



A case for justice:

Immigrant women's experience
with Australian migration law

Maryann Athaide

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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.

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List of Terms

Barriers	Consumers perceptions of obstacles to gaining access to health information or services.
CALD	CALD stands for culturally and linguistically diverse. CALD women and children face considerable barriers in seeking assistance, including language, cultural and family pressures to keep the family together, lack of understanding of the legal system, lack of residency status, the fear of being deported and religious beliefs (FaHCSIA 2009a).
Domestic violence	The term 'domestic violence' refers predominantly to abuse of a person, usually a women, by their intimate partner. While there is no single definition, the central element of domestic violence is an ongoing pattern of behaviour aimed at controlling one's partner through fear, for example by using behaviour which is violent and threatening (FaHCSIA 2009a).
Family Violence	Refers to violence against women perpetrated by a family member which may include, but is not limited to, their intimate partner. The range of behaviour that constitute family violence are similar to domestic violence. The term 'family violence' is preferred over 'domestic violence' in some Australian jurisdictions such as Victoria and the ACT (FaHCSIA 2009a).
Health care	Health promotion and primary care services available at doctors offices, medical centres and the public health department. This includes vaccinations, screen tests and maintenance of health status.
New and emerging communities	'New and emerging communities' are culturally, linguistically and religiously diverse (CALD) immigrant communities that are relatively small and newly arrived in Australia, for which ethno-specific organisations, information networks, advocacy or services may not have been developed.
Social inclusion	When individuals feel valued and have the opportunity to participate fully in the life of society (DSI 2009).
Victim support	Assistance available to victims/survivors of domestic violence or sexual assault. This assistance includes the provision of information, counselling, medical, legal and financial assistance.

Violence against women	There is no universally accepted definition of 'violence against women'. However, the United Nations <i>Declaration on the Elimination of Violence against Women</i> 1993 defines it as 'any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts coercion or arbitrary deprivation of liberty, whether occurring in public or in private life' (FaHCSIA 2009a).
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Abbreviations

ACT	Australian Capital Territory
ACTCOSS	ACT Council of Social Services
CALD	Culturally and linguistically diverse
DIMAC	Department of Immigration and Citizenship
DV	Domestic violence
DVCS	Domestic Violence Crisis Service
FaHCSIA	Department of Family, Housing, Community Services and Indigenous Affairs
FV	Family violence
Heira	Heira House
Toora	Toora Women Incorporated
MCWH	Multicultural Centre for Women's Health
WCHM	Women's Centre for Health Matters
WLS	Women's Legal Services

1. Introduction

Migration is part of Australia's recent history and development. Australia is one of the most multicultural countries in the world. Statistics indicate that around one quarter of the Australia population were born overseas and almost half (around 40%) have at least one parent born overseas (ed. Carrington, McIntosh, Walmsley 2007). While the significant contribution made by migrants is broadly recognised, Australia's migration policy, laws and regulations continue to evolve in response to the changing global environment and public opinion. This paper reviews the impact of the domestic/family violence (DV/FV) provisions in Australian migration law on immigrant women experiencing domestic violence. It looks at the migration legislation, defines the target group and the significance of DV, analyses the data of claims against the DV/FV provisions, discusses the barriers faced by immigrant women and the effect on service provision, using data collected from Heira House, and finally draws conclusions that demonstrate the social justice concerns within Australia's migration system.

The research has been commissioned by Toora Women Incorporated. Toora provides a range of crisis accommodation services in the Australian Capital Territory (ACT) for women. One of their services is Heira House which provides crisis accommodation and related services to women, unaccompanied by children, who are homeless due to domestic violence. Toora commenced operation in 1983 and Heira House in 1992. The primary audience for the paper are the management, staff and residents of Toora, Heira House and the Women's Health Network in the ACT. It is anticipated that the paper will have a wider audience within migrant, women and health community groups and government departments.

2. Australia's migration legislation – the rules that apply

The DV/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 in Australia (FaHCSIA 2009a). The regulations are administered by the Department of Immigration and Citizenship (DIMAC).

In order to access the DV/FV provisions, the applicant has to prove the 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 or non judicial. Judicial evidence usually requires a final civil law protection order. Non judicial evidence requires a Statutory Declaration from the visa applicant on the abuse and from professionals identified in the regulations as 'competent persons'. These include doctors, psychologists, social workers, court counsellors and managers of women's refuges. While the application is being prepared and processed, the applicant has no recourse to public funds such as social security benefits, public housing or refuges. When refuges assist applicants, they bear the financial costs, as outlined later in the paper.

The migration legislation was introduced in November 1991 and DIMAC officers are responsible for making decisions on DV/FV claims. In July 2005 legislation was introduced to allow DIMAC to refer doubtful claims of domestic violence to an independent expert, with extensive expertise in domestic violence matters, to ensure that only genuine claimants access the provisions. The opinion of the independent expert, currently Centrelink, is binding on the immigration decision maker. The most recent amendment to the migration regulation took effect on 15 October 2007. These amendment included updating the term and definition of 'domestic violence' to 'family violence' (DIMAC 2008).

Currently DV/FV provisions apply to the following visa categories:

- family stream: partner, spouse and interdependency
- skilled stream (business): established business in Australia, State/Territory
 - sponsored regional established business in Australia, labour agreement, employer nomination scheme, regional sponsored migration scheme & distinguished talent
- other: spouse of main applicant for a resolution of status.

The applicants using the DV/FV provisions are generally from the family stream on a provisional partner visas which covers spouse, fiance and interdependency visas. Visas granted in the partner category has grown significantly from 26,681 in 2003-04 to 42,098 in 2008-09 (an increase of 36.6%) as shown in Table 1 below.

Table 1: Partner Category Outcome 2003-04 to 2008-09

	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09
Partner category	26 681	27 119	36 374	40 435	39 931	42 098

Source: DIMAC 2009c, Report on Migration Program 2008-09

3. Target Group – immigrant women experiencing domestic violence

The target group are immigrant women experiencing domestic violence who are eligible under the DV/FV provisions to continue with their application for permanent residence. These women are in the visa categories described above-family, skilled and other. Although these provisions are intended to be gender neutral, evidence shows that women and their children carry the burden of the impact of domestic violence and hence women are the central focus of this paper (Narayan 1995, Anitha 2008, FaHCSIA 2009a).

Under Australian migration law, women moving to Australia under these visa categories are legally, economically and often socially dependent on their partner/spouse (or sponsor) for a period of two years before a permanent resident application can be made (exclusions can apply for long term relationships). If the relationship with the partner (sponsor) ceases and there is DV, the women can apply to remain in Australia under the DV/FV provisions.

4. The significance of domestic violence – in Australia and within the migration regulations

The *Time for Action* report prepared by Australia's National Council to Reduce Violence against Women and their Children stated that

'violence against women and their children remain a profound problem in societies around the world, and Australia is no exception. Addressing the causes and solutions to their violence is a moral and societal challenge. Nearly one in three Australian women experience physical violence and almost one in five women experience sexual violence over their lifetime. Violence cuts across all aspects of our community - it knows no geographical, socio-economic, age, ability, cultural or religious boundaries' (FaHCSIA 2009a, p. 9).

The report estimated that violence against women and their children will cost the Australian economy \$13.6 billion in 2008-09 and indicated that without appropriate action this figure would grow to \$15.6 billion by 2021-22 (FaHCSIA 2009c, p.4).

Immigrant and refugee women were identified as one of the key groups vulnerable to the risks and effects of violence. The report indicated that without appropriate action to 2021-22, violence against immigrant and refugee women would cost the economy just over \$4 billion.

According to DIMAC the claims against the DV/FV provisions have been relatively constant in recent years at approximately 500 claims per year increasing to 708 claims in 2008-09 as shown in Table 2 below.

Table 2: Claims against DV/FV provisions 2004-05 to 2008-09

	2004-05	2005-06	2006-07	2007-08	2008-09
Claims	497	492	562	502	708

Source: DIMAC (previously DIMA and DIMIA), Annual reports 2004-05 to 2008-09

Of the 708 claims made in 2008-09 631 were granted permanent residence visas, representing approximately 90% of claims approved in that financial year (subject to meeting all the other legislative criteria relevant to their visa including health and character requirements). In 2008-09 the gender balance of the claims were 549:159 between women and men, roughly a ratio of 3.5:1.

5. Barriers facing immigrant women

Reports commissioned nationally (FaHCSIA 2009) and locally (WCHM 2008, WCHM 2009, WLS 2007) highlight the range of barriers to achieving social connectedness and access to justice for immigrant women experiencing domestic violence. These included lack of knowledge of the legal system and service providers, limited translated information about legal rights and services; and fear of interaction with the police and legal authorities based on pre-migration experiences. During the extensive consultations for the *Time for Action* report, the issue that was consistently raised by various immigrant and support services was 'ensuring access to the family provisions of the Migration Regulations of 1994' (FaHCSIA 2009a, p. 97).

In 2007 the NSW government Violence Against Women Specialist Unit and Women's Legal Services conducted *The Long Way to Equal* research to gauge progress made in addressing the barriers facing migrant and refugee women accessing legal services identified by the Quarter Way to Equal report of 1994. The report concluded that 'overwhelmingly the legal access barriers identified by the Quarter Way to Equal report remain significant sources of difficulty for migrant and refugee women in their interactions with the Australian legal system' (WLS 2007, p. 6). The difficulties identified included migrants and refugees' limited finances to fund their own legal cases, low levels of English language, lack of knowledge about the legal system and legal services, the availability of legal aid, difficulties with the provision of interpreters and

translators and generally a lack of sensitivity to the needs of culturally and linguistically diverse (CALD) women.

The United Kingdom and United States of America have similar DV rules in their Immigration Acts as Australia. Although in all three countries there have been recent amendments to the legislation in response to active lobbying, barriers to a fair and human rights outcome for abused immigrant women remain.

Key barriers facing immigrant women with the DV/FV provisions in Australia's immigration law include:

- Complexity of the regulations that need to be negotiated particular when the women is dealing with a violent relationship and is new to the country, often without family or social networks independent of the partner. Evidence indicates that women will not leave without a safe place to go and some financial security (Anitha 2008)
- The DV/FV provisions do not take into consideration the vulnerabilities of women escaping DV (which is worse for a recent immigrant) and assumes the applicant has knowledge of legal rights and resources (financial and social networks)
- Evidence shows that the dependent immigration status of the immigrant women are exploited by their partners with threats of deportation if the women wishes to leave or report the relationship. The regulations are worsening the imbalance of power for the immigrant women, which is often further reinforced by the structures within their ethnic community
- The evidence requirements ensure that women bear the burden for the effectiveness, or lack of, for the services provided. For example accessing 'competent persons' can be difficult given the prescriptive nature of the legislation and is costly. The women often rely on professional services provided on a 'pro bono' basis which varies in quality and may take a long time
- For women in rural and remote areas of Australia, accessing 'competent persons' is even more challenging
- Women are not entitled to public funds during the application process. The probationary period and no recourse to public funds requirement of the immigration laws were measures to prevent marriage becoming a way of 'easy' entry to Australia in response to a concern about 'sham' marriages. Evidence shows that these measures are causing unintended harm
- Research points to a high level of under reporting of DV and FV, especially among immigrant and refugee women, and few proceed right through the court process (WLS 2007). This would suggest that many immigrant and refugee women would have difficulty meeting the judicial evidence requirement of the regulations.

6. Effect on service provision – using the case of a women's refuge

As noted above the effectiveness, or lack of, of service provision is borne by the immigrant women. Even with good intentions, service providers are hamstrung by lack of funds and resources including staff, expertise and materials.

Australian data regarding violence against women and their children in the general population is limited and for immigrant women is even more sparse (FaHCSIA 2009c). Various factors contribute to these limitations including information not collected consistently across states, government departments and service providers; under reporting particularly among vulnerable groups like women with limited or no English and lack of in-depth and detailed research. Within the confines of these limitations, this paper draws on the data collected and experience of staff at Heira House as well as discussions with staff from key women service organisations in the ACT.

Heira staff estimate that they assist an average of three to five immigrant women a year with applications under the DV/FV provisions and DIMAC decisions on their client's claims take some 6 to 12 months. In the experience of Heira staff, most DIMAC decisions were made in favor of the women. Despite these positive outcomes, immigrant women can stay in Heira House for up to 18 months - initially during the preparation and processing period for the application and later awaiting public housing. Heira is a seven bed facility consequently the effect of servicing immigrant women has a large impact on their service and effects their ability to support a wider client group given the long stays of the immigrant women.

The Coordinator of Heira House indicated that the basic cost of maintaining a women at their premise is approximately \$15,000 a year. This cost includes accommodation, food, personal items (such as clothes, transport), medical and legal costs. The immigrant women also require more than the eight weeks allocated for on-going support under the outreach program when they leave Heira House. These are substantial costs for a small non profit organisation to bear.

The Coordinator of Canberra's Domestic Violence Crisis Service (DVCS) advised in a meeting of 19 November 2009 that DVCS processes 3 to 8 applications under the DV/FV provisions a year and that the 'unreported cases were even greater'. Prominently the applicants come from Asia, Africa and Eastern Europe.

In the last ten years more than 50% of the women residing in Heira have been immigrants. In the first week of December 2009 five of the seven residents at Heira were immigrant women. With this long history of engagement, Heira has

gained substantial expertise on immigrant women issues which is utilised by other refuges and community organisations. Heira's contribution to the Canberra community was acknowledged when Toora received the ACT Council of Social Services's (ACTCOSS) Minor Miracle Award 2008 for the Heira program.

Main effects of providing services to immigrant women for refuges like Heira House are:

- refuges are non-profit organisations and bear the cost of supporting immigrant women staying at their premises and some costs associated with preparing the application like case worker support and translators
- the requirements of the DV/FV provisions are often beyond the skills of the case workers where for example specific knowledge of immigration law is required
- complementary services which provide health and legal professionals are difficult to access at a 'pro bono' basis
- limited access to translated material on legal rights or health matters.

7. Conclusion

Research in Australia and comparable overseas countries show that immigrant women escaping domestic violence are experiencing difficulties with accessing the DV/FV provisions in the migration legislation. In Australia the legislation has been in place for nearly twenty years and has undergone a number of amendments, yet excessive barriers still exist. Although these barriers have been raised by numerous reports and reviews, little is being done to make fundamental changes to the legislation. The *Time for Action* report indicates that if action is not taken the impacts and cost to individuals and the society will get worse.

In a recent address to the Settlement Council of Australia Conference, Andrew Metcalfe, Secretary for DIMAC said that:

We must always remember that our work in settlement is about people.

People who possess—in the words of the United Nations Universal Declaration of Human Rights—'...the inherent dignity and the equal and inalienable rights of all members of the human family'.

The people we resettle in Australia as refugees may be very vulnerable and may have had traumatic and tremendously difficult experiences previously.

The great gifts we can offer them as a nation are respect for—and recognition of—their human dignity and cultural background, a pathway

back to a life of safety, good health and opportunity, an active role in our democracy, and a full and deep sense of belonging (Metcalfe 2009, p.2).

He further indicated that:

The business of my department is to effectively manage each and every stage of the entry and settlement of people in Australia, from applications for residency to the fostering of an inclusive and cohesive society as a whole (Metcalfe 2009, p. 6).

Although this address was directed to settlement of humanitarian refugees, the sentiments can equally apply to immigrant women. They come to Australia in good faith as legal entrants having broken no laws. Yet if the sponsoring relationship breaks down the women have little to no rights and have to deal with complex systems which are difficult to access without considerable assistance. These systems take little account of the nature of domestic violence and the multiple dimensions of disadvantage that recent immigrant women face. Refuges like Heira House report that women often choose to return to violence situations rather than dealing with lengthy and challenging administrative and legal processes.

In opening the Settlement Council of Australia Conference, the Parliamentary Secretary, Laurie Ferguson said that: 'we have a strong duty of care to offer effective settlement support to the people we invite to live in this country' (Metcalfe 2009, p. 6). This raises the issue of whether Australia's migration laws and policies reflect 'duty of care' to immigrant women and what Australia 'owes' non-citizens who are in the process of becoming citizens. A nation that is based on immigrants ought to take pride in protecting people who are involved in the process of acquiring permanent residence status and in becoming its citizens (Narayan 2009).

These are large questions well beyond the scope of this paper. Yet it does indicate there is sufficient evidence to warrant an independent review of DV/FV provisions within Australia's migration legislation. The concerns that need to be addressed include designing appropriate and achievable evidence requirements, providing access to public funds for migrants and service providers like refuges while the DV/FV claims are being processed, providing more information (with translations) on services and rights and reducing or removing the threat of deportation. These concerns are reinforced by the data from DIMAC which shows that a vast majority of the claims under the DV/FV provisions are granted permanent residence visas.

Although migration legislation is the responsibility of the federal government, state and territory governments and even advocacy groups can undertake in-depth research on impacts of the DV/FV in their states or in a specified area that would assist a review. For example in the United Kingdom, research on DV provisions has been commissioned by Saheli, a specialist domestic violence service, with contributions from the National Institute for Mental Health England, University of Huddersfield and the Manchester Partnership. This research documents the nature of domestic violence faced by south Asian women and the process of leaving the abusive relationship; explores service pathways and makes recommendations to inform policy changes (Anitha 2008).

States and territories can consider some direct action. For example, the ACT government could fund Heira to train staff from other refuges and community organisations on immigrant women issues and investigate funding a dedicated service for immigrant women.

Ultimately, the problem of women with insecure immigration status facing domestic violence is a human rights issue, not just one of immigration and should to be tackled as such. The human rights concerns for immigrant women that involve treating people with 'inherent dignity' highlighted in Metcalfe's address should be respected. There is a need to review, and potentially to reform, the migration laws to accommodate the difficulties being faced by immigrant women who experience domestic/family violence and have taken the courageous and important step of leaving the abusive relationship.

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Maryann Athaide

Maryann Athaide is completing a Graduate Diploma in Community and Health Development at the University of Canberra. This paper was written as part of her community field work experience with Toora Inc. Over the last couple of decades Maryann has worked for the Australian Agency for International Development (AusAID) principally with Pacific Islands countries.