonesia and Fiji (FaHCSIA 2009b).

It is the women and their support network including refuges that are bearing the cost- emotional, physical, mental and financial. For refuges like Heira House, Beryl Women Inc and many others in the ACT and across Australia where they

¹ These include doctors, psychologists, social workers, family court counselors and managers of women's refuges.

have only a small number of places and the immigrant women are staying for up to 18 months, sometimes longer, it affects their ability to service the wider community.

Community groups have raised a number of difficulties with having Centrelink² in the role of 'independent expert' for settling doubtful cases of domestic violence referred from DIMAC. Women and Reform of Immigration (WARM 2007) have pointed out the potential conflict of interest with Centrelink being obliged to monitor the victim's compliance with other government benefits. WARM have also raised concerns about the lack of codes of conduct for the independent expert that govern ethical matters like qualifications, conflict of interest and how evidence may be used.

Research shows that cultural values and immigration status enhance the complexities normally involved in D/FV cases and women from culturally and linguistically diverse (CALD) backgrounds are generally less likely than other groups of women to report DV cases³ (AIC 2009 & 2010). A survey on immigrant women supported by selected ACT services providers, conducted in early July 2010, showed that 44 women were assisted in 2009/10. Results of the survey are in Appendix 2.

Time for Action report (FaHCSIA 2009c) indicated that without appropriate action to 2021-22, violence against immigrant and refugee women would cost the economy just over \$4 billion.

Why take action?

Immigrants form a significant part of Australian society and are very much a part of our history and development. Forty percent of the population are born or have a least one parent born overseas (ed. Carrington, McIntosh & Walmsley 2007).

Central to our drive to take action is the 'duty of care responsibility' Australia owes individuals residing in our country. These women come to Australia in good faith having broken no laws. Yet when the sponsoring relationship breaks down, they have limited and often no rights or access to public funds. Our legal systems take little account of the nature of domestic violence and the multiple dimension of disadvantage facing these recent immigrants. Services that support these women do so at their own cost.

² Centrelink is an Australian government statutory agency delivering a range of Commonwealth services, including health and welfare payments, to the Australian community..

³ Contributing factors include limited availability of appropriate interpreter services and access to support services like refugees, low levels of English language, lack of knowledge of the law, isolation, cultural and/or religious shame.

The problems the women face raise human rights concerns that are much larger than just immigration and welfare issues. Anecdotal evidence on immigrant women from refuge case workers is included in Appendix 3.

What can be done?

As immigration policy and legislation is a federal responsibility and public housing is a state responsibility, our call for change is to both state and federal governments. The Women Services (ACT) Network recommends that:

The Federal Government-

1. Remove or reduce the threat of deportation for immigrant women and amend the restrictive regulations governing evidence requirements particularly in relation to 'competent' persons. The regulations for D/FV provisions need to be simplified, reducing the time taken to process applications.
2. Enable immigrant women in all visa categories and their support services to access public funds including legal and interpreter services while the D/FV applications are being prepared and processed.
3. Enact WARM's proposal that suitably qualified experts be statutorily appointed and contracted to act as independent experts to DIMAC for referring cases where domestic violence is in doubt and that these experts are governed by a publicly available code of conduct.
4. Provide accessible translated information to relevant migrant communities on immigration regulations and D/FV provisions which include contact details for relevant DIMAC officers.

The ACT Government-

1. Allow immigrant women to be included on the waiting list for public housing while they are awaiting a decision on their application for permanent residency from DIMAC.
2. Reserve an annual allocation of at least two public houses for immigrant women.
3. Increase accommodation places for refugees like Heira and others in the ACT where a high proportion of women using the service are immigrants.
4. Investigate establishing a specialised service for immigrant women similar to those existing in Victoria, NSW and other states of Australia.
5. Undertake in-depth research into the nature and extent of domestic violence for vulnerable communities including immigrant women.

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Appendix 1

Process for accessing the Domestic/Family Violence provisions

(the 'simplified' version)⁴

Australia's migration regulations requires the victim to prove domestic violence has occurred

To access DV/FV provisions the applicant has to notify the DIMAC (the administrators of the migrations regulations) in writing of change of circumstances and has to prove:

- relationship with the sponsoring partner has ceased,
- there was domestic violence; and
- there was a genuine and continuing relationship with the sponsoring partner up until the time of separation.

To prove DV has occurred the applicant has to provide evidence that can be either:

judicial, usually requires a final civil law protection order;

or

non judicial, requires a Statutory Declaration from the applicant on the abuse and from two professionals identified in the regulations as 'competent' persons. These include doctors, registered psychologists, social workers, family court counselors and managers of women's refuges.

The completed application is processed by DIMAC officers responsible for making decisions on DV/FV claims. Applicants are often interviewed as part of the vetting process. In doubtful cases of domestic violence the opinion of an independent expert, currently Centrelink is sought to ensure that genuine claimants access the provisions. The opinion of the independent expert is binding on the DIMAC decision maker.

⁴ These include doctors, psychologists, social workers, family court counselors and managers of women's refuges.

While the application is being prepared and processed, the applicant depending on visa status has limited or no recourse to public funds such as Centrelink, Medicare, public housing or refuges. When support services assist applicants, they bear the financial costs.

Yet the application process for permanent residency and obtaining public housing can take up to 18 months, sometimes longer.



Appendix 2

Survey on immigrant women supported by ACT service providers

In mid June 2010 a Working Group within the Women Services ACT Network was established to assist the development of this position paper. The Working Group commissioned a short survey on immigrant women supported by twelve ACT service providers. The survey was completed in early July 2010 with ten services providing some response .

During the period from July 2009 to June 2010, the services surveyed assisted 44 immigrant women with Inanna, YWCA and Heira House being the major providers. In most of these cases the women applied for permanent residency under D/FV provisions.

Both Heira House and YWCA reported a significant proportion of immigrant women used their services. Heira House staff indicated that 50 percent of the women accessing their services have immigration issues and 60 percent were from CALD backgrounds.

Approximately a third of the people we assisted are migrants. In the last 6 months we accommodated 7 out of 23 families who were from CALD backgrounds and they were all relatively new migrants.

Quote sourced from YWCA survey response 2010

At their own cost, services provide a wide range of financial, legal/administrative, medical and emotional assistance to the immigrant women. Heira House staff estimated it cost \$15,000 to maintain a woman for a year at their premises. Refugee workers indicate that immigrant women require more support than the other women in their care, to large extent due to their lack of English. These are substantial costs for small non-profit organisations to bear.

Costs associated with supporting these women were reduced rental contributions, financial assistance, food, phone cards, bus tickets, paying for copy of new passport and children's birth certificates. Another cost is the use of interpreter services.

Quote sourced from Beryl Women Inc. survey response 2010

The health impacts for immigrant women in the case examples reported in the survey responses included depression, anxiety and trauma, grief from abandonment, suicidal, digestive disorders, physical injuries, cultural shame, isolation, sexually transmitted infections and unwanted pregnancies due to sexual assaults.

Australia is a signatory of the Ottawa Charter for Health Promotion which advocates for healthy public policy that-

.... Puts health on the agenda of policy makers in all sectors and at all levels, directing them to be aware of the health consequences of their decisions and to accept their responsibilities for health.

Ottawa Charter for Health Promotion, World Health Organisation 1986



Appendix 3

Anecdotal evidence on immigrant women

The following anecdotal evidence has been collected from recent research studies in the ACT and Victoria:

Women are unsure of their legal rights particularly on permanent residency and visa status. The fear of being deported is very real for many immigrant women. Case workers in refuges have reported-

This woman has also been in a violent and controlling relationship, and again, her partner and his parents conspired to have her deported by not passing on letters and phone messages from DIMAC about her permanent visa. It was only by luck that she had been taken to DIMAC while visiting her extended family. Neither women, both Muslim, chose to return to their country of birth because of the shame that their divorces would bring to the family.

Quote sourced from Women's Centre for Health Matters 2009

When a domestic violence situation occurs while she is waiting for a visa [a woman] becomes confused [about] whether to seek assistance for the fear of being returned to her original country. There is a fear amongst many [immigrant and refugee] women that the government may reject her application for a visa because of trouble within her marriage.

Quote sourced from Immigrant Women's DV Service 2006

Multiple levels of disadvantage that exist for immigrant women escaping domestic violence is well illustrated by case workers-

Upon arrival at the refuge (the woman) was experiencing a high level of distress and was diagnosed with post traumatic stress disorder, depression and anxiety, had physical injuries from the assaults, had no form of income, no personal belongings, no bank account, no friendships, no English language skills and was unfamiliar with the local area and community. She was ineligible for public housing, Centrelink benefits, Medicare and

legal aid due to unresolved status of her visa and not being a permanent resident of Australia. Having changed addresses and being unfamiliar with the processes involved with changing her address for immigration and correspondence purposes, she had not received the letters sent to her by DIMAC regarding the progress of her visa. Refuge workers followed this up and advocated with DIMAC to take her circumstances into consideration so that her visa would not be cancelled. DIMAC granted this request.

Quote sourced from Heira House survey response 2010

We had a woman who had left a violent situation, gone to a refuge, been referred to us, and we've been unable to access Centrelink assistance for her because she has no ID. She has no money to access medical services, nothing. It seems to be a further abuse to a person who has already suffered so much and is trying to get away from it—the system becomes abusive. Women have gone back to a violent situation because they just cannot survive on their own financially.

Quote sourced from Immigrant Women's DV Service 2006





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