



Temporary Migration and Family Violence: An analysis of victimisation, vulnerability and support

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While this research did not directly involve any of the women whose cases are presented in the findings, it is important to recognise and acknowledge that every number in this report, and every extract from the case notes, is drawn from women's experiences. Given the nature of research that involves de-identifying data, the individual stories, situations and experiences detailed in this report are at once no specific individual's story, while at the same time being the story and experience of many. This data set is unique, in offering something substantial to the Australian community and illuminating situations and experiences that for too long have been barely recognised and poorly responded to. The hope of research such as this is that its findings and recommendations will contribute towards positive change for all women, but in particular, women who are temporary migrants in Australia.

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In light of the contribution of others acknowledged above, I take full responsibility for any errors in this report.

Marie Segrave, September 2017

Abbreviations, terminology and presentation of findings

Abbreviations

AFP	Australian Federal Police
ALRC	Australian Law Reform Commission
FVPs	Family violence provisions
FVSN	Family Violence Safety Notice
CALD	Culturally and linguistically diverse
COAG	Council of Australian Governments
CRAF	Common Risk Assessment Framework (VIC)
DIBP	Department of Immigration and Border Protection
DSS	Department of Social Services
ILO	International Labour Organization
IVO	Intervention Order
InTouch	InTouch Multicultural Centre Against Family Violence
LGBTIQ	Lesbian, gay, bisexual, transgender, intersex, queer
NESB	Non-English-speaking background
RILC	Refugee and Immigration Legal Centre (Victoria)
UK	United Kingdom
VRCFV	Victorian Royal Commission into Family Violence
VMC	Victorian Multicultural Commission
VRCFV	Victorian Royal Commission into Family Violence

Terminology

Victim-survivor

In the case files the reference is to the 'client': reflecting the nature of the service provision. In this report, this term is replaced by the use of the term victim-survivor, or woman/women as appropriate (reflecting that in this study all of the victim-survivors were women). It is important within the context of this research to clearly demarcate the data from the files: that is, we come to these files and reproduce this data as research evidence, rather than as client reports that reflect service provision, and thus this shift away from the terminology of client is critical.

Perpetrator/s

We refer broadly to perpetrators, recognising that in some cases they remain alleged perpetrators. The report adopts the position that, regardless of whether there has been a legal intervention, for the purposes of the service and support required there is one or more perpetrator who has led the victim-survivor to seek the assistance of InTouch. Perpetrator is not the equivalent of partner or former partner.

Family violence

The report refers to family violence, which is the terminology utilised widely, including by the VRCFV (2016). This broad term captures the predominance of intimate partner perpetrators but also allows for the breadth of situations of violence that includes, in this report, the presence of additional familial perpetrators.

Culturally and linguistically diverse [CALD] versus immigrant and refugee women

In this report, drawing on Vaughan et al. (2015), the broad term of immigrant and refugee women is employed, as it offers greater scope than the term CALD, which is dominant in the policy domain. A concern regarding CALD is the assumption of diversity – whereby women from western, English-speaking backgrounds may be presumed not to be a part of this group (such as those from the United Kingdom (UK), the US and Canada) and yet women from these nations may be temporarily in the country. This report is primarily focused on migration status as a point of distinction, rather than cultural or linguistic difference; however, as discussed throughout the report, there is cultural and linguistic diversity within this population which requires close attention.

Presentation of findings

Where direct quotes are used, these are drawn from either case workers' notes or women's written accounts that are included in the case files. This is indicated in the text. These are edited only for readability via the use of ellipses, to remove any identifiable data (names, places and other identifying information) and to replace the word 'client' with 'victim-survivor', as described above in the Terminology section.

In general, percentages used in this report are rounded.

Executive Summary

Across Australia, governments at every level (federal, state and territory, and local) have moved to put family violence on the public agenda. Campaigns, policies and funding are being directed towards supporting victim-survivors and preventing future generations from experiencing the high levels of entrenched family violence that exist today.

Family violence does not discriminate. However, it is known that for various subsets of the population, both the experience of family violence and the support and response options do vary, in some cases significantly. The Victorian Royal Commission into Family Violence (VRCFV) acknowledged the importance of recognising these points of differentiation among key groups, which include, but are not limited to, immigrant and refugee groups, the lesbian, gay, bisexual, transgender, intersex, queer (LGBTIQ) community, and those who have physical or intellectual disabilities or impairments. In the Second Action Plan 2013-2016, as part of the Commonwealth National Plan to Reduce Violence against Women and their Children 2010–2022, it was recognised that 'learning more about violence against these groups of women [including CALD women, as well as Indigenous women and women with a disability] is critical if we are to make violence against all women stop' (Commonwealth of Australia 2013: 23). This report presents the results of the first comprehensive study of a subset of the immigrant and refugee community: temporary migrants. This group is comprised of those who are in Australia on temporary visas, which include partner-related visas, as well as working, student, visitor and other temporary visas.

The visa and migration system in Australia is complex. This complexity is not canvassed in detail here but, where relevant, is referred to in the report for greater clarification. The main focus in this report is on temporary migrant women, whose status can be divided based on whether or not they are on a partner visa that offers a pathway to permanent residency. For women who are on such a partner visa, there are provisions in the Migration Act that enable women to access permanent residency if a relationship breaks down due to family violence, via the family violence provisions, as summarised (and simplified) in Figure 1¹ (below). For women who are not on this pathway – most often women not on temporary partner visas – there is no such safety net (see Figure 1).

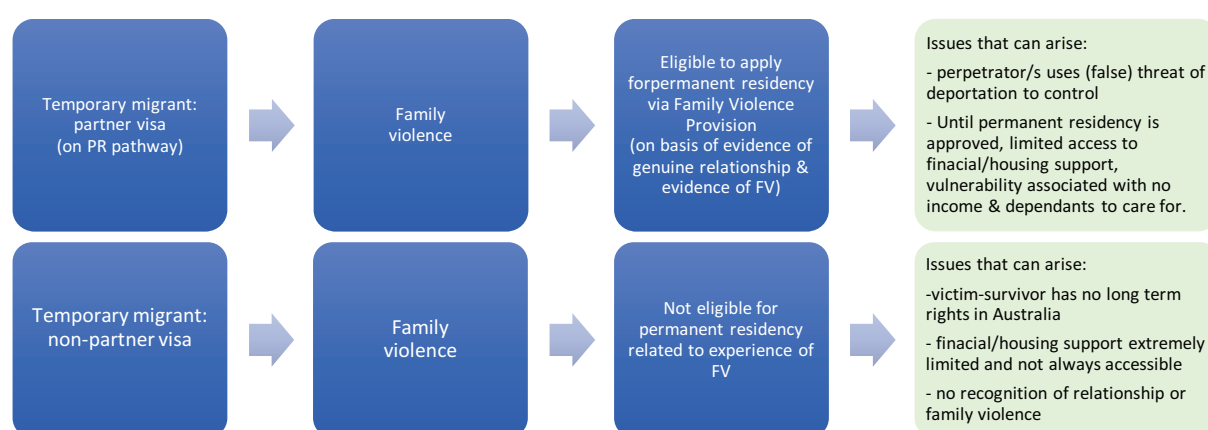


Figure 1 The basic difference between temporary migrants on a partner and non-partner visa

Why does temporary migration status matter in the context of family violence?

Temporary migration status matters in the context of family violence because, in addition to the acknowledged levers of financial, emotional, technological, physical and sexual abuse that occur across situations of family violence, uncertainty of migration status creates additional leverage for violence and

¹ In Appendix 1, a detailed diagram provided by the DIBP is included that explains the difference between onshore and offshore applications, as well as the difference between a prospective marriage visa and spousal visa.

control. As indicated in Diagram 1, migration status (i.e. temporary partner visa or temporary other visa) also impacts victim-survivors² in terms of access to support and services (see VRCFV 2016; Special Taskforce on Domestic and Family Violence 2015), and if the victim-survivor has Australian citizen children, complex migration issues can arise with the potential for women to have to leave Australia while their children remain in the country.

Critically, the family violence provision within the Migration Act acts as a safety net only for women on temporary partner visas, as indicated in Diagram 1. It is extremely difficult to measure the extent to which those who are eligible actually apply to access this provision. However, based on the estimate that one in four women experience family violence, and the annual average approval of 36,450³ temporary partner visa applications from female applicants, it could be assumed that at least 9,112 women across Australia who are on temporary partner visas are experiencing family violence. In 2015–16, there were 529 family violence provision applications made by women on such visas, of which 403 were successful – meaning that 403 women were able to access permanent residency via the recognition of family violence being the cause of the relationship breakdown⁵. This low number suggests that there is much to be done in relation to understanding women's experiences and situations, as well as the extent to which victim-survivors who are temporary migrants are aware of their rights and support agencies are able to assist women to access these rights.

What is not indicated in Diagram 1, but which is detailed throughout the report, is the complexity of the situations of family violence that women who are temporary migrants experience. Importantly, some of the complexities of context and experiences of family violence are not restricted to this population, although they may impact women in this study in specific ways. For example, threatening to take custody of dependant (Australian citizen) children if a victim-survivor leaves can be brought into sharp relief for women who believe their migration status will result in them having limited rights as mothers when they are also temporary non-citizens. Further, there are important overlaps between family violence and situations that are akin to trafficking and slavery offences, as defined in the Commonwealth Criminal Code Act 1995, including forced marriage, domestic servitude, human trafficking and other slavery-like situations. This report brings these situations to the fore and considers how Australia can move forward to better recognise and respond to the critical issues raised in this analysis.

The research and the report

This report draws on detailed cases of 300 women who sought the support service of InTouch Multicultural Centre Against Family Violence over 2015–16. The findings lay the ground for a range of potential interventions and improved responses for this group of women, on the basis of significant data that details the specific impact of migration status on the experience of family violence and access to support. While in this study migration status does not align exactly with immigrant and refugee status, there are often issues that are relevant across both groups: related to cultural and familial practices and living arrangements in particular. As this report details, migration status often adds a layer of complexity and, most often, uncertainty, for women. Further, the report points to other significant concerns that extend beyond the specificity of temporary migration – in particular, the overlap of family violence and forms of coercion and abuse that are akin to Commonwealth trafficking and slavery offences.

In summary, this report urges recognition of the following:

- Temporary migration status impacts women regardless of whether or not they are eligible to apply for the family violence provisions.

² Please see Abbreviations and Terminology (p.iii) with regards to the use of 'victim-survivor', and the utilisation of the gendered recognition of victim-survivors as women in this study.

³ This is based on averaging the approval data provided by the DIBP regarding approved partner visas from 2013 to 2017.

⁴ Personal email communication with the DIBP September 2017.

⁵ As noted, there are many complexities regarding this process, including but not limited to meeting the requirement of establishing both that the relationship was genuine and providing sufficient evidence that family violence has occurred. It is not suggested that all those who apply for permanent residency via the family violence provision are eligible; rather, there are some significant gaps here that require further examination. See section 5.0 for a discussion of this in detail.

- On the one hand, migration status is prioritised over and above the experience of family violence. The response and support made available is dependent on migration status first and foremost, rather than risk and need in relation to experiencing family violence. This is most evident in relation to the limits on access to financial and housing support for women with temporary migration status.
- On the other, migration status is often not factored into assessment of risk. The failure to recognise, understand and assess risk pertaining to migration status results in limited recognition of violence, abuse and coercion in all their forms, and their impact.
- As a nation we are only just coming to grips with the complexity of family violence, the interventions required to better understand and manage risk, what is required to prevent family violence and what we need to do to ensure a comprehensive, impactful and efficient response. It is critical that we respond to family violence first and foremost, in its various manifestations across Australia, and that we recognise and support all victims equally, regardless of migration status or any other point of difference.

The report offers recommendations that speak to the opportunities we have as a community to ensure that migration status does not impact on how we respond to family violence and how we support victim-survivors of family violence who seek assistance. The intention of this study is to provide a detailed evidence base to inform the continued development of responses to family violence the ultimate goal of which is a future free of family violence across Australia.

We have an opportunity to create a more comprehensive and more informed response, in the push towards comprehensive and targeted family violence interventions and support for the range of experiences and situations in which women, predominantly, find themselves. This report endorses the national, state and territory commitment to working towards a future free of gendered violence, and offers specific recommendations towards achieving this.

Recommendations

The recommendations arising from this report do not stand alone as there have been major reports released and commitments made in relation to family violence within Australia in recent years (in particular, the Council of Australian Governments [COAG] National Plan, the Victorian Royal Commission into Family Violence, and the Queensland Special Taskforce on Domestic and Family Violence Not Now, Not Ever report). This is acknowledged where relevant in the recommendations below and throughout the report. The four recommendations presented below are organised thematically, drawn from specific recommendations provided throughout the report which are consolidated here into broader recommendations for clarity and focus. They are intended to offer a clear indication of the next steps that need to be taken towards achieving a better outcome in relation to the response to family violence broadly, and for temporary non-citizens specifically.

Recommendation 1: Information provision and data monitoring

- a. Information provision:** Women need to be empowered via increasing their confidence and knowledge regarding rights pertaining to migration status and family violence law and support provisions. Information and communication strategies must include the following:
- i. Pre-departure and arrival information must be provided for all new arrivals regarding Australia's definition of, and stance on, family violence.
 - ii. Ongoing information must be provided that targets immigrant and refugee women, and temporary migrants, via diverse media and communication platforms. Beyond printed materials, this should include digital social media, television and radio, and community awareness raising (i.e. a comprehensive text/verbal/visual communication strategy).
 - iii. All information provision strategies must make clear that the definition of family violence is broad and inclusive.
 - iv. All information should provide direct contacts to specialist family violence services with migration expertise in each state and territory.
- b. Data monitoring and information sharing:** As Victoria moves towards implementing Recommendation 143 of the VRCFV, focused on ensuring the Victorian Family Violence Index measures the extent of and response to family violence in different communities, and Recommendation 5 of the VRCFV, focused on the development of a family violence information-sharing legislative scheme (to be contained within Part 5A of the Family Violence Protection Act 2008), it is recommended that the database include:
- i. data regarding demographics, including the migration status of victim-survivors and their dependants
 - ii. data regarding the family violence context, including multiple perpetrators and their relationship to the victim-survivor
 - iii. data regarding the nature of family violence, including the use of deportation or other migration-related threats
 - iv. immigration data regarding family violence provision applications and outcomes, and regarding partner sponsorship refusals.

Extending the information sharing across family violence service providers and agencies, to include the Department of Immigration and Border Protection, would require further legislative arrangements. It is recommended that the Victorian Government pursue this via COAG, to support a future comprehensive national monitoring database.

In addition to enabling trends to be monitored, this will enable accountability and measurement of the impact of legislative (and, in the case of migration, regulatory) change.

Recommendation 2: Risk assessment

This recommendation identifies specific risk assessment and management in relation to initial screening for victim-survivors, screening for children, and specialised risk assessment and management for immigrant and migrant women, and temporary migrants.

a. Generalist risk assessment and management: This report evidences the need for baseline questions in risk assessment and management that may have specific ramifications for women whose migration status is temporary, but that can also impact all women in situations of family violence. These questions should relate to:

- i. *Technology:* including the utilisation of technology to enact (or threaten) abuse, but also control over women's use/access to technology.
- ii. *Employment and financial security/control:* assessment should include canvassing control over and access to finances, sharing of household and other financial responsibilities, and limitations or control related to accessing employment, and the type or nature of that employment.
- iii. *Multiple perpetrators:* questions pertaining to who is enacting violence/harm/threats/control should be gathered to ensure specificity of legal response (for example, IVOs against all relevant parties) and to understand the cultural and familial context of family living arrangements.
- iv. *Counter/cross claim IVOs and other mechanisms to undermine victim accounts:* It is important for risk assessment purposes to capture where IVOs and/or other intervention mechanisms (such as mental health reports) have been used against the victim-survivor to undermine/challenge the veracity of her account of family violence.
- v. *Migration status:* if migration status is temporary, this should be a screening question to enable referral to a specialised service, where further, more specialised risk assessment and management should take place. This should be a routine assessment question, as migration status is not directly aligned with language or cultural difference per se.

b. Risk assessment for children and young people: For risk assessment related to children, information should be gathered pertaining to the:

- i. child's migration status
- ii. parent/guardian's migration status
- iii. use of migration status and/or deportation of child/parent as a threat.

c. Specialist risk assessment for immigrant and refugee, and temporary migrant women: Where migration status is temporary (regardless of whether migration status is connected to the partner), additional questions should be asked by specialised services in relation to:

- i. threats regarding migration status/deportation/withdrawal of sponsorship
- ii. threats pertaining to child/ren and separation or deportation as a result of temporary migration status
- iii. the identification of who is perpetrating violence/control/abuse, and this should extend to the nature of these practices and the location of these perpetrators (including whether they are exerting abusive and controlling behaviour from an overseas location)
- iv. the identification of indicators pertaining to potential slavery or trafficking offences, with a referral model to direct cases to the AFP and to determine the support and management model for this group of victim-survivors as their cases are reviewed and investigated in relation to these offences.

Recommendation 3: Risk management and service provision

There are two parts to this recommendation: the first focuses on the model of service provision, while the second focuses on funding gaps and creating a more comprehensive system of support for women, regardless of their migration status.⁶

a. Service provision model: The ideal risk management and service provision model should include:

- a specialist service model whereby case work, migration agents and family law experts work collaboratively to support victim-survivors.

⁶ Across Australia there are dedicated CALD family violence services in nearly all states and territories; however, they do not all have the resourcing to provide comprehensive migration, law and case management services.

This would ensure:

- efficiency of service delivery and appropriate levels of specialisation; more generalist services are not expected or able to be experts in the complexities of the intersections of migration law, family law and criminal law. Further, given the noted challenges for generalist organisations to be attuned to the specificity of needs of key populations (see VRCFV 2016), and to resource the provision of the support that may be required, specialisation (alongside consistency of referral) will ensure efficiency across the sector.
- specificity of risk assessment and management that can attend to the complexity of cultural, faith and other migration-related contexts, including knowledge and training to direct cases to the AFP as required where potential slavery or trafficking offences may be indicated. This will ensure tailored, targeted and impactful case management and service responses.
- empower women to identify preferred service provision and risk management, recognising that for some women support that is external to their community will be preferred, whereas others may opt for a management model that is inclusive of their faith community, for example.

To achieve this:

- i. The Victorian Government should consider fully funding a comprehensive model that can provide support across the state.
- ii. The Victorian Government should work with COAG to fund service provision, towards a nationally consistent approach and national funding for migration-related services that sit within the CALD/immigrant and refugee service provision sector.

b. Service and risk management funding gaps: There are noted gaps related to accommodation and income that particularly impact women whose migration status is temporary. These gaps are evidenced in this report. It is recommended that the Victorian Government develop a model of funding that will fill these gaps and request COAG to share some of these funding responsibilities in the long term. Specifically, the gaps that must be addressed are:

- i. Specific funding for accommodation (crisis and shelter) to enable services to accept women whose migration status is temporary and/or whose long-term future in Australia is uncertain, to ensure that uncertainty regarding long-term status in Australia (and the ability to rehouse in longer term accommodation) does not impact women and their children's ability to access housing to escape situations of family violence.
- ii. Immediate access to financial support for temporary partner visa holders: The Victorian Government should lead a discussion at COAG to urgently review current limitations regarding access to welfare support, to enable women to access immediate (short term) and ongoing (medium to long-term) financial support, rather than awaiting finalisation of their FVP application. Recognising that in many cases women are dependent on their partners financially, there is an opportunity for women and their children to be supported by the government, particularly as financial independence is critical in the context of family violence. This should be provided based on evidence that the majority, by far, of those who apply for FVP are successful. The cost to the community will be limited, and the benefit to women and their children substantial.
- iii. As per the VRCFV Recommendation 162, the Victorian Government should also encourage COAG to support changes to the Migration Regulations to ensure that all people seeking to escape family violence are eligible for crisis payments, regardless of their visa status.

Recommendation 4: Legislative responses

The evidence in this report has relevance primarily to the Migration Act 1958 and Migration Regulations 1994, and the Commonwealth Criminal Code Act 1995 and the Family Violence Protection Act 2008 (Vic), and the recommendations pertain to these.

a. Migration Act 1958 and Migration Regulations 1994: COAG should consider the following amendments or inclusions:

- i. *An appeal process:* potentially on the basis of evidence of family violence, to enable relevant migration processes (such as passport applications) where one parent (the perpetrator) is refusing to sign the relevant documentation as an act of control.

- ii. *Criminal law consequences for sponsors who enact family violence*: COAG should consider criminal law consequences for sponsors who enact family violence, recognising that currently a sponsor's failure to meet their obligations is a civil and administrative offence.
- iii. *Review of the family violence provision application process*: this should include more specific articulation/recognition that a genuine relationship can be difficult to prove in the context of family violence and clearer provisions need to be made regarding evidentiary requirements and when these may not be necessary, as in the case of forced marriage.
- iv. Recognition across workplaces, education services and the DIBP of the impact of family violence on visa obligations, to ensure the impact of family violence (which may include disruption to work attendance and to education attendance or completion) is recognized and visa cancellation does not occur in this context.
- v. As per the VRCFV Recommendation 162, COAG and the Commonwealth Government should review and broaden the definition of family violence in the Migration Regulations 1994 (Cth) to ensure consistency with the Family Violence Protection Act 2008 (Vic).

b. Divisions 270 and 271 of the Commonwealth Criminal Code Act and the Family Violence Protection Act 2008 (Vic): The intention, provisions and clarity of the law at both the state and federal level require careful consideration, as do the implications of different systems of support including funding models and responsibilities for family violence and trafficking and slavery victim support.

- i. In light of VRCFV Recommendation 156, for Victoria to include new offences of forced marriage and dowry-related abuse in the Family Violence Protection Act (2008), the Victorian Government should review the consistency and relationship of these laws to existing Commonwealth legislation, as well as the potential benefits to supporting the pursuit of these offences at the Commonwealth level. Specific consideration should be given to the following:
 - Policing, specialisation and jurisdiction: currently the AFP undertakes investigation related to forced marriage and the Commonwealth Government sponsors a national victim support service (contracted to Red Cross), but there needs to be clarity regarding whether the intention is to separate the Victorian and national response. There are important consequences for Victoria Police, as well as other agencies, in relation to training and specialisation with regards to these offences. There are also important considerations regarding which offences are pursued (state or Commonwealth) and which require the input of the Commonwealth Department of Public Prosecutions and the Victorian Department of Public Prosecutions.
 - The extent to which other trafficking and slavery offences (such as human trafficking, forced labour and domestic servitude) should also be considered within the suite of proposed new offences.
 - The consequences of creating specific legislation for the broader response to slavery and trafficking offences, including consideration of whether this will dilute the national response to human trafficking and modern slavery.
- ii. The Victorian Government should urge COAG to undertake a review of the existing slavery and trafficking legislation in relation to family violence and partner migration. Specific consideration should be given to the following:
 - The limited identification and referral of trafficking and slavery offences when they occur within a domestic setting/familial relationship: this should include recognition that, in addition to forced marriage, situations akin to human trafficking, forced labour, domestic servitude and other offences under the Commonwealth legislation occur within the context of partner migration but have rarely been pursued as such.
 - The implications for the existing national response to trafficking and modern slavery if states and territories begin to pursue selected offences, such as forced marriage, under relevant family violence legislation.

1.0 Introduction: The research and policy context

Family violence, as a form of gendered violence that impacts and involves current and former intimate partners, children and extended family members, has shifted as a contemporary issue in Australia from an acknowledged problem to a political priority for our national and state governments. It is a form of violence and control that manifests in multiple ways – physical, sexual, verbal and financial – and via many means including directly and indirectly, and via technology.

This report seeks to contribute an important evidence base on family violence related particularly to temporary migration status, to build on the burgeoning recognition of immigrant and refugee (often referred to as CALD) women as a group that experience specific elements of risk and vulnerability in the context of family violence. This growing body of research has acknowledged that immigrant and refugee women are subject to migration and other systems that can exacerbate and entrench violence against them (and their children) and create contexts within which women either cannot or will not seek (or indeed, may be refused) support due to broader concerns they have about their migration status, and/or their children's migration status. The specific contribution of this report is in the provision of empirical, quantitative and qualitative data, which supports and affirms previous qualitative data produced on a smaller scale (see Vaughan et al. 2016; Victorian Multicultural Commission [VMC] 2016; VRCFV 2016) that has indicated that the experience of immigrant and refugee women in relation to family violence has unique and complex aspects that require targeted responses, and that temporary migration status is a significant risk factor for this population.

1.1 Background: immigrant and refugee women and family violence

The recognition that immigrant and refugee women (the collective term for this group has, at different times, included non-English-speaking background [NESB] and culturally and linguistically diverse [CALD]) have specific needs and experiences in relation to family violence and to accessing support is not new. For example, the specific vulnerability of women sponsored by Australian citizens has been raised over time since the 1980s. In 1992, a Parliamentary Research Service Background Paper noted that:

Serial sponsorship⁷ has emerged as a problem because of claims of violence in these relationships, and failure to provide maintenance for former spouses and children. While the numbers of serial sponsors may be small (estimates range from 50 to a few hundred), the issue has been highly publicised. (Millbank 1992: 2)

In addition to publicity around specific cases, research has similarly illuminated practices of repeat (or 'serial') sponsorship and the high level of perpetration of domestic violence among this group of sponsors (Iredale 1994). The result of public recognition of this issue was changes to migration policy to prevent serial sponsorship. This translated into the introduction of limitations on how many times an individual could be a sponsor and a time limit regarding how quickly someone could apply to be a sponsor for a different applicant. With these measures, the federal government stopped short of requiring sponsors to disclose their criminal history and/or specific history pertaining to offences related to family violence. In a further measure to protect women and their children and enable them to access support in Australia, the Family Violence Exception was introduced in 1994 to enable women on a temporary partner visa to access permanent residency if it could be demonstrated that the relationship had broken down due to family violence. This served in part to offer protection to women (see below for further details regarding these provisions and their current operation); however, concerns related to family violence around the intersection of vulnerability and migration status continued to be raised (see, for example, Cunneen & Stubbs 2002).

More recently, in the wake of a significant groundswell of national attention on family violence, there has been some significant contemporary research in Australia that has highlighted the importance of recognising the complexity of immigrant and refugee women's experiences in both metropolitan and regional Australia⁸ (see Vaughan et al. 2016; McCulloch et al. 2016; VMC 2016).

⁷ As detailed in Milbank's report, 'serial sponsorship' refers to Australian citizen or permanent residents who have sponsored multiple partner visas, most often men sponsoring women from overseas to come to Australia.

⁸ While various reports and research may use different collective terms, including CALD or immigrant and refugee, this is not distinguished here in part because it is complex to determine where the lines are to be drawn and in part because many reports do not provide clear demarcations. Although CALD does not equate to immigrant and refugee perfectly, as noted in the terminology overview, where relevant the broad reference to either groups is indicated, but more importantly, what is relevant to this discussion in reviewing the breadth of research and report writing is where there is specific reference to migration status and, in particular, temporary migration status.

Notably, data across these collective projects indicates that there is no evidence that the incidence of family violence is higher for those from culturally diverse and migrant communities. Rather, the stressors related to migration can increase the risk of family violence and migrant and refugee women encounter specific barriers to accessing family violence services, in part due to their migration status, limited knowledge regarding their rights and access to support, and also due to certain cultural values and related cultural barriers that may impede help-seeking behaviour (see InTouch Multicultural Centre Against Family Violence 2010; Vaughan et al. 2016; VMC 2016; see also Vaughan et al. 2015 for a comprehensive international literature review regarding the intersections of migration and family violence).

The recent review of the Victorian Common Risk Assessment and Management Framework (CRAF) (McCulloch et al. 2016), recognised the critical need to build an evidence base to inform understanding of migration-specific risk. The report identified that temporary migration status created significant leverage for control and coercion, and that other aspects of migrant experiences including both isolation from and entanglement within a community can serve to enable rather than challenge the coercive practices of the perpetrator. In addition, a recent report for the Commonwealth Department of Social Services found that ‘the challenge for women escaping violence while living in Australia on temporary visas ... [included] the fear of losing the right to remain in Australia, whether real or perceived, [which] was a significant factor in a woman’s decision-making, especially for those on partner visas or dependants of other temporary visa holders such as international students or skilled workers’ (Commonwealth of Australia [DSS] 2015: 25). More recently, the ASPIRE (Analysing Safety and Place in Immigrant and Refugee Experience) project report, funded by the Australian National Research Organisation for Women’s Safety (ANROWS), based primarily on semi-structured interviews with victim-survivors from CALD backgrounds and support providers, noted that:

services in both [Victoria and Tasmania] were under immense pressure to respond to family violence generally and were under-resourced to adequately meet the specific needs of immigrant and refugee women. Key informants reported there were high costs associated with assisting immigrant women and their children who had no income and who required assistance for complex legal, immigration and protection matters. (Vaughan et al. 2016: 4)

The ASPIRE project included fewer than 10 women in the study whose migration status was temporary; however, its findings are nonetheless indicative of similar issues identified in other research. Further reports, including one from the Victorian Multicultural Commission (VMC, 2016), have raised similar concerns, albeit again based on small samples and indicative community data. Migration status is thus recognised as a significant, but poorly understood, aspect of family violence risk. Temporary migration status, in particular, can pose a significant barrier to reporting family violence and accessing support, and can be used by abusive partners and other perpetrators (such as family members) as leverage to control victim-survivors (see Vaughan et al. 2016; VMC 2016).

The urgency of better understanding and developing more targeted responses to this aspect of risk within the broader spectrum of family violence has also been recognised in a number of recent reports and policy statements. In the 2015 Not Now Not Ever report from the Special Taskforce on Domestic and Family Violence in Queensland, issues relating to language and the use of interpreters were raised, and the report acknowledged that, in order ‘to be effective ... a domestic and family violence strategy must contemplate the unique experiences and meet the unique needs of Aboriginal and Torres Strait Islander peoples, people from CALD backgrounds, people with a disability, the elderly, people in LGBTIQ relationships, and children impacted by domestic and family violence’ (Special Taskforce on Domestic and Family Violence 2015: 185). The 2016 VRCFV Final Report similarly recognised that ‘People from culturally and linguistically diverse communities are more likely than people of Anglo-Australian background to face barriers to obtaining help for family violence’, and importantly identified that ‘the impact of family violence on CALD victims who do not have permanent residency is particularly severe’ (VRCFV 2016: 34). Further, the VRCFV identified that:

People from CALD backgrounds without permanent residency can feel they are unable to leave an abusive relationship because doing so will have consequences for their visa status – for example, possible deportation to their country of origin and loss of their children. Uncertain visa status can be

used by abusive partners or other family members to threaten and control women: a considerable power differential arises when a woman's partner has permanent residency and she does not. A CALD victim can also be threatened by potential withdrawal of sponsorship of their permanent residency application, having their visa cancelled or having other family members deported. Additionally, they can face harm or ostracism from their family and community if they leave their relationship and return to their country of origin. (VRCFV 2016, vol. 4, pp. 109–10)

A final problem is the barriers to financial and accommodation support. The VRCFV final report noted that submissions made to the Royal Commission made clear that, while women without permanent residency can access refuges and emergency or transitional accommodation, their inability to move into long-term housing (as they are ineligible) may place a refuge in a situation where they have to refuse to accommodate women because there is no certain pathway beyond the refuge (VRCFV 2016: 51). In addition, women without permanent residency are ineligible for social security benefits and may have no source of income, which is a significant challenge in itself, but also creates obstacles to accessing refuge and crisis accommodation, as some refuges require women (or at least the majority of those accommodated at any one time) to have an income (VRCFV 2016: 52). Safe Steps, a family violence response centre, reported to the Royal Commission that 'over 80 per cent of the women and children accommodated in its emergency accommodation units have not been able to enter a refuge because they lack permanent residency and that these people remain in crisis accommodation twice as long as other residents' (VRCFV 2016: 52). What is absent from such data is the impact of this uncertainty of long-term support for women and their children, and the ways in which such practical issues pertaining to welfare impact on women's ability to access migration services to pursue their rights at the same time.

This report offers further, more detailed analysis of the specific situation of a subset of women from immigrant and refugee communities – those whose migration status is temporary, and who experience specific structural and familial circumstances that impact their experience of family violence and the supports available to them. In particular, it provides a quantitative evidence base that demonstrates the impacts of the harms and obstacles raised above– including, but not limited to, the specificity of migrant women's experience of family violence (such as the prevalence of multiple perpetrators), the use of migration status as leverage for violence, the threat of ostracism from the community, threats of harm to women and their families (in Australia and in their country of origin) as retaliation for leaving an abusive partner. In addition, this report documents the ways in which migration status is connected to and impacts access to support.

The report also offers something additional to the existing field of research: it seeks to document the breadth of situations of violence and exploitation, and the extent to which some cases may better be considered cases of human trafficking (as per the Commonwealth Criminal Code 1995 s270 and s271). This is largely absent in the reporting that has occurred across Australia thus far. Notably, Recommendation 156 from the VRCFV suggested that the Victorian Government 'amend section 6 of the Family Violence Protection Act 2008 (Vic) to expand the statutory examples of family violence to include forced marriage and dowry related abuse [within 12 months]' (VRCFV 2016: 122). However, in this report instances of potential forced labour and other trafficking offences are also evident. This report considers the evidence of forced marriage and other offences defined under Divisions 270 and 271 of the Criminal Code 1995 (Cth) (see section 6). It also considers, more broadly, the implications for pursuing offences that are currently defined as slavery and trafficking offences federally, and demarcating some offences as family violence offences. Through the consideration of this complex legal terrain, the report seeks to inform a more complex understanding of these offences in Australia and the development of a risk assessment tool that would enhance data gathering, in order to improve women's access to appropriate legal and welfare support services.

1.2 The policy and legal setting

This research was undertaken at a time when significant policy commitments were being made to redress the inadequacy of responses to family violence in Victoria and nationally. This is evidenced by the findings and recommendations of the VRCFV (outlined above), in addition to Commonwealth and COAG commitments to family violence generally and specific efforts to introduce law reform around immigration law and family violence. Overall, Australia's response to preventing violence against women and their children can be characterised as a public health approach, as per the National

Plan to Reduce Violence against Women and their Children (and subsequent Action Plans), which emphasises targeted support and innovation in realising long-term social change (see Commonwealth of Australia 2011, 2013, 2016; see also VMC 2016). The discussion below outlines the broad frameworks that have emerged, with a focus on the specific commitments related to immigrant and refugee women and their children.

1.2.1 Commonwealth and COAG commitments

In 2011, the Commonwealth, in partnership with all states and territories, launched the National Plan to Reduce Violence against Women and their Children 2010–2022. This plan details a 12-year strategy aimed at realising the goal of Australian women and children living lives free from violence. To this end, the following six outcomes have been articulated as the key areas of achievement required for this commitment to have the desired impact: 1. Communities are safe and free from violence, 2. Relationships are respectful, 3. Indigenous communities are strengthened, 4. Services meet the needs of women and their children experiencing violence, 5. Justice responses are effective, and 6. Perpetrators stop their violence and are held to account (Commonwealth of Australia 2011). To achieve these broad goals, the plan is underpinned by 'a series of four three-year Action Plans ... [that] will support Australian governments to work together to develop, implement and report progress within a coordinated national framework' (Commonwealth of Australia 2011: 12). To date, three Action Plans have been released, each of which has laid out specific steps towards achieving the broader goals of the 2011 plan.

With regards to migrant and refugee women, there is limited specific reference to this group within the National Plan. Arguably, this is partly because the issue of violence against women and their children – and specifically family violence – is not discriminatory and as such the broader goals outlined in the plan are intended to be achieved for, and to impact, all women and the community. However, there are, of course, specific experiential and structural factors that impact distinct groups of women in different ways, including migrant and refugee women broadly and women whose migration status is temporary more specifically (the National Plan refers to this group broadly as CALD), and these require nuanced understanding and targeted responses.

Within the National Plan there are two specific references to issues pertaining to migration status. In relation to the first National Outcome, which is focused on creating communities that are safe and free from violence, there are three strategies, one of which (Strategy 1.3) is focused on advancing gender equality. Within the identification of achievements preceding the National Plan and the immediate implementation of initiatives towards this outcome, it is recognised that there is a need to continue the work to 'Build and support legal literacy among migrants and refugees on Australian law and gender equality principles', and to 'Provide information about protections for women who experience violence in Australia to newly arrived migrants and refugees' (Commonwealth of Australia 2011: 16). Within National Outcome 5, which is focused on effective justice responses, one of the strategies includes a commitment to consider both the Australian Law Reform Commission's (ALRC) 2010 Inquiry recommendations as outlined in *Family Violence: A National Legal Response*, and the introduction of an ALRC inquiry 'into the impact of Commonwealth laws on those experiencing family violence, including the impact of child support and family assistance law, immigration law, employment law, social security law, superannuation law and privacy provisions' (Strategy 5.3, Commonwealth of Australia 2011: 27).

The First Action Plan, which accompanied the release of the National Plan (2010–2013) amendments to the Migration Regulations 1994, sought to 'improve the operation and accessibility of the family violence provisions' (Commonwealth of Australia 2013: 25), via 'streamlin[ing] the evidence that applicants need to provide when making a non-judicial claim of family violence' (DIBP 2016, see below for a more detailed discussion of the family violence provisions and accessibility).

In subsequent Action Plans there has been further articulation of issues related to migrant and refugee women, primarily in the Second Action Plan 2013–2016 (Commonwealth of Australia 2013). Within this Action Plan five specific national priorities are stipulated (1. Driving whole of community action to prevent violence, 2. Understanding diverse experiences of violence, 3. Supporting innovative services and integrated systems, 4. Improving perpetrator interventions, and 5. Continuing to build the evidence base)

which are areas on which all governments have agreed to focus over the three-year period. Relevant here is the focus, in national priority two, on understanding diverse experiences of violence. In relation to this, CALD women are identified, alongside Indigenous women and women with a disability, as specific groups of women who 'can face an increased risk of violence and additional challenges in accessing services and support' (Commonwealth of Australia 2013: 23). The work to realise this priority includes five action items (8–11), of which one is to 'work with culturally and linguistically diverse communities to reduce violence and support women and their children, particularly those who can be most vulnerable' (Action 11, see Commonwealth of Australia 2013: 23). Under this action item, the commitment of the Commonwealth and state and territory governments is to work with CALD communities to 'prevent violence and foster leadership' via a range of initiatives⁹, the most relevant of which are the focus on further strengthening the support to overseas spouses by 'requiring additional information disclosure by the Australian husband or fiancé' and the development of resource materials to inform (and thereby support) overseas spouses about essential services and emergency contacts in Australia (Commonwealth of Australia 2013: 25).

In addition, the report of the Second Action Plan indicates that there will be a 'strengthening of linkages with other significant national reforms' (p. 12), including the National Action Plan to Combat Human Trafficking and Slavery. In the Second Action Plan, there is a stated commitment to 'quantify the impact and effectiveness of our collective efforts to combat these crimes', including forced marriage; however, such accountability remains elusive (see Segrave, Milivojevic & Pickering 2017). A key underpinning of this report is that it remains unclear how the Commonwealth views the overlap – in law or in the policy response – between human trafficking and slavery, on the one hand, and protecting and supporting victims of family violence, on the other, and the potential distinction between some of these offences if they occur within what appears to be a familial relationship. In this report (see section 6), it is argued that the way forward requires careful evaluation of and reflection on what has been achieved nationally in relation to trafficking and slavery, where the emphasis is on criminal law interventions, within which family violence support frameworks have no place, and where the attrition of cases from identification to prosecution is extremely high, such that in over a decade of responding to human trafficking fewer than 20 prosecutions that have a direct relationship to Commonwealth trafficking and slavery offences have been pursued, and even fewer have resulted in a conviction (see Segrave et al. 2017, ICHTS 2016).

There is much to be said regarding the breadth and depth of commitments made at the national level via the National Plan. However, there are limitations on what has been achieved to date, and concerns have been raised about the extent to which the commitments outlined above will deliver meaningful change for women and children in the context of family violence. These concerns are addressed throughout this report, and specific limitations are discussed below in relation to three key national legal and regulatory frameworks: the family violence provisions, changes to sponsorship requirements, and the slavery and trafficking legislative and policy commitments.

1.2.2 Legal frameworks: the family violence provisions

In 1994, the Family Violence Exception (now the Family Violence Provisions) was introduced and since this time has undergone several amendments. Relevant to this report is not the history of these amendments, but rather the current design and operation of this legal and regulatory protection mechanism. At the time of writing, the Commonwealth protections for partner visa applicants in Australia, and some other visa holders¹⁰, who experience family violence remain in place to enable those who are applying for permanent residence in Australia to do so after their relationship has broken down due to (demonstrably evidenced) family violence by their sponsor (DIBP 2017). Family violence is defined in the Migration Regulations 1994 (Cth) (the Regulations) at Regulation 1.21(1), in addition to the Family Law Legislation Amendment (Family

⁹ The actions include: increased engagement of CALD communities with White Ribbon Australia, Victoria funding a CALD-specific primary prevention project for future adaption to other CALD communities and jurisdictions, targeting the expansion of The Line to enable better access for CALD young people and communities, ensuring CALD women's voices are heard as implementation is undertaken, and ensuring the provision of accessible and translated information and support in National Plan communications (Commonwealth of Australia 2013: 25).

¹⁰ Specifically, in the Family Stream primary applicants for Partner (permanent) (subclass 100) visa, Spouse (permanent) (subclass 100) visa*, Interdependency (permanent) (subclass 110)*, Partner (temporary and permanent) (subclasses 820/801) visas, Spouse (temporary and permanent) (subclasses 820/801) visas*, Interdependency (temporary and permanent) (subclasses 826/814)* In the Skilled stream (business): Partners of primary applicants for Established Business in Australia (subclass 845)*, State/Territory Sponsored Regional Established Business in Australia (subclass 846)*, Labour Agreement (subclass 855)*, Employer Nomination Scheme (subclass 856)*, Regional Sponsored Migration Scheme (subclass 857)*, Distinguished Talent (subclass 858). [*These visas have been closed to new applicants from 1 July 2009, existing applicants are covered by family violence provisions].

Violence and Other Measures) Act 2011 (Cth), which further defined and expanded the meaning of ‘family violence’ (see Section 4AB in the Family Law Act 1975 (Cth)). The definition of family violence is broad, and includes ‘conduct, whether actual or threatened ... that causes the alleged victim to reasonably fear for, or to be reasonably apprehensive about, his or her own wellbeing or safety’ (DIBP 2016: np).

Two important elements must be met to successfully access the provisions. The first is the provision of acceptable evidence that family violence has occurred. The second is the provision of acceptable evidence that a genuine relationship existed between the sponsor and the applicant. With regards to the first element, acceptable evidence of family violence includes that which is judicially and non-judicially determined. Judicially determined evidence includes any relevant court documentation, such as a court injunction under the Family Law Act 1975, court orders against the sponsor/partner made under an Australian state or territory law, or evidence that the sponsor/partner has been convicted or has a recorded finding of guilt of an act of violence against the visa applicant or members of their family unit. Recognising that in many cases judicial evidence is not available, there is also a suite of non-judicially determined evidence that can establish that family violence has been perpetrated by the sponsor against the applicant. Following the 24 November 2012 amendments, the ‘minimum evidence required from an applicant who is making their first written claim of family violence’ is a statutory declaration¹¹, plus at least two documents from the list of evidence specified in the legislative instrument (see IMMI12/116, DIBP 2016: NP). Where the application is based on non-judicial evidence, if the department determines that there is reasonable doubt regarding the evidentiary basis of the claim of family violence, it can refer the evidence to an independent expert for assessment and the determination of that expert must be accepted by the Department (DIBP 2016: NP).

The second criterion for a successful application to access the family violence provisions is that the department must be satisfied that there was a genuine relationship between the sponsor and applicant. Specifically, Regulation 1.23 of the Migration Regulations outlines that family violence must have occurred while the spousal or de facto relationship existed between the alleged perpetrator and their spouse (that is, the only perpetrator must be the partner or former partner). Thus, in order for the applicant to access family violence provisions the department must first be satisfied that the applicant and the sponsor meet the definition of spouse or de facto partners such that the relationship is genuine and established (that is, has been in place for some time)¹². A genuine relationship is demonstrated via evidence across four categories: financial (such as joint financial investments or legal commitments, sharing of finances and joint bank accounts, and sharing of household bills and expenses); the nature of the household (including living arrangements, responsibility for housework, joint ownership or rental of residence, joint responsibilities for payment of utilities/bills and joint responsibility for children); the social context of the relationship (such as evidence that the sponsor and applicant are generally accepted as a couple socially, have declared the relationship to commercial/public institutions, have joint travel/participation in activities or membership of groups, and have supporting declarations from friends and family regarding the nature of the relationship); and the nature of the commitment between the applicant and the sponsor (that is, knowledge of each other’s personal circumstances, intention of a long-term relationship, terms of the will, and evidence of correspondence over time) (for a full outline, see DIBP 2017: 41–3).

As indicated above and earlier, the changes to the family violence provisions introduced in 2012 were intended to ‘streamline’ the application process for non-judicial claims; however, they have not been subject to analysis or evaluation. Data made available by the DIBP across all (male and female) applicants, indicates there has been a decline in applications using the family violence provisions since 2011–2012 (n=855, compared to n=535 in 2015–16) (DIBP 2017a). Further research is therefore required into the process of applying for permanent residency using the family violence provisions. This report offers some insight into the reasons for the limited number of applications made annually, and how this can be addressed; however, a more dedicated analysis would illuminate the issues that impede greater access. A further three issues related to the family violence provisions are raised by the findings in this report. The first is the extent to which women are aware of these provisions and are able to access appropriate

¹¹ There is a specific form, Form 1410, that can be used for this purpose; however, a generic one will suffice so long as it includes the appropriate information.

¹² Migration Regulations 1994 (Cth) Regulation 1.15A and 1.09A.

support to help them submit an application. The second is the impact of waiting for a response to their application to access these provisions for women whose status is precarious and who, as discussed earlier, have limited financial and welfare support due to this uncertain status. The third concerns the limitations of the provisions, such that they exclude those who have been in a relationship with an abusive partner but who have not applied for a provisional partner visa. As discussed later in this report, the current approach in fact ensures that sponsors largely remain with significant power, including the power to prevent their partner from applying for a partner visa, thus ensuring women remain with limited access to support provisions (see section 3.2 for a further discussion of the findings on this issue).

1.2.3 Legal frameworks: temporary migration and sponsorship changes

As noted above, in the Second National Plan to Reduce Violence against Women and their Children, Action Item 11, there was a commitment to protecting women migrating to Australia to be with their partner via requirements that would ensure 'additional information disclosure by the Australian husband or fiancé applying for an overseas spouse visa' and, subsequently, the option to refuse sponsorship applications on the basis of this information (DSS 2013: 25). Yet this was a commitment that went against the recommendation of the ALRC's comprehensive review of Commonwealth law and intersections with family violence (ALRC 2011), which considered the potential for a separate sponsorship criterion or process, and concluded that a focus on the safety of 'victims of family violence can be promoted through targeted education and information dissemination' rather than via the creation of additional hurdles to or criteria for sponsorship (ALRC 2011: 100).

In 2016, the Turnbull government introduced the Migration Amendment (Family Violence and Other Measures) Bill 2016, a piece of legislation that seeks to mandate character checks for anyone seeking to sponsor a family visa application (Minister for Immigration and Border Protection Press Release 1 September 2016). This Bill aims to ensure that the DIBP can 'refuse sponsorship applications in circumstances where the sponsor has convictions for paedophilia, other offences against children or offences relating to violence' (Minister for Immigration and Border Protection Press Release 1 September 2016). The Bill was referred to the Senate Legal and Constitutional Affairs Legislation Committee (the Committee) for inquiry and report, and the report was published in late 2016, following interruption in the process due to the dissolution of the Parliament for the 2016 election. In total, 14 submissions were made. The Committee's report endorsed the Bill, with one dissenting position (Legal and Constitutional Affairs Legislation Committee 2016). However, 11 of the 14 submissions opposed the introduction of the Bill, and 10 of the submissions made direct reference to the ALRC report and recommendation, endorsing the ALRC's 2011 position (see Segrave & Burnet-Wakes [forthcoming] for a review of the submissions and considerations regarding the potential impacts of these measures). At the time of writing, this legislation remains a Bill; however, alongside this legislation the Migration Legislation Amendment (2016 Measures No. 3) Regulation 2016 was processed on 1 September 2016, which immediately put in place a number of the processes attached to the Migration Amendment Bill regarding sponsor checks.

1.2.4 Legal frameworks: slavery, trafficking and related offences

Largely unaddressed in the field of human trafficking research is the overlap between trafficking, slavery and family violence. There are many reasons for this, one major reason being the contemporary development of the international and national response to human trafficking that focused largely in the early 2000s on sex trafficking, and has since expanded to target more broadly human trafficking in industries beyond the sex industry and now, modern slavery, which by various definitions includes forced labour, forced marriage, debt bondage as well as human trafficking and slavery-like exploitation (see Segrave et al. 2017). While historically there has been recognition in Australia of the utilisation of migration processes to enable Australian citizens to effectively import so-called 'mail order brides' and to abuse women who come to Australia on the false pretence of a long-term relationship commitment (see Iredale 1994), this was not responded to as an issue of human trafficking – though under the current Commonwealth law it could

¹³ Notably, in the Second reading speech to the House of Representatives, the minister responsible, Peter Dutton MP, indicated that there are two integrity issues regarding the sponsored family visa program and that the amendments were designed to address both. The first issue was vulnerable Australian sponsors being targeted by non-genuine visa applicants seeking a pathway to permanent residency; while the second issue was the opportunity for Australians who have a history of violence, including family violence, to apply to sponsor without disclosing this history (see Dutton 2016). It is worth noting the order in which the Minister identified these two issues, the former of which has received limited attention in the subsequent reporting of the amendments to the regulations.

potentially be pursued as such. That said, a handful of researchers in Australia, including Quinn (2009), have identified 'exploitative domestic and sexual servitude' in relationships involving Australian sponsors and temporary non-citizens. In 2014, the Australian Institute of Criminology attempted to engage with this overlap, though its evidence base was very limited (the research primarily relied on eight de-identified case studies provided by the DIBP). The authors argued that cases were 'misidentified' as domestic violence offences and advocated for the recognition of a 'different form of human trafficking' that is exploitation of the 'self' as opposed to the 'body' (as per sexual servitude) or 'labour' (as per domestic servitude and labour outside the home) (Lyneham & Richards 2014: ix). However, this conclusion is not supported by the findings in this report.

Human trafficking and slavery offences are criminalised in the Commonwealth Criminal Code Act 1995 (Criminal Code) Divisions 270 and 271, where Division 270 specifies slavery, slavery-like practices (including servitude, forced labour and deceptive recruiting for labour or services) and forced marriage, and Division 271 relates to trafficking in persons and includes domestic trafficking, organ trafficking, trafficking in children and debt bondage and harbouring offences. To date, in pursuing these offences in Australia the priority has not been to focus on these offences within the context of partner migration and intimate partner relationships, with the exception of the recognition of forced marriage as a specific offence. There have been notable challenges in the pursuit of these offences, but in relation to forced marriage an emerging concern is around the utilisation of criminal law as the framework used to determine the response (see Segrave et al. 2017). In Australia, the number of forced marriage cases coming to the attention of the Australian Federal Police (AFP) has been steadily increasing since the introduction of the legislation and the efforts to publicise this issue (see ICHTS 2016); however, this largely comes to the attention of the AFP in cases involving young women who primarily wish not to be forced to travel overseas to be married. However, as this report identifies, there are some further considerations for how Victoria and Australia could begin to better identify broader practices of slavery and trafficking offences within the context of temporary partner migration and family relationships, beyond the current narrow focus on forced marriage, based on the findings presented herein (see section 6).

2.0 The study: aims, scope and research design

Of the 1000 women who annually seek advice and support from InTouch, approximately 400 women (40 per cent) are temporary migrants in Australia. Little is known about the systemic challenges faced by women in situations of family violence who seek assistance and support, or the extent to which women's temporary migration status gives rise to or enables specific forms of violence.

The aim of this project was to undertake a comprehensive review of family violence cases managed by InTouch that involve women (victim-survivors) who have experienced or are experiencing family violence and whose migration status was temporary when they first came into contact with the organisation.

This project sought to:

1. Build the first comprehensive database that details the breadth and range of the specific migration-related components of family violence risk.
2. Provide a CALD-specific data set to inform the redevelopment of the Victorian CRAF as part of the next stage of the DHHS response to the VRCFV.
3. Provide a platform from which to understand the impact of existing immigration law and regulations on women's experiences of accessing safety and support.
4. Provide InTouch with an evidence base from which to further target support for their clients.

This research has produced the first database that documents how migration status can be linked to a range of serious forms of abuse and exploitation including family violence.

It maps the ways in which temporary migration status results in women's exclusion from long-term family violence support (including housing and financial support) and the impacts of migration law and policy, to lay the ground for a reform agenda and the development of a national database that enables the review and assessment of the impact of reform in this area.

2.1 Research design and methodology

This project differs from much of the existing research on intimate partner and family violence in relation to immigration and refugee women (see, for example, Vaughan et al. 2016). It is a national-first study that offers a quantitative and qualitative account of the situations of women whose migration status is temporary and who are experiencing family violence, based on the analysis of case files. The case files included case worker contact notes regarding risk, provision and prioritisation of support; updates regarding the individual and familial circumstances of the client; and information and documentation related to migration processes (including applications to access the family violence provisions and the accompanying documentation).

This report draws on the analysis of 300 client case files from InTouch Multicultural Centre Against Family Violence that were closed over 2015–16 and involve clients whose migration status was temporary when they first came into contact with InTouch. These clients included those on partner-related visas, but also those on working, student, visitor and other temporary visas. The research was conducted with the approval of the Monash University Ethics in Human Research Committee (CF16/2277 – 2016001127) which took into account the highly sensitive nature of the case files, and the inability of the researchers and the agency to contact former clients to approve the use of these files for research purposes. The files were all maintained on the premises of InTouch, and a database was created that de-identified the information as it was entered.

The analysis is based on the database, which enabled quantification of the situation and circumstances (demographics related to the victim-survivor and perpetrator, details of the immediate needs and services, and information related to migration status); the identification of risk (drawing on the existing Victorian CRAF and the InTouch-modified CRAF that relates specifically to a CALD clientele); and the identification of indicators related to other Commonwealth offences, specifically forced labour, forced marriage, human trafficking and slavery (as per ss. 270 and 271 of the Commonwealth Crimes Act and as per the International Labour Organization international indicators for sexual and labour-related exploitation 2012).

As this research is based on case files, the detail and breadth of each file varied considerably, as did the consistency with which some information was recorded or detailed, reflecting what was relevant to the support required for each client. The case files are the collective records of case workers and the migration agent based at InTouch. This means that for some areas of data collection there are, at times, significant 'unknowns' simply because there is variance across the clients' needs. In the analysis offered in this report, the number/percentage of unknowns is indicated where relevant, and, where appropriate, this data is excluded and the analysis is based on the total number of known identifiers/factors. Importantly, for many of the case files, there were rich narratives and first-person accounts of victim-survivor experiences, describing the clients' negotiation of migration and other legal processes, and their interactions with the criminal justice system, as well as the circumstances of their travel to Australia, the relationship between the perpetrator and the victim-survivor, and the details of what occurred within the context of the relationship. Throughout this report, the quantitative data is further enhanced and illustrated via examples drawn from the qualitative data.

2.2 The findings: mapping temporary migration, vulnerability, risk and support

The findings are divided into three parts: situation and circumstances, risk identification, and the identification of Commonwealth offences in intimate partner contexts.

3.0 Situations and contexts: temporary migrant women and family violence

This first section of the analysis focuses on the descriptive contexts of family violence that involve women whose migration status is temporary. Demographic information related to the victim-survivors is presented, followed by a more detailed analysis of migration status, familial context, housing and living arrangements, and faith and cultural community connections. Arising from this analysis is a recognition of migration status as a specific and unique factor within the context of family violence, and the recommendations founded upon this data reinforce the importance of understanding and responding to this.

3.1 Demographics

The demographics of women in this study did not differ significantly from the broad demographics of InTouch clientele generally with regards to age, marital status and nationality background (see InTouch 2016). All of the victim-survivors in this study were women. This reflects the broader pattern of family violence, as noted by the VRCFV, within which 'the significant majority of perpetrators are men and the significant majority of victims are women and their children' (VRCFV 2016 Summary and Recommendations: 7, see also Crime Statistics Agency 2016: 21; Special Taskforce on Domestic and Family Violence 2015). The victim-survivors ranged in age from 20 to 61 years, with the majority (65 per cent) being 24–34 years of age¹⁴, again reflecting broader patterns of recorded family violence (Crime Statistics Agency 2016: 21).

Marital status at time of contact with InTouch
(per cent)

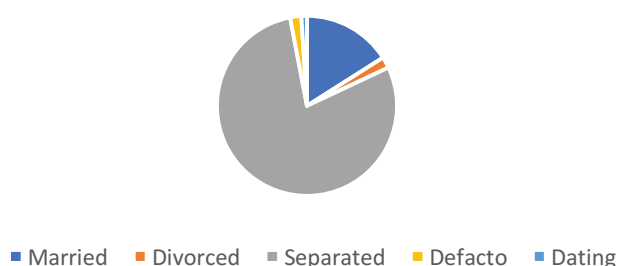


Figure 2: Marital Status at time of contact

None of the victim-survivors in this study were in an LGBTIQ relationship when they sought the support of InTouch. All the main perpetrators (see section 4.1.1 regarding additional perpetrators) were adult male partners or former partners. As per Figure 2, **across the 300 cases, 16 per cent of women were married at the time of first contact with InTouch, 2 per cent were divorced, 2 per cent were in a de facto relationship, while the majority, 79 per cent, were separated.** It is well known that separation from an abusive partner increases women's risk of serious injury and death (Department

of Human Services, Victoria, 2012). Thus, this knowledge, alongside the identified challenges for women seeking to access support due to their migration status, highlights the importance of ensuring greater equality of access to emergency and medium-term support for women who leave abusive relationships, as per Recommendation 3 of this report. Among women whose migration status is temporary, especially those who have a partner visa, a further concern is that they might return to their partners due to the challenges of maintaining a livelihood independent of their partner in the face of restricted access to support services due to their migration status. This is discussed further in section 3.4 in relation to women's housing status and living arrangements and in section 3.6 in relation to financial security.

Just over half (n=155, 52 per cent) of the victim-survivors in this study had dependants. Importantly, while it is known that children are present in one in three family violence incidents (Crime Statistics Agency 2016) and that the impact of family violence on children requires specific attention, this report focuses on women as the primary clients of InTouch, reflecting the data that is the foundation of this study. In section 3.3 below, the familial situation and the issues that arise in relation to temporary migration status and uncertainty regarding custody are explored in some detail, including identifying the ways in which dependant children are used as leverage by perpetrators.

¹⁴ It is worth noting that data was also collected regarding whether there had been an age change for the purpose (primarily) of migration but also for any other reason (i.e. it has been reported that in some cases a passport and/or other identification materials falsely recorded the age of the victim-survivor to enable an underage young woman to access a partner visa). While this is known to occur, particularly in relation to forced and/or underage marriage, it was only identified twice in this study (see section 6.0 in relation to forced marriage).

Across the 300 cases, only six women were noted to have a specific disability or illness. However, this data is not routinely collected (see DVV 2015 regarding data gathering limitations within the provision of support in Victoria), and the presence of a disability or illness was noted in only a small number of cases and/or within immigration-related information for a family violence provision application. These cases included two women with a diagnosed mental health condition, two with injuries or illness caused or worsened by a perpetrator's abuse and two others with health diagnoses of an illness that was being managed or treated (cancer and HIV-positive status). Capturing health and disability data within the context of family violence service provision is complex terrain, in part because this is not a routine aspect of data collection in this field. Thus, it is to be expected that in the case files of any family violence service there will be an underrepresentation of illness, in particular, though some disabilities may also go unrecognised (such as acquired brain injury) and/or unrecorded. Given that family violence is recognised broadly as a leading contributor to death, disability and illness for Victorian women aged between 15 and 44 years of age (VicHealth 2004), it can only be acknowledged that this data is not an accurate tool for identifying the immediate (and clearly not the medium- or long-term) health impacts of family violence for women seeking support from any service, including InTouch.

3.1.1 Victim-survivor language and nationality background

In this study it is migration status, rather than language or cultural diversity, that is the demarcation for inclusion in the study. However, through analysis of the language and nationality background of victim-survivors in this study it is possible to identify the extent to which temporary migration status aligns to a large degree with immigrant and refugee status, such that for the majority of temporary migrants in this study, they were born overseas and English is not their first language.

Of the 300 victim-survivors, 53 per cent required an interpreter. InTouch has case workers who are bi- or multi-lingual, with 25 languages spoken across the organisation. Thus, the non-use of an interpreter is not necessarily an indication of a victim-survivor being English-speaking. The critical role of interpreters, and the importance of specific training to enable interpreters to support the work of agencies in the family violence sector, has been prioritised by multiple reports as a key area for significant and ongoing resource investment (Special Taskforce on Domestic and Family Violence 2015; VRCFV 2016; McCulloch et al. 2016; Vaughan et al. 2016).

There were **41 different languages spoken at home across the 300 victim-survivors in this study.** The most common language spoken at home was English (21 per cent, although this may reflect that the partner spoke English, and not that the victim-survivor's first language was English), followed by Vietnamese (15 per cent), Mandarin (9 per cent), Hindi (7 per cent), Punjabi (5 per cent), Arabic (5 per cent), Tagalog (4 per cent), Persian (4 per cent), Thai (4 per cent) and Dari (4 per cent).

While 41 languages were spoken at home, **65 nationalities were represented across the 300 cases.** The 300 cases in this study included women from a wide range of nationalities. The most represented nations were India (16 per cent), Vietnam (16 per cent), China (excluding SARS and Taiwan, 9 per cent), the Philippines (7 per cent), Iran (5 per cent), Sri Lanka (4 per cent), Thailand (4 per cent) and Afghanistan (3 per cent). This is indicative of the breadth and complexity of the cultural and language terrain being negotiated in working to support women in situations of family violence. It also reflects the diverse situations within which women come to form partnerships with men who perpetrate violence against them. While in the past there has been attention on the vulnerability, in particular, of so-called 'mail order brides' (see Iredale 1994; Millbank 1992), the experience of victim-survivors who are temporary migrants is diverse, as are the contexts within which they have come to Australia and come to be in the relationship where they have experienced or are experiencing family violence, which is discussed next.

3.2 Migration status

The most critical factor determining the migration pathway and support options for the women whose migration status was temporary and who experienced family violence in Australia was the specific visa they held at the time of contact with InTouch. As noted in the Introduction (see section 1.2.2), those who do not hold a temporary partner visa and/or relevant working visas are ineligible to access the family violence provisions in order to apply for permanent residency, despite the breakdown of their relationship due to

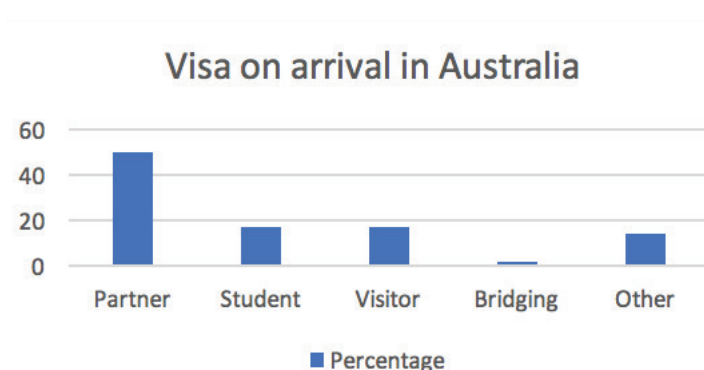


Figure 3: Type of Visa on arrival to Australia

to ensure that women are aware of their rights when in Australia, there are women in the non-partner visa group who were unaware of their migration status or visa type when they first came to InTouch, as this excerpt illustrates:

This victim-survivor was unsure of her visa status... She initially thought that she was a dependant on her husband's Temporary Protection Visa; however, after investigation she was a dependant on her husband's postgraduate research sector visa.

The assumption that women are aware of, or directly involved in, the migration process and understand their migration status is flawed, just as it is problematic to assume that all written information regarding visas and support services in Australia will be made available to women who apply for a visa (as it is evident that while women may be applicants, there are many instances in which they are not directly involved in much of the application process). This poses challenges for how information is communicated to women, as is captured in Recommendation 1a.

While the majority of women on partner visas were eligible to apply for the FVP not all chose this path, for a range of reasons not always specified, but including circumstances such as reconciling with their partner, and in some cases out of fear, as the following example demonstrates:

The victim-survivor was provided with information about the FV provisions, however after returning to her husband the first time, she left again and then decided to return to Vietnam for 3 weeks as she was afraid of the perpetrator and his family. The victim-survivor was told to contact InTouch when she got back if she needed further support.

Given the number of women arriving on partner visas, it follows that at the time of contact with InTouch **at least 50 per cent of InTouch clients were ineligible to apply for permanent residency via the family violence provisions¹⁷, and subsequently faced limitations regarding the financial and housing support services accessible to them.** These cases included the example provided below, but more often related to women who were on student or visitor visas:

¹⁵ Access to welfare provisions is dependent upon the woman's specific visa, and certain other factors such as whether she is the primary carer for a child who is an Australian citizen.

¹⁶ In some cases, the visa type on arrival differed from the visa type on first contact with InTouch. This is not detailed here as this was difficult to capture with accuracy. However, it is worth noting that, of the 16 women who arrived on a prospective partner visa, only 9 were involved in applications for the FVP, which means that they had been married within the nine-month time frame and their application for a subclass 820 801 had been approved.

¹⁷ It is important to clarify that those arriving in Australia on a prospective marriage (subclass 300) visa must marry within nine months of the visa being granted, which then allows them to apply for a partner visa (subclass 820 801) (see [https://www.border.gov.au/Trav/Visa-1/300-/Prospective-Marriage-visa-\(subclass-300\)-document-checklist](https://www.border.gov.au/Trav/Visa-1/300-/Prospective-Marriage-visa-(subclass-300)-document-checklist)). This estimate reflects the difficulty in providing an exact number from the data set, as a small percentage of women opted to return to their partner or to apply for another visa that was available to them and/or they did not remain in contact with the case worker and the case was closed following a period of trying to reconnect with the individual.

Victim-survivor was a UK citizen, and on a regional skilled (provisional) visa, and was therefore ineligible for permanent residency via the family violence provisions. As she was a UK citizen, she was also ineligible for a protection visa despite threats by the perpetrator to send her back to the UK and keep the children in Australia.

While in this case it was possible that the victim-survivor may have had a pathway to permanency via eligibility for the Skilled Regional visa (subclass 887) (which can be applied for after four years, if the requirements for eligibility have been met), the key concern is that in this situation the victim-survivor has to wait until she has successfully pursued and paid for this migration pathway to access services including financial and housing support for herself and her children. This victim-survivor is not alone in this regard (and she is not alone in having the perpetrator threatening deportation and separation from her children – see sections 3.3.1 and 4.1.4), and there is a need to recognise that the system can fail to support women (and, potentially, her children) in this circumstance.

Another woman arrived in Australia on a visitor visa to be with the perpetrator:

The victim-survivor overstayed for a year while living with perpetrator. No spouse application nor marriage certificate. He kept her passport and she just retrieved it a month ago.

The consequence of such circumstances is that the victim-survivor (whose passport was withheld – a circumstance further discussed in relation to slavery and trafficking in section 6) has very limited protection options in Australia, and while the family violence that occurred may be pursued by the courts, as someone who has overstayed her visa she will be subject to limited access to family violence support and will likely be on a pathway to removal due to her migration status.

While it may be argued that experiencing family violence should not automatically enable the victim-survivor to access a pathway to permanent residency, these circumstances highlight that migration status contributes to specific vulnerabilities. Women who are in relationships that are abusive and whose migration status is temporary have limited protection due to their migration status which, arguably, escalates the coercive control of the perpetrator. This is further evidenced by situations arising in this research where perpetrators refused to sponsor women on partner visas – the only way for women to have security of migration status and full access to the support services they need. In addition, there were a number of cases where perpetrators denied or delayed partner visa applications. While it was not possible to identify the prevalence of this in this study (as data on this is not routinely gathered and therefore not consistently recorded in the case notes), the cases identified **raise significant concerns around the ability of perpetrators to restrict women's rights by refusing to sponsor an application for a visa, which would provide a safety net in relation to family violence** (either via access to permanent residency or eligibility to apply for the FVP). Some examples of such a scenario follow:

The victim-survivor arrived in 2014 (to be with the perpetrator), however the perpetrator did not sponsor her on a spousal visa until February 2015 when she was 8 months pregnant.

Victim-survivor was unsure about [her migration] status as the perpetrator had refused to sign the forms necessary to apply for partner visa.

Victim-survivor [who was married to the perpetrator] was on visitor visa (subclass 600) and thus was not eligible for FV provision.

Victim-survivor was on visitor visa as marriage to perpetrator was not considered registered in Australia. Perpetrator refused to register relationship.

Perpetrator has refused to apply for spousal visa.

The perpetrator refuses to sign documents required to apply for partner visa.

It was made explicit in some case notes that the refusal to sponsor a partner visa was a deliberate effort to control, ensuring that the victim-survivor remained in an uncertain position, resulting in these victim-survivors having no safety net:

Perpetrator was not keen for victim-survivor to access permanent residency – he told her he would not apply for victim-survivor to [access] permanent residency and refused to support it.

The perpetrator and his family started to blackmail her [and] stated that [they are] going to cancel her visa. The perpetrator [initially supported the application] for a partner visa, but cancelled this later. This meant that victim-survivor remained on a visitor visa, and thus was not eligible for family violence provision.

In section 4.2.5, migration status as a specific element of risk is explored in more detail. In this study, it is not possible to identify the extent to which perpetrators refuse to sponsor women's access to a partner visa because they are aware that this will limit these women's access to support or permanent residency, or simply due to the costs associated with this application (both the temporary and permanent visa applications incur costs of at least AU\$7000 in addition to fees paid to a migration agent). However, **what these examples highlight is that, in abusive contexts, perpetrators (whether citizens or permanent residents) have significant power in ensuring that women remain in positions of temporariness, with limited claims to support or protection in Australia.**

Recommendation 1: Information provision & data monitoring

- a. Information Provision:* Women need to be empowered via increasing confidence and knowledge regarding rights pertaining to migration status and family violence law and support provisions. Information and communication strategies must include:
- i Pre-departure and arrival information for all new arrivals regarding Australia's definition of, and stance on, family violence.
 - ii Ongoing information that targets immigrant and refugee women, and temporary migrants, via diverse media and communication platforms. Beyond printed materials, this should include digital social media, television and radio, and via community awareness raising (i.e. a comprehensive text/verbal/visual communication strategy).
 - iii All information provision strategies must make clear that the definition of family violence is broad and inclusive.
 - iv All information should provide direct information to specialist family violence services with migration expertise.

3.3 Familial context: children and migration status

Family violence has significant ramifications for victim-survivors and their children, as has been highlighted repeatedly in Australia and internationally (see ABS 2005; VRCFV 2016; Cox 2015; Humphreys 2008; Stanley and Humphrey 2017). There is limited research, however, on mothers and children in relation to the intersection of complex migration status issues and experiences of family violence. This research offers some important insights in relation to the need to consider not only women's migration status, but also their children's migration status, within the context of family violence.

3.3.1 Dependants

Just over half (n=155) of the victim-survivors in this study had dependants. Of those cases where the age of dependants was indicated, the majority had one dependant (34 per cent), followed by two (12 per cent), three (5 per cent), four (1 per cent), and five (0.5 per cent).

¹⁸ Only three cases involved four or five dependants, and they are excluded from this analysis because they were outliers in the data and because they were slightly more complex in relation to the nature of the relationship between the victim-survivor and the children, and the extent to which every child would be considered the victim-survivor's dependant.

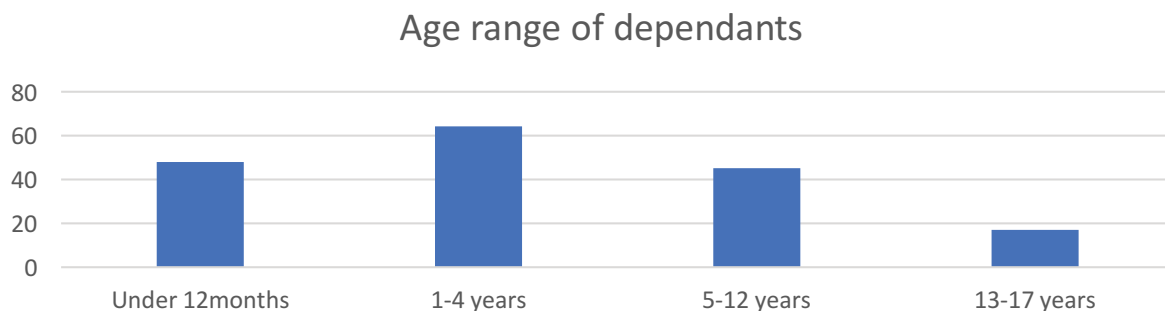


Figure 4: Age of dependants for victim-survivors

For those with between one and three children¹⁸, the age range of dependants was as outlined in Figure 4 above.¹⁹

It is important to note that, **where the age was known, the majority of children were under the age of four.** This is critical both in terms of the known risk to women with babies and young children (see Campo 2015) and also because this is a period of time, especially when there is only one child, where mothers are often more isolated and, arguably, more easily isolated, as children are not of school age and not in full-time contact with external education and other service providers. While beyond the scope of this study, it is also worth noting that for children who witness violence and are not Australian citizens there are additional factors that may increase their stress and fear as a result of uncertainty about their future residency in Australia and/or potential (or actual) long-term separation from their mother due to her migration status. This is an unexplored aspect of young people's experiences of family violence, yet one that is worthy of future examination.

With regards to the relationship between the victim-survivor and dependants, the majority of dependants were the victim-survivor's biological children; however, 16 children and young people were step-children, and in one case the young sibling of the victim-survivor.

3.3.2 Women's migration status and their children's nationality and location: dependants as leverage in family violence

What is clear in this study is that, as in family violence more broadly, children are used as leverage. In this study, this was evident regardless of the specific circumstances of women's migration status and living arrangements: whether they were overseas and not being directly cared for by the victim-survivor or they were living in Australia in the care of the victim-survivor, and were either Australian citizens or citizens of other nations, there was the opportunity for perpetrators to create (and realise) insecurity for women in relation to having contact with and supporting their children. The range of circumstances related to dependants, as detailed below, combined with these women's migration status, created complex scenarios of threats and practices of separation and loss of custody. While this study cannot measure the impacts of this on women, **we cannot underestimate how the use of children as leverage in the context of temporary migration influences women's decisions, including decisions to remain in situations of family violence, particularly due to the absence of support or certainty – and this is indicative of a failure to provide solutions and support in this space.** Legally, these situations cover complex terrain, but this research offers an opportunity to highlight such circumstances with the aim of informing the development of solutions and more nuanced responses.

Of the 227 dependants for whom the clients in this study were responsible, financially and legally, 32 were not in Australia at the time of contact with InTouch²⁰. In the majority of these cases there was limited information available about the dependants, other than that a child or children were living with family in the victim-survivor's country of origin, and often there were notes regarding efforts to send money to care for

¹⁹ This data excludes unknown ages from the analysis.

²⁰ This is presumed to be an underestimate as, again, this data is only noted where relevant rather than being information routinely captured in the provision of case support.

the children and/or the intention (albeit often thwarted by the perpetrator) to bring the child/ren to Australia. What was evidenced in some of these cases was the use of children as leverage for control, even in their absence, as in the following:

The victim-survivor's 5-year-old son was living in Thailand with his grandparents throughout the case. The victim-survivor was trying to financially support her son and her parents while she was in Australia, until the perpetrator got angry at her and told her to stop.

This example is demonstrative of the ways in which children can be directly impacted and used as leverage in situations of family violence, particularly where the victim-survivor is largely dependent upon the perpetrator to support the child (and his/her carers) financially. For a woman to be able to sponsor her child to come to Australia she must either rely on her partner to do so or she must wait until she has accessed permanent residency (which applies only to women on partner visas). It is known that factors related to child welfare impact the decision-making of many women regarding whether to stay in or leave an abusive relationship, and this finding highlights the specificity of this decision for women who do not have permanent residency and the precarious hold they often have on supporting and being with their child.

Despite some dependants being outside Australia, the majority²¹ were in Australia at the time of contact with InTouch. Of this group, just under half were living with the victim-survivor and were Australian citizens (47 per cent). For the 53 per cent of dependants who were not Australian citizens, nationality was spread across 29 countries, as shown in Table 1.

Number of children/dependants	Nationality
21	Vietnam
10	India
10	China
10	Iran
10	Sri Lanka
9	Philippines
9	Thailand
4	Lebanon
3	Cambodia
3	Somalia
3	Serbia
3	Russia
3	Afghanistan
2	France
2	Pakistan
2	South Sudan
2	Indonesia
2	Poland
2	England/Britain
2	Turkey
1	Fiji, Iraq, Kenya, NZ, Mauritius, Hungary, Bangladesh, Sudan

Table 1: Nationality of children/dependants who were not Australian citizens

Alongside recognising where children resided and their migration status, it is also worth noting that, of the women who were able to access the family violence provisions, 50 per cent had dependants. Of the women who were ineligible for these provisions, 55 per cent had dependant children (n=41), of whom approximately 15 per cent were Australian citizens while the remaining were not (of whom a small percentage, around 10 per cent, were not in Australia). This is important to consider in terms of the

²¹ NB this data totals to 227 rather than 223, as three dependants were over 18 and these were excluded from the analysis.

precariousness that women may experience and the ways in which perpetrators exert control over children and victim-survivors. The following case notes highlight the impact of this:

Support letter from a mental health social worker who was seeing victim-survivor at the time stated: ‘... many times he has threatened to divorce her and send her back to Vietnam. He threatened to take the baby away from her after she gave birth, which made her very scared and distressed. He had forced her out of the house many times in the past when it was dark and cold.’

Victim-survivor noted that the perpetrator has threatened to kick her out of Australia and keep the son.

In some of the cases in this study, women were threatened by the perpetrator that their children would be returned to their country of origin without them and/or that the women would be forced (in some cases women were deceived, and this is discussed in section 6.0) to return to their country of origin without their children. While it may be assumed that children who are Australian citizens are in a more secure position, and that their status as citizens can potentially enable their mothers to access a more secure migration status themselves, this is not automatically the case. Parents of Australian citizen children who are not citizens are not automatically eligible for Australian permanent residency or any other pathway towards citizenship. Broadly speaking, within the Migration Act Clause 801.221(6) there is the possibility for an applicant to remain in Australia to fulfil their parental responsibilities towards their child(ren) if a relationship breaks down (regardless of whether the breakdown is due to family violence) and the applicant is on the requisite partner visa. This is subject to meeting evidentiary requirements such as that they have been granted joint custody or access by a court; they have a residence order or contact order made under the Family Law Act 1975²²; or they have an obligation under a child maintenance order made under the Family Law Act 1975, or any other formal maintenance obligation. However, if a woman is on a temporary visa that is not connected to her partner, the situation is more complex. If a woman is, for example, on a student visa and has a child with an Australian partner and the relationship breaks down, she may apply for a Contributory Parent Visa, but this requires that she has the financial capacity to pursue this. In other cases it is possible to appeal to the Minister for Immigration and Border Protection, but this comprises a complex and lengthy process involving many stages of appeal to reach the point of requesting ministerial intervention. Such cases are not captured in this data (and generally are not pursued by InTouch). However, it is important to note here that the legalities reflect that issues pertaining to children, custody, access and women’s migration status are complex and that the potential outcomes are uncertain. An example of the types of situations that arise is provided in the following case note:

In March the perpetrator suggested the victim-survivor return to Thailand to learn hair dressing course which she could finish in 4 months time. In the meantime, he promised to look after the child. But when she went to Thailand, [he only allowed her] to speak with the child once. She was worried and decided to return to Australia earlier than it was planned. The victim-survivor returned to Australia to the matrimonial home [two weeks later]. The perpetrator’s family was there – his mother and brother and the child. They were all surprised that she came on the day, given the expected return was in around May 2016. She was refused entry to the house... She found her belongings have been put in the boxes outside of the house, to be sent through to Thailand. Woman does not have any friend in Melbourne, so she went to NSW to stay with a friend and to seek legal advice. Woman later on returned to Melbourne and got in contact with inTouch.

Children, as the above example demonstrates, can become pawns in practices of abuse that include attempting to wield total control over the child and to utilise migration pathways to attempt to separate the mother from the child. In this way, children become leverage for abusive partners to control victim-survivors – in some instances to force them to stay, and in others, as in the example above, to force the victim-survivor to leave (not just the home, but Australia). The prevalence of this across Australia is unknown, **but the examples in this study point to the urgent need to develop immigration and customs processes within both Australia and Australian consulates internationally that ensure that victim-survivors do not lose custody of and/or become separated from their children because of the power a perpetrator wields.** The following case is exemplary here:

²² The Federal Court decisions of *Fitch v Tribunal* [2004] FCA 1673 and *Srouf v Minister for Immigration* [2006] FCA 1228 support that a parent on a temporary partner visa could obtain a partner visa due to parenting responsibilities awarded under the Family Law Act 1975.

The perpetrator suggested the victim-survivor travel to Pakistan for a few months. She agreed to this. She and child departed Australia in July, with a return date booked for December that year. Husband remained in Australia. In September, the paternal grandfather asked the victim-survivor to give the child's passport to him for renewal. As the child is an Australian Citizen, the victim-survivor was aware that child had only been granted a 90 days visa by the Pakistan government. However, the child's passport was never returned by the paternal grandfather to her. While in Pakistan the victim-survivor could not contact her husband in Australia [for some time. When she was able to contact him] she told him what had happened and that she wanted to return to Australia with the child. **The husband told her that the child's care was not her decision to make and that he would ultimately decide whether the child would return to Australia or remain in Pakistan with the paternal family.** She tried to seek help from the Australian Consulate in Islamabad. When she informed her husband that she had contacted the Australian Consulate, he told her to tell the Australian Consulate that she had lost child's passport and ask them how to get this renewed. **The victim-survivor attended an appointment with the Australian Consulate in December. She was told that the emergency passport could be issued for the child providing the child's father's signature was obtained. The Consulate informed the victim-survivor this document needs to be received within five days. When she informed this to her husband, he first promised to sign the document but later on said that he would not give consent for an emergency passport to be renewed. As a result of this, the victim-survivor had to travel to Australia on her own and left the child behind in Pakistan.**

In relation to such cases, concerns have been raised about the limited reach of the Hague Convention (the common reference to the international Convention on the Civil Aspects of International Child Abduction), and as the Convention is specific to practices of abduction its applicability is not guaranteed. A further limitation of the Convention is that not all of the countries listed in Table 1 above are signatories to it, and even those that are do not always uphold the Convention (or uphold it consistently).

The case cited above also highlights jurisdictional concerns in relation to the ways in which migration processes and/or laws related to parental approvals required for documentation in Australia and in other countries can result in the victim-survivor having a limited legal platform upon which to seek support, and/or to gain custody of their children. The precarious situation facing women whose migration status is temporary when they separate from their Australian citizen/permanent resident partner is that, even if their child is an Australian citizen, there is no automatic legal right for the mother to remain in Australia. This can, and does, translate into situations where the parent will have to leave the country and their child.

In another case, the victim-survivor's migration status was used to separate her from her child, but, despite the perpetrator's efforts, it was the subsequent Family Court case held upon her return to Australia that assisted her application for the FVP and gave her security in Australia, independent of her former, abusive partner:

The woman's son was kept by the husband while woman was sent back to Thailand. Husband told her that she could spend sometimes with her family in Thailand and to learn hairdressing course. However, upon her return to Australia, she was denied access to see the child. Woman had to go to the Family Court in order to have contact with the child. The parenting order that was sought was also useful for the grant of PR.

While in this case the outcome was positive, the story of women leaving the country and being denied access to their children upon their return is not uncommon. This issue is returned to in section 6.1 in relation to forced migration and the use of children in this context.

Recommendation 2: Risk assessment

b. Risk assessment for children and young people: For risk assessment related to children, information should be gathered pertaining to:

- i. child's migration status
- ii. parent/guardian's migration status
- iii. use of migration status and/or deportation of child/parent as threat via diverse media and communication platforms. Beyond printed materials, this should include

Recommendation 4: Legislative responses

- a. Migration Act 1958 and Migration Regulations 1994:* COAG to consider the following amendments or inclusions should be made:
- i. *Appeal process:* potentially on the basis of evidence of family violence, to enable relevant migration processes (such as passport applications) where parent is refusing to sign to move forward.

3.3.3 The role and impact of child protection intervention and support

In 23 per cent of cases (n=35) in this study where the victim-survivor had one or more dependants, the Victorian Child Protection Service was involved in the case. In the majority of these cases there was limited information, other than a note indicating their involvement in the case and/or, more specifically, their involvement due to the child/ren witnessing or been victims of abuse by the perpetrator (n=23).

However, there were some notably more complex cases: in three cases the Child Protection Service was involved in helping to retrieve children on behalf of the victim-survivor (n=1) within Australia, or supporting the victim-survivor to be reunited with her children, either upon her return to Australia (n=1) or overseas in cases where the children were not in Australia (n=1). In four cases, the case notes indicated that Child Protection had a role in the process of seeking an IVO, which included seeking conditions to protect children such that they would be removed from the victim-survivor's custody if she were to return to live with the perpetrator. In other cases, Child Protection were involved in supporting the process of negotiating childcare/sharing agreements. Across these 35 cases, the victim-survivor returned to live with the perpetrator in five cases (in two cases for a short period of time, while in three situations the case was closed when the victim-survivor returned to live with the perpetrator).

This data is very preliminary in relation to informing an understanding of the role of Child Protection Services in such complex cases, and therefore warrants further and ongoing consideration in the review of the management of children's risk in the context of family violence and of the role and impact of Victorian Child Protection Services. There are noted complex issues surrounding the practices of Child Protection Services, and the recently implemented Child Protection Partnership (which is about to be reviewed), as identified by both the VRCFV (2016) and the Commission for Children and Young People (2016). Indeed, the VRCFV made specific note of the need for this service model to improve cultural competency to enable more appropriate responses for children and families from CALD backgrounds. Regardless, these findings offer some insights into the potential for child protection to play a positive role in supporting women and their children when women are temporary migrants in Australia, and as such points to the importance of considering the role of child protection in cases where migration issues arise.

3.4 Housing status and living arrangements

At the time the case was opened, 36 per cent of women were living with friends, family or an acquaintance (of those, 2 per cent were living with the perpetrator's family), while 25 per cent were in emergency accommodation and a further 22 per cent were living with the perpetrator. Only 17 per cent of the women were living independently (7 per cent alone and 10 per cent with dependants). This data indicates that very few women were in permanent, safe housing: 71 per cent were living in temporary accommodation. At case close, this was reduced to 50 per cent of clients remaining in temporary accommodation. Thus, half of InTouch clients remain in precarious housing situations – whether they are living with family, friends or in emergency/shelter accommodation.

This analysis highlights two key findings: first, housing-related service provision (which is outside the remit of the services provided directly by InTouch) that extends beyond immediate assistance to the provision of long-term, sustainable housing is critical; second, the need for housing stability and affordability, as recognised in other significant studies, must be addressed as part of a holistic response to family violence because it is a 'significant barrier for women seeking help' and is 'also the reason that brings many women back into relationships with perpetrators of family violence' (Vaughan et al. 2016: 80). Accessing independent, private housing (either via rental or home ownership) is a significant challenge for

women who are in Australia on a temporary visa and who have experienced family violence. This is best illuminated by an examination of the data on rental history. In the case files it was observed that, for at least a third (35 per cent) of victim-survivors, rental history was an identifiable problem with regards to accessing housing. The related issues ranged from having no previous rental history (often because they had only ever lived with the perpetrator while in Australia and the perpetrator had been responsible for any previous lease if accommodation was rented) to having no referee to speak for the victim-survivor as a potential tenant. These problems are further compounded when victim-survivors have no ongoing employment and/or income – an issue addressed in section 3.6 – and when they are applying for housing with young dependants. This is illustrated in the following excerpt from the case notes in one file:

The victim-survivor entered Australia on 309 visa, ineligible for Centrelink payments. Eligible for Special Benefits only because of child. Accommodation choices limited because dependent on perpetrator [financially] had to leave for a refuge where she was transferred from place to place.

The recent announcement by the Victorian Government of the allocation of \$50 million towards medium- to long-term housing support for women is a welcome investment to address this significant need (Minister for Housing, Disability and Ageing, 2017). However, in terms of access to both crisis and longer-term accommodation, it must be noted that migrant women on temporary visas face particular vulnerabilities. For example:

Victim-survivor was on bridging visa at the time of contact and for duration of the case. Had to stop working for a short period to access short term emergency accommodation.

Victim-survivor applied for IVO against perpetrator, but did not have the money to move out so was living with the perpetrator throughout the case. The IVO was active at the time of case close.

Both housing and financial support are significant points of disadvantage for temporary migrant women, as the VRCFV noted: ‘those without permanent residency have limited access to crisis accommodation, Centrelink benefits, and some health and education services’ (State of Victoria 2016, vol. 4, p. 110). This leads us back to Recommendation 3 and the importance of supporting women experiencing family violence, regardless of their migration status.

Recommendation 3: Risk management and service provision

b. Service and risk management funding gaps: There are noted gaps related to accommodation and income, that particularly impact women whose migration status is temporary. These gaps are evidenced in this report. It is recommended that the Victorian Government develop a model of funding that will meet these gaps, and that the Victorian Government request COAG to share some of these funding responsibilities into the long term. Specifically, the gaps that must be met are:

- i. Specific funding for accommodation (crisis and shelter) to enable services to accept women whose migration status is temporary and/or whose long-term future in Australia uncertain, to ensure that uncertainty regarding long-term status in Australia (and the ability to rehouse in longer term accommodation) does not impact women and their children's ability to access housing to escape situations of family violence.
- ii. Immediate access to financial support for temporary partner visa holders: The Victorian Government to review and lead a discussion at COAG to urgently review current limitations regarding access to welfare support, to enable women to access to immediate, ongoing financial support, rather than awaiting the FVP application to be finalised. Recognising that in many cases women are dependent on their partners financially, there is an opportunity for women and their children to be supported by the government, recognising that financial independence is critical in the context of family violence. This should be provided based on evidence that the majority, by far, of those who apply are successful. The cost to the community will be limited, and benefit to women and their children substantial.

3.5 Religion and faith communities

It is not a component of the case work or the database used by family violence support organisations to gather information pertaining to the religious or faith affiliation of clients. However, given what is known about the potential for faith and cultural communities to both hinder and enable women's access to support (see McCulloch et al. 2016; Vaughan et al. 2016), for the present study this data was collected where it was noted in the file. In the majority of cases (74 per cent), no religion or faith was identified in the case notes.

As a result, the following data is presented with a caution: the representation of any particular religion has no bearing on propensity to utilise violence in the familial setting. It is also important to note that **culture per se is never the cause of, trigger for or excuse in relation to family violence.**

Of those cases in which religion was recorded, 37 victim-survivors identified as Muslim, 24 were Hindu, 6 victim-survivors identified as Catholic, 3 identified as Sikh, 2 identified as Buddhist, and 1 identified as Eastern Orthodox.

Data was also collected regarding any notable impact of religion/faith in particular on the victim-survivor's experience and/or immediate situation, as indicated by the case notes and immigration data. However, for the most part, the explanations provided by the victim-survivor regarding expectations of the relationship and of her role in it were shaped more by culture than religion, where such information was captured.

The following case note excerpts are exemplary here:

As per Hindu marriage tradition, the victim-survivor had to live with her husband's family after they married. They physically abused her, and destroyed her passport, which she accepted for a while.

Victim-survivor statement: 'I felt like he is treating me like a sex object and those Asian women he watches from porn videos. I didn't call the police or didn't complain because I love him and because our culture and religion tell us that women to endure and submit ourselves to our husbands.

Cultural influences on nature of marriage meant that once she returned to India as a result of the abuse she could not go back to her parents as married woman cannot do that. The victim-survivor's family was required to pay a significant dowry for the victim-survivor when she married the perpetrator, and after she returned to India her father convinced her to come back to Australia to stay in the marriage regardless of the circumstances.

Recently the Victorian Government, alongside its announcement of funding for housing for women and children experiencing family violence, also announced that '\$100,000 will be provided to strengthen the support available and provide culturally-specific case management to Muslim women at risk of or experiencing family violence' (Minister for Housing, Disability and Ageing, 2017). However, **the findings from this report endorse a broader recognition of immigrant, refugee and CALD women in place of such specificity.** This is for two reasons: first, the government's focus on funding for Muslim women suggests that there is a specific issue pertaining to the Muslim community, which is difficult to substantiate (and potentially dangerous to suggest); and second, diverse groups are represented under this broad umbrella of women from CALD backgrounds and the importance of targeted support services that can attend to this diversity is critical.

Recommendation 1: Information provision & data monitoring

a. Information Provision: Women need to be empowered via increasing confidence and knowledge regarding rights pertaining to migration status and family violence law and support provisions. Information and communication strategies must include:

- i. Pre-departure and arrival information for all new arrivals regarding Australia's definition of, and stance on, family violence.
- ii. Ongoing information that targets immigrant and refugee women, and temporary migrants, via diverse media and communication platforms. Beyond printed materials, this should include digital social media, television and radio, and via community awareness raising (i.e. a comprehensive text/verbal/visual communication strategy).

3.6 Employment and financial security

There is growing recognition of the importance of attending to economic abuse and of the critical role of financial independence and security in supporting victim-survivors of family and intimate partner violence. These issues are not exclusive or specific to women whose migration status is temporary; however, as the analysis demonstrates below, there are particular ways that lack of income impacts temporary migrants who, unlike Australian citizens, have no (or, at best, a limited) safety net.

The findings below explore source of income but also the concept of financial independence, which is distinct from employment status. As described below, there are certain complexities around employment and unemployment that need to be better understood in terms of recognising both women's labour and the ways in which workforce participation can involve complex situations of abuse. This latter point is relevant to women across Australia, and not specific to women with temporary migration status per se. The report later considers situations where the labour context is potentially related to the more serious legal framework of forced labour (see section 6.0), yet the focus in this section is on illuminating how control and coercion in the context of family violence play out in relation to finances and employment.

3.6.1 Source of income

In this study, as depicted in Figure 5 below, half the victim-survivors (51 per cent) were dependent on the perpetrator for income.

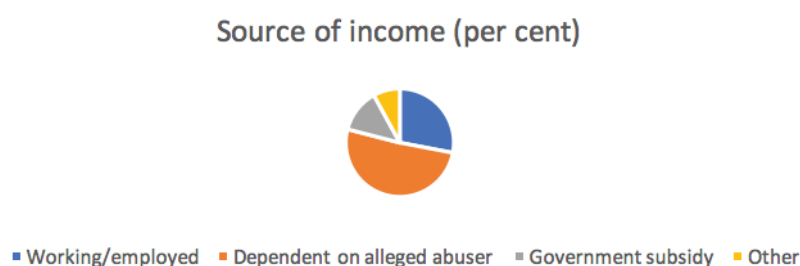


Figure 5: Victim-survivor source of income

However, dependency on the perpetrator is complex. It can be complete financial dependency because the victim-survivor has no independent income, but also because the alleged abuser controls the household finances and thus even those who are employed outside the home may in fact be, or experience themselves to be, dependent on the perpetrator because their income and finances are controlled by him. It is widely recognised that 'women with limited English skills may be particularly vulnerable to financial abuse, and those without permanent residency have limited alternative means of financial support, if they are ineligible for Centrelink payments or are distanced from family and friends. Where women are in Australia on spousal visas, this may also enable an additional level of control' (Cortis & Bullen 2016: 49–50). While women on partner visas are vulnerable, the additional precariousness faced by women who are not on partner visas and who are without access to permanency is clearly evidenced in the findings. Of the group whose temporary visa did not allow them access to the family violence provisions, over half (55 per cent) had dependant children. For some women in this cohort, many of whom who were dependent financially on their abusive partner/former partner, child support payments were their only source of income. This was noted in the following case file excerpt:

Entered Australia on 309 visa, ineligible for Centrelink payments. Eligible for Special Benefits only because of child. Accommodation choices limited because dependent on perpetrator – had to leave for a refuge where she was transferred from place to place.

The financial pressure facing women in such circumstances, who have no additional access to ongoing financial support, cannot be underestimated. The absence of support must be recognised as forcing women to make decisions that involve weighing up their own and their children's safety and welfare against their financial survival, the latter of which is near impossible in these circumstances and requires dependence on piecemeal support from agencies, family and/or the community. This is brought into sharp relief in the context of migration-related costs and the impact of circumstances where perpetrators threaten women with debts and repayment related to previous visa costs, as in the following example:

No other issues raised with immigration status. PR was applied for through the FVP. Once obtained the victim-survivor would be applying for her youngest son (12 years old) to join her in Australia.

Perpetrator had threatened to have her deported throughout marriage, and indicated that she would have to repay the costs of the spousal visa (told victim-survivor it would be \$20,000) and used this to control her.

While the case notes cannot tell us more about such experiences, it is important to note that the threat of debts and victim-survivors' concerns about how to cover the private migration agent fees and the costs associated with visas have the potential to influence women's help-seeking decisions and thereby undermine their safety and wellbeing.

The findings of this report clearly indicate the ways in which this occurs: the fact that **over half of the women in this study were financially dependent upon their partner brings to the fore the urgency of the need to create a secure financial safety net for all women.** This dependence has wide ramifications: it can limit women's ability to access technology, to feed and clothe their children or to be independent of an abusive partner and free from violence; and, of course, it can impact women regardless of their migration status. However, the key point is that women who are temporary migrants have a limited financial safety net, if they can access any financial support at all, and this distinguishes this group from Australian citizens.

3.6.2 What does it mean to be employed or unemployed? The importance of context.

Across the 300 cases, where it was indicated (5 per cent unknown are excluded), the majority of victim-survivors were noted to be unemployed (50 per cent) and 18 per cent were recorded to be primary caregivers at home, making those not officially in the labour force 68 per cent. In relation to paid work, 13 per cent were employed full-time, 15 per cent part-time and 5 per cent on a casual basis.

While it may be assumed that having work is empowering and/or at least a platform for women to leverage independence in circumstances of family violence, employment does not equate with financial independence: perpetrators can still control women's access to employment and wages. In at least eight cases, while the women were employed, they were nonetheless financially dependent on the perpetrator (either due to having a small or limited income or to the perpetrator controlling their wages).

In this study, there were many situations where control over work and wages was evident, as the following examples demonstrate:

Victim-survivor works part time as a cleaner at the hospital. She often works from 9pm - 1am. Perpetrator told her to work more hours so she could pay the \$30,000 which perpetrator alleged was owed by the victim-survivor to him.

The victim-survivor had to leave her part time employment as he [perpetrator] contacted her colleagues with stories about her that made the manager reduce her hours.

The perpetrator helped the victim-survivor find employment through his [nationality] contacts. The victim-survivor started work, however the employer was paying all her wages to him [the perpetrator]. The victim-survivor changed the account to which her wages were being paid, and was still required to give the perpetrator money, as well as tell him how much she was getting.

Victim-survivor worked for 1 week in Australia. She had no money as perpetrator took all of the money she earned.

Victim-survivor earns about \$500 per fortnight. Perpetrator forced victim-survivor to spend her entire salary on the household grocery, bills, his traffic penalties, linen, his hair cut, his credit card and his personal shopping, leaving her with very little or no money. He did not allow victim-survivor to spend any money on herself.

Unemployment and/or undertaking home duties and the care of the children can also belie the gravity of the situation, particularly in relation to unemployment. In some circumstances, the perpetrators did not allow the women to work:

The perpetrator did not allow her to work.

After she was married, her husband forced her to stop working and was sending her money to support her.

The victim-survivor was not allowed to find an employment by her husband.

Victim-survivor was not allowed to seek paid employment in Australia but that she was required to cook three times a day and clean for herself, her husband, her sister-in-law (and her husband) and her mother-in-law.

Thus, the findings reveal how controlling whether women work is one form of abuse. In this regard, as the final excerpt above indicates, there were situations where women's work was confined to the domestic setting in situations akin to domestic servitude (as opposed to performing the domestic duties that are part of the everyday lives of families):

The victim-survivor was not in a paid work. It was noted that for 21 months of living with the perpetrator the victim-survivor was doing all of the housework, such as cleaning, cooking, doing grocery shopping and caring for him in general.

Victim-survivor was forced to do all the housework, cleaning and cooking for her husband.

Victim-survivor was working as a cleaner but was forced to stop working. She is now treated as a slave at home.

The victim-survivor was not in paid work. The victim-survivor was required to do all of the housework in a house she shared with husband and his family.

Victim-survivor indicated that her husband was severely disabled, and during a conversation with her brother-in-law he stated that the reason they brought her to Australia was to look after her husband and 'work like a servant for them'. She explained that she was doing all the housework (cooking, cleaning etc.).

This final case is returned to in the examination of trafficking and slavery indicators in section 6.0. The case notes vary in the detail provided about these situations; yet together they offer some insight into the control and abuse experienced by temporary migrant women in relation to employment and labour, and it is noteworthy that in these circumstances migration status is not the only influential factor (that is, Australian citizen women also experience such abuses in relation to financial control and abuse). However, **as per the broader context of this study, being a temporary non-citizen limits the support options available to women and determines the factors they have to take into consideration when deciding whether to seek assistance and/or leave the perpetrator.**

Recommendation 2: Risk assessment

- a. *Generalist risk assessment and management:* This report evidences the need for baseline questions in risk assessment and management that may have specific ramifications for women whose migration status is temporary, but that can also impact all women in situations of family violence. These questions should relate to:
 - ii. Employment and financial security/control: assessment should include canvassing control over and access to finances, sharing of household and other financial responsibilities and limitations or control related to accessing employment, the type or nature of that employment.

Recommendation 3: Risk management

b. Service and risk management funding gaps: There are noted gaps related to accommodation and income, that particularly impact women whose migration status is temporary. These gaps are evidenced in this report. It is recommended that the Victorian Government develop a model of funding that will meet these gaps, and that the Victorian Government request COAG to share some of these funding responsibilities into the long term. Specifically, the gaps that must be met are:

- ii. *Immediate access to financial support for temporary partner visa holders:* The Victorian Government to review and lead a discussion at COAG to urgently review current limitations regarding access to welfare support, to enable women to access to immediate, ongoing financial support, rather than awaiting the FVP application to be finalised. Recognising that in many cases women are dependent on their partners financially, there is an opportunity for women and their children to be supported by the government, recognising that financial independence is critical in the context of family violence. This should be provided based on evidence that the majority, by far, of those who apply are successful. The cost to the community will be limited, and benefit to women and their children substantial.

4.0 Risk identification

Within the context of supporting women in situations of family violence, risk assessment and management is an important element of structuring and targeting responses, which has been supported in Victoria by the Family Violence Risk Assessment and Risk Management Framework (commonly referred to as the Common Risk Assessment Framework, or CRAF). The first recommendation of the VRCFV (a recommendation that in part arose from the 2015 Coronial Inquest into the Death of Luke Batty) was that the CRAF be reviewed and redeveloped in order to deliver a comprehensive framework of minimum standards, roles and responsibilities in relation to family violence screening, risk assessment and risk management, as well as practices relating to information sharing and referral across Victoria. It was recommended that the revised framework should reflect a greater diversity of needs and experiences, which was affirmed in the review of the CRAF by McCulloch et al. (2016). In particular, the VRCFV made reference to the specific needs of older people, people with disabilities, and people from Aboriginal and Torres Strait Islander, CALD, and LGBTIQ communities (see also McCulloch et al. 2016 regarding the issues pertaining to risk for these groups).

At the time of writing, as noted in the Introduction, this framework is undergoing extensive revision and redevelopment. The data in this research is drawn from the operational CRAF, and as such reflects the limitations already noted regarding this instrument in relation to diversity broadly, and to immigrant and refugee women, and women whose migration status is temporary (see McCulloch et al. 2016). In the review of the CRAF, McCulloch et al. (2016: 108) recommended that in the redevelopment of the CRAF 'a number of specific family violence risk factors and issues for CALD women' should be included, such as 'visa status, isolation and community entanglement'. A major contribution of McCulloch et al.'s study is in highlighting the importance of inserting migration status and related issues into broader conceptualisations of family violence risk. Their findings inform a broader understanding and recognition of such risk to ensure that women across Victoria are being supported appropriately (see also Vaughan et al 2015).

This section offers two key insights, drawn from the analysis of the case file data. The first insight reflects on the data that is garnered via utilising the risk assessment data. In addition to redevelopment of the CRAF, the VRCFV recommended that the Family Violence Index be comprehensive in monitoring the extent of and response to family violence (Recommendation 143) and that Victoria move towards a legislated family violence information sharing system (Recommendation 5). The data drawn from the CRAF and discussed in section 4.1 demonstrates the potential (which will increase as we move towards a more comprehensive model of risk assessment) for the current data to be utilised to monitor family violence.

The data is limited, not least because the comprehensive assessment recording template (which is part of the broader CRAF Practice Guide) from which the data is drawn utilises an aide memoire that identifies specific risk factors for victims and perpetrators, as well as relationship risk, but was not designed and is not used as a simplistic checklist to indicate whether an identified risk factor is present or absent, instead it is designed to be used to guide the course of the conversation (DHS 2012: 95). Thus, not every risk factor reported on below necessarily has an indication of presence or absence in the case file and, as such, there are 'unknowns' within the data set. That said, as indicated in the discussion below, there is currently limited data collation to provide such statistics within many agencies (this data was gathered via creating a database and entering the data case-by-case) and across agencies there is little consistency of data, therefore hindering comparison or compilation. There are significant gains to be made by working towards consistent, long-term data monitoring both within and between agencies, as it is a touchstone for measuring the impact of the efforts being made to reduce and prevent family violence.

The second insight reflects on the noted issues pertaining to specific risk for key populations and the need to broaden the conceptualisation of risk in the family violence context. These findings offer an important evidence base as Victoria moves towards developing and finalising a new risk assessment and management model. The analysis presented in section 4.2 first highlights the aspects of risk that are relevant to family violence contexts generally that were identified in this research as important but unrecognised elements of risk (that is, elements not included in the CRAF) – specifically, the use of technology and counter-claim IVOs. The focus then turns to two issues that relate primarily, but not exclusively, to immigrant and refugee communities: multiple perpetrators and the twin sides of isolation and entanglement. Finally, the analysis explores migration status as an element of risk that has a significant impact on victim-survivors and considers both quantitative and qualitative data regarding this risk factor. It highlights, as many of the findings in this report do, the specific ways in which migration status is used to control and coerce women in situations of family violence. As the recommendations arising from this analysis indicate, ensuring that all women have access to support – especially financial and housing support – is a vital step towards reducing the power of citizen and permanent resident perpetrators.

4.1 Risk assessment data: victims, perpetrators, relationships and the nature of family violence

Victims

In this study, a quarter of the women were either pregnant or had an infant child to care for (26 per cent). For at least 40 per cent of women, depression or mental health issues were noted, and 21 per cent had experienced suicidal ideation or had attempted suicide. Further details regarding mental health issues or illnesses were not provided in the case notes for the majority of cases. Very few women (2 per cent) in this study had issues pertaining to drug or alcohol misuse or abuse.

Perpetrators

In this study, the general data gathered using the standard CRAF risk assessment did not indicate patterns of risk related to the perpetrator and the perpetrator's modus operandi that could be clearly differentiated from those reported in relation to perpetrators of family violence more generally in other national reports. This was only made evident via the additional data capture, beyond the CRAF risk assessment, detailed in section 4.2 below.

The use of weapons was noted in 13 per cent of cases, while access to weapons was identified as a risk in 20 per cent of cases (though in 12 per cent of cases it was unknown whether there was any access to a weapon). This echoes data reported by the ABS on women's experiences of family violence and the use of weapons, which is generally around 11–12 per cent (with some exceptions such as in the Northern Territory – see ABS 2015).

In this study, 14 per cent of perpetrators had a history or current breach of an IVO (though for 29 per cent this was not indicated and was reported as unknown, and 28 per cent had no previous or current IVO), and while 18 per cent had a known history of violent behaviour for the majority (60 per cent) this was recorded as 'unknown' as it was not indicated in the case file.

Only 3 per cent of perpetrators had diagnosed depression or mental health issues. However, over a third (37 per cent) had alcohol or drug misuse/abuse issues (8 per cent unknown).

Relationships

For 91 per cent of victim-survivors it was noted that there had been a recent separation from the perpetrator (or the main perpetrator in cases where there were multiple perpetrators). Reflecting what is known and reported regarding the timing of support-seeking, in the majority of these cases (83 per cent) there had been a recent escalation in the severity or frequency of violence. Financial difficulties within the context of the relationship were also common (65 per cent).

The nature of family violence

With regards to the nature of family violence experienced by victim-survivors, threats or actual harming of victim-survivors (93 per cent reported experiencing this), choking (41 per cent had experienced this, with 4 per cent unknown) or threats to kill (49 per cent) were predominant across the situations captured in the case files. Specific forms of abuse and violence included stalking the victim-survivor (40 per cent of women experienced this), and sexual assault were recorded in 43 per cent of cases. The data regarding sexual assault is slightly higher than revealed by the broader pattern of the use of sexual assault in the context of family violence in Victoria, as reported by the ABS (2015), which is 35 per cent (see also ANROWS 2012).

Nearly all perpetrators used controlling behaviours (94 per cent), and over two-thirds (68 per cent) displayed obsession or jealousy with regards to the victim-survivor.

As per the nature of family violence, threats to harm extended beyond the immediate victim-survivor to include threats to harm or kill children (this was noted in 35 per cent of cases where there were dependants), threats to harm or kill other family members (23 per cent) and threats that the perpetrator would harm or kill himself (13 per cent).

Recommendation 1: Information provision & data monitoring

b. Data monitoring and information sharing: As Victoria moves towards implementing Recommendation 143 of the VRCFV, focused on ensuring the Victorian Family Violence Index measures the extent of and response to family violence in different communities, and Recommendation 5 of the VRCFV, focused on the development of a family violence information sharing legislative scheme (to be contained within Part 5A of the Family Violence Protection Act 2008), it is recommended that the data base include:

- i. Data regarding demographics, including migration status of victim-survivor and her dependants.
- ii. Data regarding family violence context, including multiple perpetrators and relationship to victim-survivor.
- iii. Data regarding nature of family violence, including the use of deportation/other migration threats.
- iv. Immigration data regarding family violence provision applications and outcomes, and regarding partner sponsorship refusals.

Extending the information sharing across family violence service providers and across agencies, to include the DIBP, would require further legislative arrangements. It is recommended that the Victorian Government pursue this via COAG, to support a future comprehensive national monitoring database.

In addition to enabling trends to be monitored, this will enable accountability and measurement of the impact of legislative (and in the case of migration, regulatory) change.

4.2 Recognising risk: additional components of family violence risk

4.2.1 Technology and risk

There has been growing interest in acknowledging and identifying the ways in which technology is used as a form of control and coercion in situations of family violence (see VRCFV Final Report 2016a; Woods 2016; Powell & Henry 2016a) as well as a form of sexual assault, and increasingly this is being included in legislation across Australia (see, for example, NSW, ACT). There is also some recognition of the potential for technology to serve as protection, though this is not the focus here and was not identified as a finding within the case notes generally (see Maher et al. 2017; VRCFV 2016b: 39–43).

In Woodlock's Australian study, it was reported that perpetrators of family violence (and stalking) use technology in three main ways: to create a sense of omnipresence, to isolate, and to punish and humiliate (Woodlock 2017). Mobile phones (both smart and mobile phones) were the predominant technology used to facilitate abuse against women, followed by social media (such as Facebook), and, text messaging (Woodlock 2017). Importantly the results indicated that technology-facilitated stalking was rarely isolated, as women were likely to experience other forms of family violence alongside it. The findings in this research echoed Woodlock's findings to some extent.

In this study, **just over a third (34 per cent) of cases involved the use of technology as an aspect of controlling or abusive behaviour.** As in Woodlock's study (2017), this predominantly involved mobile phones (87 per cent, which included smart phones), followed by laptop computers (26 per cent). Given that this information is not routinely gathered as part of the risk assessment process, it can be presumed to be underestimate regarding the predominance of the use of technology in these cases.

While there is much emphasis on the use of technology in relation to recording sexual/nude images and sharing these images without consent (see for example Henry and Powell 2015, Powell and Henry 2016), in this study technology was rarely recorded as being used in this way. However, there were some exceptions, as in the following excerpts:

Victim-survivor statement: 'I discovered that the respondent had created a fake online profile of me. [The perpetrator] had uploaded pictures of us and was posting things pretending to be me. [The perpetrator] wrote that I scammed my way into our marriage. [The perpetrator] has been blackmailing me into staying with him or he says he will report me to immigration. Ever since I moved out [the perpetrator] has called me from blocked numbers, written unpleasant things about me and sent disturbing emails.'

At the time of contact with InTouch, the perpetrator was going through court regarding the IVO and had been detained for multiple breaches. The perpetrator continued to contact the victim-survivor while waiting for the full IVO hearing, and was detained as a result. On [date], the victim-survivor reported to InTouch that he continued to breach the IVO by contacting her through the iCloud threatening to harm her and not leave her alone regardless of the country she was living in. He also sent explicit photos of a personal nature to her family, friends and colleagues in Brazil.

These two examples demonstrate the utilisation and distribution of personal images, in addition to the complex way in which threats related to migration status (see section 4.2.5) and the repeated breaching of IVOs are entangled with such practices. However, for the purpose of this discussion, as detailed in Table 2 below, technology was predominantly used as a way of controlling victim-survivors, whereby phone usage was limited or banned, and/or what was shared on and how social media was used was controlled and monitored by the perpetrator.

How technology is used	Percent
1. Threats to share stories via social media	7
2. Abuse via social media/direct messaging (e.g. actual sharing of images/stories, and use of email or SMS to directly abuse or share misinformation with others)	17
3. Social media stalking	11
4. Controlling access to social media sites (includes preventing or controlling/monitoring use)	19
5. Controlling personal mobile phone (includes preventing or controlling/monitoring use)	80
6. Sending messages/making calls on victim's behalf	8
7. Other	15

Table 2: Predominance of reported use of technology within the context of family violence

What was notable in this research was that access to and control regarding the use of mobile phone technology was the most common form of control and abuse in relation to technology. The case files revealed the ways in which technology is controlled by perpetrators, and how this can impact women, specifically within the context of the precariousness of temporary migration status. For example, the following detailed account illuminates how controlling access and use of technology serves to disconnect women from their extended family and potential support network:

The victim-survivor states that technological control was one of the first forms of abuse, with the perpetrator abusing his access to her email password and reading all of her emails. He then accused the victim-survivor of having prior relationships and blackmailed her. He forced her to delete her Facebook account and change her phone number so that she was cut off from all of her friends. When she moved to Australia she was isolated and lonely as she could not contact her friends or relatives. The perpetrator also replaced her sim card with one that could only accept incoming calls or allow her to give others missed calls. When the victim-survivor asserted herself and bought her own sim card, he spat on her face. The perpetrator checked the victim-survivor's messages and calls on her phone to check whether she was seeing other men. He forced her to delete the apps that she used to communicate with her family – Viber and Whatsapp. The perpetrator deleted the victim-survivor's father's contact from her phone as she called her dad and told him about the abuse. The perpetrator and perpetrator's parents got extremely angry when the victim-survivor calls her dad to tell him of the abuse. The perpetrator only allows the victim-survivor to make phone calls in front of him.

The perpetrator wouldn't let her speak to any of her friends/family and eventually completely stopped her speaking to her parents. He would read and then delete all the emails from her family in Greece. If she challenged him about it, he would beat her. He also put his phone number down when she was initially looking for work and he turned down the job offer.

Perpetrator restricted the victim-survivor's communication with her children and family in Vietnam.

The victim-survivor's reliance on mobile phones to access support and the active efforts by perpetrators to hide, destroy or control access to phones was frequently evident in the case files:

The perpetrator has hid the victim-survivor's phone so that she is unable to call for help. In particular, when he held a knife against her and then hid her phone, and threatened to kill her. The perpetrator also checks the victim-survivor's texts and voice messages regularly.

The perpetrator smashed the victim-survivor's personal mobile phone, and stopped communication with her friends and family by removing the home phone and cutting off the internet. He also put a tracking device on her car.

The perpetrator forced the victim-survivor to delete all her social media accounts, and would check all her emails and text messages.

Importantly, coercive practices via technology do not only involve perpetrators following or tracking women, but also demanding that women use technology that enables the perpetrator to monitor them:

When the victim-survivor was out with her friends, she had to keep sending messages and pictures to perpetrator so he could control her movement.

Reflecting the role of the extended family as perpetrators (as discussed in more detail in section 4.2.2), there were a number of examples in which additional perpetrators utilised technology to attempt to control and abuse the victim-survivor:

The victim-survivor's mother-in-law told her husband to listen to all her phone calls.

The perpetrator's family were sending the victim-survivor threatening messages telling her not to divorce the perp. The messages were a breach of the IVO.

In addition to women being cut off from family outside Australia, in three cases details were provided of the victim-survivor's family being threatened via messages, such that the abuse and control extended beyond the immediate victim-survivor in Australia, as evidenced in the example above and below:

While the IVO is in place, perpetrator still calling and texting the victim-survivor up to 10 times within an hour... Perpetrator also call victim-survivor's mother in Afghanistan, saying things like, 'I'm going to send people to kill you and make you vanish'. He would use a private number when calling victim-survivor's mother.

In many ways, this data offers further important insights into the use of technology in the context of family violence, contributing to the growing body of research into these practices. In addition, the focus on temporary migration reveals the ways in which women are made significantly more vulnerable when their family (immediate and extended) are in another country and they are either cut off from or restricted in their contact with them, and the exercise of control via refusing women (who often have limited finances) access to an independent communication device. There is some recognition of this, as women are asked the best phone number or email to be contacted on as a matter of routine by case workers. However, the additional vulnerability created through these practices of control and abuse cannot be underestimated, particularly for women who have limited English, who do not work or have no other regular contact in the community. There needs to be greater attention paid to the role of technology in exacerbating risk in the context of family violence broadly, to offer a more comprehensive understanding of how perpetrators ensure women's isolation and/or how they exercise control, with specific attention to the particular impact it may have on immigrant and refugee women, and those whose migration status is temporary. The shifts towards recognising technology-facilitated abuse is supported by this research, as is an understanding that abuse beyond sexualised abuse is both frequent and a significant contributor to risk.

Recommendation 2: Risk assessment

This recommendation identifies specific risk assessment and management in relation to initial screening for victim-survivors, screening for children, and specialised risk assessment and management for immigrant and migrant women, and temporary migrants.

- a. *Generalist risk assessment and management:* This report evidences the need for baseline questions in risk assessment and management that may have specific ramifications for women whose migration status is temporary, but that can also impact all women in situations of family violence. These questions should relate to:
 - i. *Technology:* including the utilisation of technology to enact (or threaten) abuse, but also control over use/access to technology.

4.2.2 Family violence and multiple perpetrators: intimate partner and familial violence

Most of the perpetrators in this study were current or former partners (as per Figure 6), which reflects the broader recorded patterns of family violence in Victoria and across Australia (see ANROWS 2016).

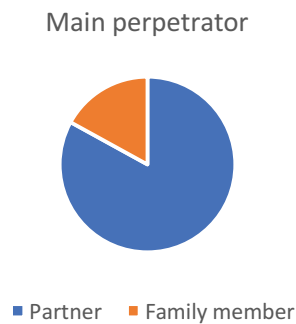


Figure 6: Main perpetrator: partner/former partner or family member

In the majority of cases involving multiple perpetrators, the first perpetrator was identified as the 'main' perpetrator (defined, where possible, as the individual who was predominant for the violence and abuse), and was most often the victim-survivor's former or current partner; however, this was not always easily identifiable from the case notes. In cases where there were multiple perpetrators, approximately 80 per cent involved members of the perpetrator's extended family, such as mother, father, sister and brother. These cases highlight some of the complex situations that arise and the ways in which additional perpetrators enact family violence:

Number of perpetrators	
1 perpetrator	80%
2 perpetrators	12%
3 perpetrators	7%
4 perpetrators	0.67%
5 perpetrators	0.67%
Total	100%

Table 3: Number of perpetrators

Perpetrator and victim-survivor live with perpetrator's family. Perpetrator's mother put the client down, spreads rumours about her in the community and is very involved in their relationship. The perpetrator's family control everything the client does, they monitor her calls and her finances, they provide her an allowance and track her finances through her bank account. Family always attend her appointments with her and today is the first day she has gone alone [to an appointment] and has been able to say what is going on. The perpetrator's mother knows everything about their relationship, including their sex life. During appointment [with the case worker] the family were calling asking who she is talking with and what it is about.

The victim-survivor married the perpetrator, and he returned to Australia afterwards. The victim-survivor remained in India living with his family. She indicated that they physically abused her and then when she arrived in Australia, she noted that he also physically abused her.

Perpetrator threw a bottle of water and hit on [the victim-survivor's] stomach area. Father-in-law came over and verbally abused her. He then smashed the phone to stop her calling the police. They would not let her go [from the house] and locked her in.

Perpetrator's mother and father were verbally abusive towards the victim-survivor. They would blame her and scold her for everything, and she would isolate herself in her room as a result as she did not want to face them. They did nothing to stop the abuse. From victim-survivor's statement, 'His parents also started scolding me and blaming me for whatever happens in the house [...] from morning till night I sit inside my room itself because if I go to the hall or living room his parents might tell something and scold and blame me for it so to avoid any kind of problem I just sit inside my room the whole time. Very soon it was like a jail to me sitting inside the four corners of my room not able to talk to anyone or not able to go anywhere.' When the perpetrator's parents found out about the abuse, 'his mom supported [perpetrator] and scolded me telling me that for a simple beating why I have to call the police'.

Perpetrator and his family started to blackmail the victim-survivor [and] stated that [they] are going to cancel her visa. Perpetrator and his family [are] constantly asking her for money. Perpetrator and her [in-]laws [are] very controlling and asking her to wash and clean all the time. They have [threatened] her family to give \$40,000 otherwise they will cancel her visa.

During most recent incident, the victim-survivor's brother-in-law explained that if she tried to move out with her husband he would have her sent back to Afghanistan. The brother-in-law then said that because his family took her out of a war zone, therefore she must do all the work for them.

The husband, the father-in-law and the mother-in-law were all included on the IVO application, as they had all been physically, emotionally, and financially abusing the victim-survivor throughout the duration of the marriage. The victim-survivor also miscarried, which was attributed to the abuse by the entire family.

Victim-survivor's sister-in-law works for the police as an admin worker. Victim-survivor disclosed the abuse and sought help. Sister-in-law refused to assist and threatened to take victim-survivor's child from her and to deport her back to Thailand, if she reported the situation to other people.

Brother-in-law would instigate husband's abuse of victim-survivor – indicating that she was 'being a whore and doing what she wanted', which resulted in her being physically abused by her husband.

FVSN [Family Violence Safety Notice] was issued after neighbours intervened in her in-laws severely beating her up outside. They stopped them and called the police.... The police report that accompanied the IVO application states that the victim-survivor was being physically assaulted by her brother-in-law, mother-in-law, husband and father-in-law: 'The brother-in-law threatened "I am going to kill you tonight you have been very disrespectful to my family"'.

Developing a clear picture of the forms of family violence that occur within this data set is not a straightforward process', yet these excerpts highlight the need to conceive of family violence in its broadest terms and to consider how we can develop a response to family violence that recognises the prevalence of multiple perpetrators. What is also evident is the intersection of culturally-specific familial living situations and the various forms of abuse and control identified thus far in this report (including technology-related control, using children as leverage and controlling finances). However, it cannot be presumed that multiple perpetrators are always members of the perpetrator's family and it must be acknowledged that, in the case of immigrant, refugee and women on temporary visas, such abuse and threats extend across international borders, as the following two cases illustrate:

The victim-survivor explained that her family in India knew about these naked pictures and told her that she is disowned, but her brother told her that if she returned to India he would kill her.

The father-in-law receives the victim-survivor's special benefits that she receives for her daughter. The victim-survivor is scared of her in-laws, and states that she is worried they might hurt her since the police arrested their son. Her in-laws are controlling and discouraged her from moving to New Zealand. They additionally kept her passport from her for a few months after the victim-survivor's husband passed away.

Recognition of the existence of multiple perpetrators is important: it draws attention to the complexity of the forms of abuse experienced in the context of family violence, and in relation to migration status it brings into sharp relief the challenges that can arise around the extent to which victim-survivors are able to pursue support based on abuse inflicted upon them by individuals who are not former or current partners. This is particularly relevant for women who are on temporary partner visas, as the relationship may break down as a result of family violence but that family violence may have primarily been enacted by her extended family rather than the sponsor. These findings warrant much closer and more detailed research, as the case notes were limited in their ability to reveal the specificity of such

circumstances and, importantly, how these circumstances impacted victim-survivors.

The role of extended family is not limited to perpetrating violence and abuse. There can also be significant pressure from the extended family (both the victim-survivor's and the perpetrator's families) to not pursue criminal justice interventions and/or to silence the victim, as in the following cases:

The victim-survivor was pressured to withdraw the case against the perpetrator by her in-laws, but could not do so as it was applied for by the police on behalf of the victim-survivor.

The victim-survivor was also threatened by both her husband and her brother-in-law to withdraw the claim or they would kill her.

The perpetrator was the victim-survivor's husband. Following the violence incident, a FVSN was issued and the victim-survivor was granted with a 12-month IVO. Perpetrator was remanded. Victim-survivor felt guilty about this. The children were asking about their father, perpetrator called victim-survivor from prison, asking her to forgive him and victim-survivor was pressured by his family to withdraw/revoke the IVO. At case close, victim-survivor decided to reconcile with husband and try to revoke the order.

The victim-survivor explained that the perpetrator told her, 'I will force you to go back to Pakistan and if you tell the police your life will be at stake and you will suffer the consequences and things are going to get ugly'.... The victim-survivor also reported that her mother convinced her to return to the relationship to avoid the associated issues, and her mother-in-law called the victim-survivor's mother in Pakistan to convince her to tell her daughter [the victim-survivor] to withdraw all the court proceedings as it is bringing shame and embarrassment to the family.

The situations in these cases reinforce the importance of police powers to take out IVOs without the victim's consent, but also highlight the seriousness of the pressure and threats that accompany demands to withdraw statements and/or to not participate in the criminal justice process. It is highly skilled and specialised service providers who are well placed to be alert to this, and to support women in such situations.

Recommendation 2: Risk assessment

This recommendation identifies specific risk assessment and management in relation to initial screening for victim-survivors, screening for children, and specialised risk assessment and management for immigrant and migrant women, and temporary migrants.

a. Generalist risk assessment and management: This report evidences the need for baseline questions in risk assessment and management that may have specific ramifications for women whose migration status is temporary, but that can also impact all women in situations of family violence. These questions should relate to:

iii. *Multiple perpetrators:* questions pertaining to who is enacting violence/harm/threats/control should be gathered to ensure specificity of legal response (for example, IVOs against all relevant parties) and to understand cultural and familial context of family living arrangements.

c. Specialist risk assessment for immigrant and refugee, and temporary migrant women: Where migration status is temporary (regardless of whether migration status is connected to the partner), additional questions by specialised services should be asked related to:

iii. the identification of who is perpetrating violence/control/abuse should extend to the nature of these practices and the location of these perpetrators (including whether they are exerting abusive and controlling behaviour from an overseas location)

4.2.3 IVOs against women: the use of IVOs and other formal reports to undermine women

While most commonly immigration pathways were pursued by perpetrators to undermine or prevent family violence claims there was also evidence of the use of counter IVOs and other strategies to undermine claims. The most common was to seek an IVO against the victim. In this regard, a range of situations were noted in the case files:

[The perpetrator] arrived to her place to see the child, started to argue with her, fought with her and managed to take child and left the house. After that he went to the police and report that she hit him. Police issued a safety notice. The victim-survivor was fearful to approach the police as she was scared that her visa will be cancelled because she wasn't aware about the law.

Five days prior to the wedding, the perpetrator applied for and was granted an IVO against the victim-survivor. The personal statement indicates that he attacked her when she tried to leave, and he then called the police when she threw a coat hanger at him in defence. The coat hanger left bruises on the perpetrator's face, and he was granted the interim IVO. They married five days later. At the end of their relationship, the neighbours called the police when they saw the perpetrator attacking the victim-survivor in [an office] – they noticed he had her by the hair and that she was bleeding against the glass door – and called police.

The perpetrator applied for an IVO for himself and his children after an assault, which he blamed on the victim-survivor. [NB The IVO was not granted, but a mutual IVO was later granted.]

The victim-survivor was informed that she was served an IVO against her by the perpetrator after she went to his house to collect her belongings. The perpetrator did not let her in to get her things, and both the perpetrator and the victim-survivor called the police, who indicated that they could not help them. The victim-survivor was due to go to court in September. The IVO was enforced and there is no other detail about the IVO outcomes.

It cannot be assumed that in every situation the IVO against the victim-survivor is unwarranted; nor is it suggested that perpetrators are always making fraudulent claims when seeking an IVO and/or the police are not alert to spurious or questionable counter IVOs. However, particularly for women who are on temporary partner visas, there is a significant potential for these situations to undermine a family violence provision application in the context of a victim-survivor seeking permanent residency (see section 5.0 regarding access to support and the family violence provisions).

In some cases perpetrators also sought to undermine victim-survivors, with the aim that their claims of family violence would be disbelieved or discredited, via contacting police or healthcare providers and suggesting that the victim-survivor had a mental health issue or was suicidal, as in the following case:

Victim-survivor statement: 'I applied for Islamic divorce.... [The perpetrator] is telling everyone, including the children, that I am mentally unstable. He told the religious leader I went to see about the divorce I was mentally unstable'.

There were some situations where extended families also supported this, as illustrated in the victim-survivor's personal statement below (prepared as part of her family violence provision application):

The pressures and stressful situation continued until one day I swooned and I was taken to the hospital. My in-law family were afraid and after consultation with each other decided to introduce me as mentally ill. The doctor told me that 'your family are saying you have depression and we must give you electrical shock'. I disagreed and realised my in-law family's aim. By introducing me as crazy, they had a plan to shut my mouth up [so] in the future I would not be able to complain to the police and even if I could, they would not hear me, thinking that I am crazy.

While not seeking to dismiss that women may perpetrate some forms of family violence, in this study this was not evidenced and what is clear is that specific processes must be in place to qualify claims

of counter violence and efforts to seek counter-IVOs as they have the potential to be used to undermine women's applications to access the FVP, and that an independent mental health assessment (as well as an independent and specialised interpreter) is needed for immigrant and migrant women, especially where English is not their first language.

Recommendation 2: Risk assessment

This recommendation identifies specific risk assessment and management in relation to initial screening for victim-survivors, screening for children, and specialised risk assessment and management for immigrant and migrant women, and temporary migrants.

a. Generalist risk assessment and management: This report evidences the need for baseline questions in risk assessment and management that may have specific ramifications for women whose migration status is temporary, but that can also impact all women in situations of family violence. These questions should relate to:

iv. Counter/cross claim IVOs and other mechanisms to undermine victim accounts: It is important for risk assessment purposes to capture where IVOs and/or other intervention mechanisms (such as mental health reports) have been used against the victim-survivor to undermine/challenge the veracity of her account of family violence.

4.2.4 Risk, isolation and entanglement

Recognising that there is significant diversity among this group of 300 women – for example, some came to Australia independently (as students or tourists) and met a partner (perpetrator) here, and others were married to their Australian partner (perpetrator) in an arranged marriage overseas and moved to Australia to live with him and his family – it is important not to make assumptions regarding women's isolation and/or connectedness within the community including in relation to specific faith/religious or ethnic groups in the community. However, drawing on the work of McCulloch et al. (2016), noting that both isolation and entanglement present as potential risks for CALD women, the cases were examined in relation to two aspects of community identified in the report by McCulloch et al. to be most influential in terms of entanglement: faith and ethnicity.

With regard to faith community, only 8 per cent (n=26) of victim-survivors were noted to be connected to a faith community (not connected 48 per cent, unknown 44 per cent). Of those who were connected to a faith community, over half (54 per cent) were supported by that community, compared to 19 per cent (n=5) of cases where the offender appeared to be supported by that community (unknown/neither 27 per cent). However, there was rarely much detail provided in this regard, and most commonly a note such as the following was included:

The victim-survivor was taken in by her friend from Church, who was then assisting her to apply for an IVO against the perpetrator, and was letting her live with her.

In relation to ethnic community, only slightly more women were noted to have strong connections or ties (11 per cent, n=33), compared to 51 per cent who did not, where this was noted in the case file. Such connection was defined in this study as being a part of a wider community, beyond family (and in-laws), as evidenced by the multiple community engagements and event participation. For example, the case note below reflects the support provided to the victim-survivor within the community:

The victim-survivor was supported by a local community elder to apply for an IVO.

For the 33 women who were connected to an ethnic community, there were only two cases where it was clear that the offender was being supported rather than the victim-survivor (support for the victim-

survivor was evident in 21 cases, while in 10 cases it was not discernible). In the following case, the court recognised that the community support being offered to the perpetrator was a concern and recommended specialised support for the victim-survivor:

A church leader, who was a friend of the perpetrator, became involved [in a case where there was an IVO which the victim-survivor sought a variation on]. The church leader told the court that the family would be moving in with him and his wife so they could support their reunification as a family. The court worker had concerns about the intentions of the leader, as did the court. The court issued the IVO for three years and insisted that the victim-survivor be referred to InTouch for further information about the rights associated with her visa status and the IVO.

Finally, it is also worth noting that, due to religious and community factors, some women are already ostracised by their community and as such can fear leaving the relationship as they have nowhere to go, particularly if they have no pathway to permanent residency in Australia. This is captured in the following case study:

Victim-survivor comes from a strict and conservative Moslem family and perpetrator is a Christian. Victim-survivor did not inform her family when they got married due to fear of being killed under Honour Based Violence. Once victim-survivor married with perpetrator, she travelled to her home country with the perpetrator to meet with her family. Victim-survivor's family told her not to continue the marriage and not to travel to Australia. Victim-survivor's father and brother have threatened to kill her as she has brought shame to the family. Her sister was reluctant to talk to her because she was told not to do so by their father and brother.

These findings remain relatively preliminary – not least because the determinations are made based on the case notes and other materials rather than women's articulation of their experiences. However, the analysis highlights the importance of recognising the potential for community – be it faith or ethnicity based – to be at once a source of support and also a source of pressure on women to remain in abusive relationships, thereby denying their experience of family violence. While examples of the latter were few in number in this study, in at least seven cases it was clear that external pressure was placed on the victim-survivor to remain in the relationship and/or that community members sought to support the perpetrator rather than the victim-survivor. This is a key finding to inform future intervention; and highlights the importance of asking questions about community connectedness, rather than simply assessing isolation.

4.2.5 Risk in the context of temporariness: partner and non-partner visa holders

A consistent finding in this study and in other recent reports is that men utilise women's temporary, and dependent, visa status to invoke a fear of deportation as a means of control and coercion (see VRCFV 2016: 104; also Vaughan et al. 2016). This practice was evidenced in many of the case files in this study, and extensive case excerpts are drawn upon here to demonstrate and emphasise the significance of this aspect of risk for temporary migrant women.

Quantifying these threats and their impact is challenging. However, within the case files specific elements of risk and fear were quantified where they were articulated (although, at best, they underestimate the prevalence of such attempts at control). Among the case files, it was noted in **24 per cent of cases that for the victim-survivor returning to her country of origin (which was a threat made by the perpetrator) was a significant source of concern and worry (though, again, this is not routinely captured data: in 63 per cent of cases this was recorded as unknown as it was not clear in the case file)**. This concern is embodied in the following excerpts:

Victim-survivor was referred to RILC [the Refugee and Immigration Legal Centre] to see if she was eligible for a protection visa [as she was not eligible for the FVP] – victim-survivor noted that she doesn't want to go back to India because of the shame.

When the victim-survivor first thought about leaving the perpetrator she went through Islamic mediation prior to eventually leaving. In this case file there was also a psychologist report which stated further:

'she suffers from disturbed sleep and is worried he will divorce her "islamically" which leaves her tied to him.... She has limited family support but believes that life in Lebanon would be harder as she would be stigmatised as a divorced lady who brought shame to her family... culturally, it is shameful for a woman to leave her husband and domestic violence is often tolerated which is why she didn't leave earlier.'

[Perpetrator] states he is going to use his culture to harm the woman; has threatened to have her stoned when she returns to Iran and tells woman that if he kills himself that she will suffer in Iran – she would be killed and blamed for his death...

After her first report to the police, victim-survivor noted that her husband called her parents in India and threatened them to force her to take back the complaint or he would deport her back to India and make sure she never had a 'respected or dignified' life in India or Australia. Victim-survivor has explained that the nature of the traditional marriage meant that her husband did have the ability to make her life very difficult in both Australia or India if she was to return, and the cultural expectations associated with her role as a wife meant that returning to India, or complaining about her husband, was not considered acceptable and had consequences for her safety.

From victim-survivor's statement, 'Many times he has asked me to get out of his house or go back to my dad. But I begged him not to send me back because he was everything for my life after the wedding. My mother died when I was very young and after that I and my sister continued our studies in India by staying in a hostel. Then my dad remarried again, so even if [perp] sends me back to Sri Lanka I have nowhere to go. I can't go and live with my dad as my stepmom and her daughter are living with him. So ultimately I have no place to go if [the perpetrator] sends me out of the house. But by knowing this [the perpetrator] took advantage of me, telling me that if I don't listen to him or do what he tells me he would send me out of the house. One day he fought with me so badly and hit me that he himself called my dad and told him to book my ticket to Sri Lanka and told him that he doesn't want to live with me anymore. I told my dad that I didn't want to come there but my dad was scared that [the perpetrator] would hit me more and abuse me. So my dad arranged for me to go to Sri Lanka. So unwillingly I went to Sri Lanka on [date].'

In at least 39 per cent of cases²³ it was indicated that the perpetrator had specifically threatened to have the victim-survivor deported or reported to the DIBP in order to have her sent back to her country of origin. In at least 44 per cent of cases²⁴, the perpetrator had specifically articulated a threat to withdraw sponsorship of the victim-survivor's visa. Such situations included the following:

The victim-survivor was often threatened by perpetrator to be deported whenever they had an argument. This scared her.

The victim-survivor reported that the perpetrator would tell her that he had the rights to deport her and keep their child in Australia. This is why she did not respond to the FVSN as she was unsure what that would mean for her visa (and didn't want to be deported without her child).

The perpetrator and his family would threaten to withdraw the victim-survivor's sponsorship [once she moved onto a spousal visa] if she didn't pay off the debt built up by her husband/the perpetrator. They had also [prior to the victim-survivor moving onto a partner visa] threatened to report her to immigration for working over the allocated 20 hours allowed on a student visa (the victim-survivor was allegedly working more hours for less pay to cover their living expenses).

The victim-survivor reported that the perpetrator pushed her to floor, grabbed her hair and threatened to kill her, divorce her and withdraw her visa.

Perpetrator said 'he had spent a lot of money on her to get to Australia and he can do anything with her otherwise she will be sent back to India where she will have no future without him'.

²³ This is presumed to be an underestimate as there was insufficient information in 38 per cent of case files, so it was recorded as unknown.

²⁴ This is presumed to be an underestimate as there was insufficient information in 37 per cent of case files, so it was recorded as unknown. The data excludes the 14 per cent of cases where this threat was not relevant due to the victim-survivor's migration status.

The perpetrator would regularly threaten to send the victim-survivor back to China, and then when she left the relationship he contacted Immigration and alleged that the child was not his (to try to undermine her application for permanent residency).

Victim-survivor's personal statement states: 'He threatened that he would cancel my visa and send me back to my country.'

Toward the end of their relationship the perpetrator started asking the victim-survivor for money for her sponsorship. The victim-survivor questioned it, asking why he had never asked before and now wanted it. The perpetrator told the victim-survivor if she didn't pay the money she would have to return to Vietnam.

Towards the end of their relationship, the perpetrator would tell the victim-survivor not to commit to anything long term because he might want her to just return to Russia.

The psychologist report states that 'The perpetrator would manipulate her by threatening to withdraw his immigration sponsorship'.

Towards the end of the relationship, the perpetrator came home after staying at his parents' house and told the victim-survivor that she had to get out of the house, otherwise he would call the immigration department and they would put her in jail and then deport her. [The victim-survivor's personal statement indicates that the victim-survivor believed that this is what the Immigration Department do, so she left the house]. The victim-survivor explained that the perpetrator told her to return to Thailand as he had a new girlfriend. Prior to that, the psychologist report reveals that when the victim-survivor would refuse to pose for him in a g-string and bra he would tell her that she had to do what he said or she can go back to her country.

Support letter from a mental health social worker who was seeing victim-survivor at the time stated: 'many times he has threatened to divorce her and send her back to Vietnam. He threatened to take the baby away from her after she gave birth, which made her very scared and distressed. He had forced her out of the house many times in the past when it was dark and cold'.

Perpetrator told victim-survivor that she has 'no hope' in getting permanent residency without his sponsorship. Victim-survivor believes this, which makes her reluctant to leave the relationship.

Victim-survivor's statement: 'In the evening he tells me what I need to do the next day. Housekeeping, preparing eating; take out the garbage; watering the garden; otherwise gentleman [the perpetrator] is not happy and no permanent visa procedures. Daily shouts and threats. We were terrorised – me and my daughters'.

The victim-survivor reported that the perpetrator would threaten to send her back to the Philippines if she called the police and disclosed his behaviour. As a result, she endured the abuse as she feared both being alone (if the police removed him from the home) or being sent back to the Philippines.

Victim-survivor's personal statement states that she could never give a child to him because 'if he was treating me like this I can't imagine what he would do with his child and he said if I wasn't going to give him a child I had no use to him at all, because he wanted a child and I was his Brazilian slave. He said he would throw my things out on the street and he would call immigration to get my useless ass deported'.

These cases indicate that women from many different countries have formed partnerships with Australian men or Australian permanent residents, and that, despite the variation in how and where these relationships were formed, the use of migration status as the basis of a threat that is a cause of serious concern for victim-survivors is widespread. It was also very common for sexual assault to occur within the context of the threat of withdrawal of sponsorship or deportation:

Whenever the victim-survivor would refuse to have sex with him, he would threaten to deport her.

Every time victim-survivor refused to engage sexually with perpetrator, he would threaten to withdraw his sponsorship and send victim-survivor back to China. Victim-survivor was afraid of the repercussion, so she decided to comply with his demands and not to report the incident to the police.

Perpetrator would threaten to withdraw his sponsorship of her visa if she did not engage in sexual acts when he wanted it.

If victim-survivor did not do as the perpetrator asked (refused to leave the house, or refused to have sex with the perp) then he would threaten to have her deported/inform DIBP they had broken up.

Victim-survivor was pressured to have sex with perpetrator. Victim-survivor was afraid to say no to his advances as she feared that he would no longer want to sponsor her and her son to live in Australia.

The perpetrator would regularly tell the victim-survivor that he would kick her and her daughter out of the country if she refused to have sex with him. This threat was also used to ensure her compliance after he told her that he had married another woman in Vietnam, and that she had to provide him with money and continue to be his wife in Australia.

The victim-survivor explained that if she refused to have sex with the perpetrator he would take her passport and threaten to have her taken away by immigration and the police. He would tell her that 'if you fuck me, you can have your passport and visa'. Toward the end of the relationship, the perpetrator asked her to engage in group sex, and when she declined he threatened to cancel her visa and have her deported. He also kept her passport and visa, and indicated that he would only give it back to her when she was at the airport about to leave the country. At the point of contact with InTouch, the victim-survivor was worried about her visa status (and the perpetrator withdrawing his sponsorship) as she wanted to sponsor her 6 year old daughter to join her in Australia. At the end of the victim-survivor's personal statement, she indicated that "the perpetrator told her that she should repay all the money that he had spent to get her out of the country" [i.e. her country of origin].

As mentioned earlier, this data represents an underestimate as it is only captured where case workers made note of these issues, and/or it is detailed by the victim-survivor, rather than migration status and related threats being an aspect of risk on which data is routinely or comprehensively captured. It is also worth noting that, **for some women who are temporary migrants, there is less opportunity for partners to make such threats as their migration status is not dependent on their partner, but the situation remains precarious for these women in that they have limited access to support related to their experience of family violence precisely because of this lack of dependency on their partner.**

While sponsors for partner-related visas have legal obligations in Australia to support their partner (with regards to welfare and financial support), the case files indicated that **29 per cent of victim-survivors had experienced denial of food, a secure place or medication.** Given the recent changes to the Migration Act and the Regulations, there is the potential for consequences to be enforced in future for such sponsors to ensure they are held accountable where historically this has not happened routinely (see section 1.2.2). However, the concerns raised in this report point to obstacles experience by women in relation to coming forward in the first place to make sponsors accountable, not least of which is concerns regarding their own and their children's future.

The analysis also revealed that **35 per cent of victim-survivors felt they could not leave the relationship (if they desired to)** in safety or without fear, and 20 per cent did not desire to leave. Importantly, in relation to fears about returning to their country of origin, **21 per cent of victim-survivors indicated that they could not return to their country of origin safely or without fear, while 35 per cent did not desire to return (27 per cent unknown)**. The two examples below illustrate the nature of the impact of returning to their country of origin for a significant number of victim-survivors, in the form of social stigma:

Many threats by the perpetrator of divorcing the victim-survivor and sending her back to Pakistan, which have consequences including shame and stigma as a result of being a divorced woman.

In this case there are significant cultural factors as well; shame or rejection brought on by the community of a wife for leaving her husband and talking about marital problems with people outside the community.

Given that this data is based on case notes, little more detail can be provided to elucidate the specificity of women's fears. However, the use of threats to the victim-survivor's family by perpetrators, in addition to the cultural setting from which some women have migrated, can have a significant impact on women's assessment of their situation and the decision, for example, over whether to remain in a relationship until they gain permanent residency. Cases such as the following were not unusual:

When the victim-survivor left her husband the first time, he contacted her family and threatened that if they didn't make the victim-survivor withdraw her complaint he would make her life in both Australia or India miserable.

An important aspect of risk is the extent to which victim-survivors know their rights, as, without an understanding of migration and criminal law, it is clear that many women remain uncertain of their rights and are thus concerned to seek support and/or they may be unquestioning of the veracity of the (mis)information provided by perpetrators, and therefore vulnerable to the associated threats regarding deportation etcetera which have no legal basis. This is embodied in the following case notes:

Victim-survivor obtained an Interim IVO applied by the police, but she was worried that such order could jeopardise her immigration status.

Victim-survivor believes that perpetrator will continue to act in this manner and his behaviour will escalate if she seeks an IVO while living under the same roof. She is concerned that she will be unable to remain in Australia if she leaves him and this will restrict future opportunities for her 6 year old daughter in the Philippines.

Addressing this risk relies in part on creating a safety net for all women, so that they can be supported by specialist family violence service providers and can access financial and housing support without question. Aligned with this is the need for specificity of risk assessment, to enable a comprehensive assessment of risk and women's fears in the context of migration – not only in relation to fear associated with family violence – to be captured, understood and responded to. These issues are addressed in Recommendations 2 and 3. Importantly, Recommendation 1, regarding information provisions, is also critical here. Information on rights does not equate to women feeling able to access support; however, the provision of such information is an essential step towards reducing the extent to which perpetrators falsely assert (or, at least, exaggerate) their power in relation to women's migration status.

Recommendation 1: Information provision & data monitoring

- a. Information Provision:** Women need to be empowered via increasing confidence and knowledge regarding rights pertaining to migration status and family violence law and support provisions. Information and communication strategies must include:
- i. Pre-departure and arrival information for all new arrivals regarding Australia's definition of, and stance on, family violence.
 - ii. Ongoing information that targets immigrant and refugee women, and temporary migrants, via diverse media and communication platforms. Beyond printed materials, this should include digital social media, television and radio, and via community awareness raising (i.e. a comprehensive text/verbal/visual communication strategy).
 - iii. All information provision strategies must make clear that the definition of family violence is broad and inclusive.
 - iv. All information should provide direct information to specialist family violence services with migration expertise.

Recommendation 2: Risk assessment

This recommendation identifies specific risk assessment and management in relation to initial screening for victim-survivors, screening for children, and specialised risk assessment and management for immigrant and migrant women, and temporary migrants.

- a. Generalist risk assessment and management:** This report evidences the need for baseline questions in risk assessment and management that may have specific ramifications for women whose migration status is temporary, but that can also impact all women in situations of family violence. These questions should relate to:
- v. *Migration status:* if migration status is temporary, this should be a screening question to enable referral to a specialized service, where further, more specialised risk assessment and management should take place. This should be a routine assessment question, as migration status is not directly aligned with language or cultural difference per se.
- c. Specialist risk assessment for immigrant and refugee, and temporary migrant women:** Where migration status is temporary (regardless of whether migration status is connected to the partner), additional questions by specialised services should be asked related to:
- i. threats regarding migration status/deportation/withdrawal of sponsorship
 - ii. threats pertaining to child/ren and separation or deportation as a result of temporary migration status

5.0 Accessing support

One of the major areas of focus of this report is mapping the divergent pathways to support available to temporary migrant women, which are largely dependent on whether they can access the family violence provisions (as detailed in the Introduction). This section discusses those who are eligible to apply for permanent residency using the FVPs, the outcome of these applications, and those who are ineligible²⁵. It is in this data that the impact of migration status and the prioritisation of migration status in the context of family violence support come to the fore: as eligibility and the application outcome both are critical to support provisions accessible in the community.

5.1 Accessing the Family Violence Provision

As detailed in the Introduction (section 1.2.3), the family violence provisions enable access to permanent residency for migrants on temporary partner visas that would have given them access to permanent residency if the relationship had not broken down due to family violence. Importantly, the provisions still require two significant elements of proof: evidence that the applicant was in a genuine relationship and evidence that family violence took place during the relationship.

With regards to applications, of the 300 women in this study whose migration status was temporary, 162 (54 per cent) were supported to apply for the family violence provisions. However, in 2015-2016 there were a total of approximately 400 cases at InTouch that involved temporary migrant women. Based on the data indicating that 162 of 300 cases involved a FVP application (which equates to 54 per cent), it can be estimated that in one year the total would be approximately 216 applications. As indicated in the Executive Summary, in Australia in 2015-16 there were 529 partner visa applicants who sought to access the family violence provisions to gain permanent residency (Joint Media Release, 2016). Based on this, **InTouch, a Victorian-based service provider, submits approximately 40 per cent of the total FVP applications across Australia in a given year.**

The application data must be put into context in relation to the potential number of applicants. For 2015-16, 34,886 temporary partner category visas were granted to women (this excludes permanent partner visas and prospective partner visas – DIBP 2017). There is no data on the prevalence of family violence according to visa status. However, adopting the evidence that, nationally, approximately one in four women experience intimate partner violence (ANROWS 2015), this would mean that approximately 8700 women have potentially experienced some form of intimate partner violence. While this is only an estimate, it nevertheless suggests that 529 total FVP applications per year is low. **The first point to make, then, is that the number of applications nationally requires urgent review.** There is much work to be done to understand the gaps in knowledge about and access to the family violence provision that this data suggests.

This application data is important, however outcome data is also clearly critical as success (or otherwise) has significant consequences for women in relation to long-term stability and access to support. Nationally, of the 529 applications in 2015-16, 403 were approved (personal email communication with DIBP September 2017). In this study, of the 162 FVP applications, the outcome was only known for 140 cases²⁶ and, as Table 4 details below, the vast majority of cases in which InTouch supported an application for the FVP were successful.

FVP application successful?	%	N
Yes	90%	126
No ¹	9%	14
TOTAL	100%	140

Table 4: Outcomes of InTouch FVP applications

²⁵ For ease of reading, in this report there is reference to family violence provision applications and refusal and success: it is acknowledged that this is not the language utilised by the Department, but it ensures clarity and accessibility for all readers regardless of specific knowledge and expertise in migration-related administrative processes.

²⁶ In 22 cases the case was closed before the finalisation of the migration process. The reasons for these cases being closed varied and included reasons such as the victim-survivor not being responsive to ongoing contact and/or relocating (in some cases overseas) and being uncontactable.

This data must be read with care and to consider this rate of success, it must be put in context with national data, as per Table 5 below.

FVP applications approved	%
InTouch rate	90%
National application rate	72%

Table 5: InTouch FVP application approval rate compared to national approval rate

The data in Table 4 and 5 indicate that **the rate of successful applications at InTouch is higher than the national average**. While this is not a study of service provision models per se, this suggests that the unique and highly expert service model is a critical element of this success rate.

Building on what was noted above regarding the potential number of eligible applicants and the number of applications per year, and this rate of success, there is clearly a need for the following:

1. We need to understand the model of support provision provided by InTouch, and draw on this to enable similar services across Australia to provide such a specialised service.
2. We need to understand why the national application numbers are so low and why the rate of success nationally is much lower than the rate of success at InTouch.

While the lower rate of success nationally cannot be explained by the evidence in this report, it is worth noting that InTouch is the only service model in Australia that includes a dedicated, in-house, full-time migration agent (who is not a case worker), in addition to having its own legal team and, importantly, highly skilled case workers who support the migration agent and victim-survivor to gather the information and evidence required for a successful FVO application. There are, of course, highly skilled and exceptional support services around Australia, however the model of expertise and the large case load ensures that InTouch remains a unique service in Australia. The data suggests that there is a model of support that can, at the very least, create a context in which applications can take place and support women to ensure improve their chances of a successful application. Thus, Recommendation 1 pertains to the need for the production of publicly-accessible data on applications and outcomes to monitor trends, and Recommendation 3, in part, is dedicated to the need for models of specialist support provision that are fully funded and informed by a comprehensive service framework that draws on this model.

Recommendation 1: Information provision and data monitoring

b. Data monitoring and information sharing: As Victoria moves towards implementing Recommendation 143 of the VRCFV, focused on ensuring the Victorian Family Violence Index measures the extent of and response to family violence in different communities, and Recommendation 5 of the VRCFV, focused on the development of a family violence information-sharing legislative scheme (to be contained within Part 5A of the Family Violence Protection Act 2008 (Vic)), it is recommended that the database include:

- iv. immigration data regarding family violence provision applications and outcomes, and regarding partner sponsorship refusals.

Extending the information sharing across family violence service providers and agencies, to include the Department of Immigration and Border Protection, would require further legislative arrangements. It is recommended that the Victorian Government pursue this via COAG, to support a future comprehensive national monitoring database.

²⁷ Please note: in one case, permanent residency via the FVP had been applied for and refused before the victim-survivor came to InTouch. It is included in this analysis.

Recommendation 3: Risk management and service provision

a. Service provision model: The ideal risk management and service provision model should include:

- a specialist service model whereby case work, migration agents, family law experts work collaboratively to support victim-survivors.

This would ensure:

- efficiency of service delivery and appropriate levels of specialization: more generalist services are not expected nor able to be experts in the complexities of the intersections of migration law, family law and criminal law. Further, given the noted challenges for generalist organisations to be attuned in detail to the specificity of needs of key populations (see VRCFV 2016), and to resource the provision of the support that may be required, specialization (alongside consistency of referral), will ensure efficiency across the sector.
- specificity of risk assessment and management that can attend to the complexity of cultural, faith and other migration-related contexts, including knowledge and training to direct cases to AFP as required where potential slavery or trafficking offences may be indicated. This will ensure tailored, targeted and impactful case management and service responses.
- empower women to identify preferred service provision and risk management, recognizing that for some women support that is external to their community will be preferred, whereas others may opt for a management model that is inclusive of faith community, for example.

To achieve this:

- i. The Victorian government should consider fully-funding a comprehensive model that can provide support across the State.
- ii. The Victorian Government work with COAG to fund service provision, towards a nationally consistent approach & national funding for migration-related services, that sit within the CALD/immigrant and refugee service provision sector.

5.2 Refused applications: an analysis

As described in the Introduction, for an FVP application to be approved (that is, for permanent residency to be accessed via the provisions), the DIBP needs to be satisfied of two things: that there is sufficient evidence that family violence occurred before the relationship ceased, and that the relationship was a genuine relationship according to the Migration Regulations (as per Regulation 820.211 [2]). With regards to the latter, the Regulations specify four grounds: financial aspects, nature of the household, social aspects and evidence of the partners' commitment to each other.

In the 14 cases where it was determined that the application did not satisfy the requirements of the FVP, the decision was based on the grounds of a lack of evidence pertaining to a genuine relationship (in only one case the reason related to insufficient evidence of family violence). The selected excerpts below, drawn from the official correspondence from the DIBP outlining the reasons for the decision²⁹, offer some insight into the ways in which assessments of the four criteria of genuine relationship are made. Each of the grounds is considered separately, followed by a discussion of some of the implications of the decisions outlined in the correspondence. It is important to note that there is no simple or single definition or standard with regard to what is required by the DIBP to satisfy any one of the four grounds; rather, as illustrated in the examples below, there is a significant interpretative element to the process.

²⁸ Across Australia there are dedicated CALD/immigrant and refugee family violence services in nearly all states and territories; however, they do not all have the resourcing to provide comprehensive migration, law and case management services that equates to the diversity and breadth of the InTouch case load.

²⁹ The official letter was not in every case file, in some cases there was a note made regarding the outcome.

5.2.1 Financial aspects

With regards to finances, in the case of rejected applications, most often the assessment acknowledged the evidence provided, but stated that what was provided was not sufficient. For example:

Although the receipts are in joint names and are dated prior to the cessation of your relationship, there is no evidence that you contributed to the rental payments financially; I therefore give these little weight of shared financial liabilities.

Most often a deciding or influential factor was that finances were not shared, as in the following:

I am not satisfied that you and your sponsor had pooled your financial resources in any way, had any significant joint access or liabilities, had made any significant joint purchases, or that you shared any day to day financial responsibilities.

You have not provided any evidence... of any previous or ongoing pooling of financial resources or sharing of day to day household expenses. Therefore, I am not satisfied that you and your sponsor had pooled your financial resources in any way, had any significant joint assets or liabilities, made any significant joint purchases, or that you share any day to day financial responsibilities.

In one case the issue of contradictory information being provided to the Department was raised:

In your statement received by the Department on [date] you stated that you were employed by your sponsor in his ... business and you received \$350 per week. You have not provided any information to demonstrate how you and your sponsor pooled your finances, shared your household expenses or evidence of your income. I note that in the family violence claims received by the Department on [date] you stated that your sponsor was controlling and that he had control over all your finances. I find that this contradicts the documentation you provided. Rental receipts show that you paid the rent when you were residing in your sponsor's apartment in the Philippines prior to your arrival to Australia. You also provided the overseas post with evidence that you were employed by your sponsor in his business overseas and that you had authorisation to access the business accounts held with Commonwealth Bank. (added emphasis)

At the time of the application you declared that due to your visa status your sponsor supported you financially, however you did not provide any evidence to support your claims. In your statement dated ... you contradict your claims made at the time of the application and stated you did not have any access to finances. Having regard to the financial aspects of the relationship, I am not satisfied that at the time of application you and [the perpetrator] had pooled your financial resources in any way, or that you and your sponsor made any joint purchases, or that you shared the day-to-day household expenses. (added emphasis)

While these particular cases cannot be commented on specifically, as there is insufficient information from the case files to identify the evidence upon which these assessments were made and it is not useful to comment on the decision process per se, it is important to make note of the complexities and intersections surrounding migration status and family violence. First, it is worth noting that, in light of the evidence presented in section 3.6 above regarding employment and financial security, the interpretation of financial interdependence raises some concerns given the many instances where perpetrators deny victim-survivors access to finances.

Second, it is important to emphasise that contradictory claims can and are made in the process of applying for a partner visa and then apply for the FVPs. When first part of an application for a partner visa with their sponsor, women may not (and may not be able to) reveal that they are experiencing family violence. Arguably, women may be better to not reveal their experience of family violence, as if they do so in their application for a temporary visa, they will not be eligible for support and/or to apply for permanent residency in the future. **This is not to suggest that women deliberately choose not to reveal family violence as part of a longer-term strategy, but rather that the unfortunate consequence of the current system is that maintaining the façade of a committed relationship in the migration process offers women a greater chance of accessing support in Australia.**

5.2.2 Nature of the household

The second criterion of a genuine relationship pertains to the living arrangements of the couple. Importantly, living together is not sufficient to demonstrate that the sponsor and applicant were in a spousal relationship, as evidenced by the following decisions:

You have provided correspondence addressed to you dated ... at [address]. Although this indicates that you resided at the same address, I give it little weight that you were living there in a spousal relationship prior to the break of your relationship... I am not satisfied that you have established a joint household or that you shared the responsibilities of a household prior to your relationship breakup.

Whilst there is some evidence that you shared the same address as the sponsor, there is no evidence to support that you established a joint household or that you shared the responsibilities of a household prior to the cessation of your relationship.

You provided utility bills addressed to your sponsor dated.... Although this indicates that you reside at the same address, I give it little weight that you lived there in a partner relationship. As you and your sponsor applied on spouse grounds, you must establish that you were living together as spouses. I am not satisfied that you had established a joint household or that you shared the responsibilities of a household.

Determining the nature of a household thus requires evidence of shared household responsibilities; therefore, again, the assessment involves a significant degree of interpretation. As noted above, if the assessment relies on shared financial responsibilities as some of the assessments above indicated, this raises some concerns regarding the nature of financial control evidenced in this report.

5.2.3 Social aspects

The third aspect of a genuine relationship that must be evidenced is that the relationship is known to and recognised by others: within familial and friendship networks, and the wider community. In these cases, the evidence provided can include formal documentation, statements from family and friends and photographic and other evidence of being together in public places. However, as demonstrated below, a variety of evidence is required and simply being married is not sufficient:

Overall there is not convincing evidence that you presented yourselves as a married couple to family or the wider community, that you undertake regular joint social activities, that you have taken holiday or short breaks together, that you have attended any significant events together or that you belong to any organisations or groups. From the information provided I am not satisfied that you and the sponsor presented yourselves to family and friends as being in a committed relationship, or regarded by others as such.

You provided photos of you and your spouse together. I note that there are no photos of you and the sponsor with your family or with the sponsor's family. While the photos indicate that you and your sponsor have undertaken some joint activities prior to the cessation of the relationship, they do not constitute convincing evidence of a committed spouse relationship. You also provided statutory declarations from the sponsor's parents. The sponsor's father confirms that you are married and he attended your wedding. Whilst this does indicate that you may have had a holiday together for a short period, it does not constitute convincing evidence of a committed spousal relationship.

You provided photos of you and your sponsor with each other and with family on holidays. While the photos indicate that you and your sponsor have undertaken some joint social activities, have met each other's families and have travelled together, they do not constitute convincing evidence of a committed spouse relationship.

There is no evidence that you present yourself as a married couple to family or the wider community, that you undertake regular joint activities, that you have taken holidays or short breaks together, that you have attended any significant events together or that you belong to any organisations or groups. From the information provided, I am not satisfied that you and the sponsor present yourself to family and friends as being in a committed spousal relationship, or are regarded by others as such.

At the time of application you declared that you and your sponsor go everywhere together and visit friends and family. In support of your application you provided two statutory declarations written by [the perpetrator's] family members. While I place some weight on the statements made by the declarants that they acknowledged the relationship between you and your sponsor I note in your statement to the department on ... declaring that apart from visiting his parents, you did not have any social life as a couple. Whilst I accept that at the time of application you and your sponsor may have been considered to be in a spousal relationship by some friends and family members, your subsequent statement to the department contradicts your initial claims. This raises concerns when assessing the social aspects of your relationship and I find that in absence of sufficient evidence to demonstrate otherwise, I am not satisfied that you presented yourselves as being in a committed spousal relationship to the wider community, or were regarded by others as such prior to the breakdown of the relationship as a long term one.

[Y]ou have provided photographs of you and your sponsor socialising with friends and celebrating your wedding. I find however that there is no information before me that demonstrates that your sponsor's family attended your wedding, that you have met any of his family members, including his children, or that they were aware of and approve of your relationship with their father. I further note that none of your family travelled to Australia for your wedding. Given that you were the first of your siblings to marry, that your extended family had met your sponsor and the fact that your sister had named her child after your sponsor, I find it significant that none of your family members were in attendance to celebrate this occasion.

Again, while the specific details of these cases and the assessments cannot be commented on, aspects of these decisions raise some broader concerns given the nature of family violence in some instances³⁰. When women come to Australia to marry and are essentially required to remain at home and serve the (most often perpetrator's) family and perpetrator, and/or where there are multiple perpetrators, there are important reasons why such evidence of a genuine relationship may not be available. It is particularly concerning that the DIBP may query or find 'significant', as per the final example above, the fact that the victim-survivor has not met the perpetrator's family members and that her family has not travelled to Australia for the wedding. Recognising that this assessment excerpt is taken out of context to some extent (i.e. it is extracted from a longer letter and does not have regard to the suite of evidence provided in the specific application), such an assessment nonetheless reveals the degree of interpretation of context and potential cultural expectations of familial engagement. Further, there was evidence in the statements made by victim-survivors in their statutory declaration (Form 1410, Statutory declaration for family violence claim) and/or in other parts of the case file, that some perpetrators had intentionally destroyed files, pictures and other documentation in order to obstruct the ability of women from gathering and providing evidence of the relationship to DIBP. Within the context of this research, given that it was not possible to establish the prevalence of such practices among perpetrators based on the case file data, what is important to note here is the need for further investigation in this area.

5.2.4 Nature of commitment to each other

The fourth criterion of a genuine relationship pertained to the personal commitment, prior to the relationship breakdown due to family violence, had a commitment to a shared life together. In this regard, as the following excerpts indicate, a short relationship was often questioned, particularly if the woman had held a non-partner related temporary visa that was close to cessation prior to the relationship forming:

³⁰ It is not suggested here that the DIBP team responsible for making these decisions are not attuned to such considerations, as this cannot be ascertained, rather that the language and issues used in the letters analysed raise concerns about the extent (and consistency) to which such considerations are taken into account. It is also worth noting that there is significant expertise involved in the preparation of a FVP application, and again, the extent to which service providers supporting such an application are attuned to addressing these issues clearly in the application is also unknown, such that the context of family violence may not be portrayed with enough accuracy or detail to enable it to be clear to a decision maker why specific information and evidence is not available.

While I am satisfied that you and your sponsor are married there is no evidence that you saw the relationship as a long term one, that you drew emotional support and companionship from each other or that you had a commitment to a shared life together prior to the breakup of your relationship.

I note that you first met your sponsor on [date] through the introduction agency and your relationship quickly developed into one where you decided to marry on [date, six weeks later]. I also note that you were in Australia on a Tourist Visa at that time which was due to cease on [date, a month after the wedding date]. [I note that] you and your sponsor both claimed that you 'fell in love at first sight' in your statement... I note that also that in your statement you claim the marriage ceremony included members of both sides of your families, however other than the sponsor's father; there is no evidence to support your claims. I do not believe that you and your sponsor could have significantly developed a relationship prior to the marriage. While I am satisfied that you and your sponsor are married, there is no evidence that you saw the relationship as a long-term one, that you draw emotional support and companionship from each other or that you were committed to a shared life together prior to the cessation of the relationship.

You and your sponsor claimed to have known each other since [date] and were married on [two months later]. In your email of [a year later] you confirmed the short period you have known the sponsor prior to the marriage. I accept that you and your spouse are lawfully married as you have provided a marriage certificate. However, you have not provided any evidence of mutual obligation, companionship, emotional support and long term planning – typical elements of a marriage.

You declared that you were married on [date] and you provided the marriage certificate as evidence. However, you have not provided any other evidence that at the time of application you have mutual obligations, provided one another with companionship and emotional support or made long-term plans – typical elements of a marriage.... While I acknowledge the claims made by you that the relationship subsequently broke down in October, there is insufficient evidence before me to demonstrate that prior to the relationship ending you had a mutual obligation to each other or provided companionship and emotional support for one another. Therefore, I am not satisfied that at the time of application you viewed the relationship as a long-term one, or that you had a commitment to a shared life together.

In other decisions, the truth of the claims made by the victim-survivor were doubted on the basis of what was considered to be contradictory evidence:

In your statutory declaration dated ... you provided an outline of your relationship with your sponsor. You stated that you met your sponsor in [year] and commenced a relationship with him ... and you resided in his apartment in the Philippines. I note that until September [six years later] your relationship with your sponsor was not exclusive as your sponsor was still married and living with his wife in Australia until she became aware of your sponsor's affair with you. I am not satisfied that you intended to remain in a long-term relationship with your sponsor prior to the relationship ceasing. You have stated that it took you nine months to marry your sponsor due to you worrying about his constant drinking. You have stated that he was drunk every day and that he drank three to four bottles of alcohol every day. I do not accept that if this was the case your sponsor would be capable of running a real estate business. I further note that you claim to have driven to Queensland and returned to Victoria with your sponsor, notwithstanding that he was driving whilst drunk. I do not accept that any person would willingly travel in a car with a drunk driver for this length of time or that he was not detected by police.

I acknowledge that undertaking DNA testing is not mandatory, however as you have declined to undertake DNA testing for your child, I am unable to determine that the child is from the relationship, especially given you provided information stating that your relationship with your sponsor was not exclusive.... I have concluded that you were not in a genuine and continuing spousal relationship with your sponsor prior to it ceasing. You have also been unable to demonstrate that you were ever committed to a shared life with your sponsor or viewed the relationship as a long term one. I am therefore not satisfied that you were in a genuine and continuing relationship with your sponsor prior to the cessation of the relationship, as... required.

I find it significant that you have provided conflicting information regarding the nature of your relationship with your sponsor. You initially provided documents to the department on [date] to support your claims that you were in a genuine and continuing relationship with your sponsor and that you and your sponsor provided each other with love and support. Following your sponsor's withdrawal of sponsorship [on date], you later claimed to the department that you had been a victim of family violence committed by your sponsor since [one year prior]. You provided very different account of the history and nature of your relationship compared to your earlier statements. This places significant doubt on the reliability of the various claims that you have made about the genuineness of your relationship with your sponsor. Based on the information before me I therefore conclude that you were not in a genuine spousal or de facto relationship with your sponsor.

The decisions outlined above raise some serious concerns regarding the basis of judgments given the context of family violence. For example, the first excerpt above relies in part on an assessment of the veracity of the claims about the perpetrator/sponsor's consumption of alcohol, while the second challenges the applicant's claims on the basis of her refusal to undertake a DNA test³¹. There is no adequate justification for these assessments: there are possible scenarios in which a person could drink four bottles of alcohol and still work, and situations where people get into cars with a drunk driver, particularly in a context of family violence. While it cannot be stated that the decision of the DIBP in these cases was demonstrably incorrect, as the case file data cannot verify the accuracy of the victim-survivor's account, such assessments bring to the fore the importance of continued review of the assessment process.

A final concern in this context relates to the findings detailed in section 4.2.3 regarding IVOs being issued against the victim-survivor (and the veracity of these), and how these can undermine her FVP application. The following excerpt is exemplary here:

In your statutory declaration ... you stated that the reason there was an intervention order against you was because your husband was violent towards you. You stated that on the night of [date] you had an argument with your sponsor and that you decided to stay with friends. You stated that you started to collect your clothing to wear the following day and this is when your sponsor got upset and would not allow you to leave the house... You further stated that he grabbed your hair and was punching you. In defence you threw a coat hanger at him which hit his face and he then called the police. As evidence of this occurring you have provided a Family Violence Safety Notice issued by the police stating that you must attend court on 5 September 2013. I noted that this safety notice was against you and was for the protection of the sponsor and that you were excluded from your sponsor's address and could only attend in the presence of the police. The police report states that they observed the bruising and marks on your sponsor's face. I further note the police report states that you arrived at your sponsor's address at 7pm to collect clothing, which indicates to me that you had already moved out of the home at this time and that you were not living with your sponsor. Notwithstanding this event, you then married your sponsor on 14 September 2013... I find from the information available before me that you have been unable to demonstrate that you and your sponsor lived together in a genuine spousal relationship prior to it ceasing.

There are two things to note with regards to the analysis above. First, it is not suggested that in any of these cases there was an error in the decision-making. However, it is important to acknowledge that these decisions can be, and in some cases are, appealed; although InTouch does not support the appeal process and will generally refer clients to the RILC to pursue this. It is also noteworthy that, anecdotally, of the refused applications from InTouch, many of the decisions that are appealed are overturned; but providing evidence of this is beyond the scope of this research. Therefore, further research is required

³¹ It is worth noting that, while the issue of DNA testing is not raised in many cases in this report, DNA testing where sponsors deny paternity of a dependant is now an aspect of this process. In at least one of the cases in this study there were significant delays in processing the application as the sponsor/perpetrator refused to participate in this. Further research with regards to DNA testing and its impact is required.

regarding appeals to the Administrative Appeals Tribunal (Migration and Refugee Branch) when FVP applications are denied and, in particular, attention to the points of difference regarding decisions that are upheld and those that are overturned by the Tribunal.

The second point to highlight is that, given the significant number of cases that InTouch has managed and the rate of success, in the majority of cases InTouch is well equipped to meet the demands regarding evidentiary requirements. Given that the success rate at InTouch is higher than the national average, this is further reason to affirm the importance of specialisation whereby case workers, migration agents and lawyers can work together to support a victim-survivor and prepare a comprehensive application that will most often meet the evidentiary standards of the DIBP.

Recommendation 1: Information provision and data monitoring

b. Data monitoring and information sharing: As Victoria moves towards implementing Recommendation 143 of the VRCFV, focused on ensuring the Victorian Family Violence Index measures the extent of and response to family violence in different communities, and Recommendation 5 of the VRCFV, focused on the development of a family violence information-sharing legislative scheme (to be contained within Part 5A of the Family Violence Protection Act 2008 (Vic)), it is recommended that the database include:

- iv. immigration data regarding family violence provision applications and outcomes, and regarding partner sponsorship refusals.

Extending the information sharing across family violence service providers and agencies, to include the Department of Immigration and Border Protection, would require further legislative arrangements. It is recommended that the Victorian Government pursue this via COAG, to support a future comprehensive national monitoring database.

Recommendation 3: Risk management and service provision

a. Service provision model: The ideal risk management and service provision model should include:

- a specialist service model whereby case work, migration agents and family law experts work collaboratively to support victim-survivors.

5.3 Alternative pathways to support: ineligibility

While the discussion above had focused on applications to utilise the FVP to access permanent residency, 130 women in this study were ineligible or chose not to access the FVP. Of those 130 women, 20 per cent sought an alternative migration status (for example, applied for a student visa, remained with/returned to the perpetrator or accessed a bridging visa). This group of women were not necessarily ineligible to apply for the FVP but the extent to which they were able to apply is difficult to quantify, largely because the migration-related details needed to determine this were not always captured in the case notes. Thus, it is most accurate to note that at least a quarter (25 per cent) of the women (n=75) who sought the support of InTouch were ineligible for the family violence provisions. The impact of this is that they are ineligible for some emergency or refuge housing, and for ongoing financial support from public funds. For some women, this safety net was effectively denied to them because their perpetrators ensured, as discussed in section 3.3.2, that they did not access a temporary partner visa. In situations where perpetrators refuse (or, in the future, given the changes to sponsorship regulations, are refused) to sponsor women on partner visas, significant disadvantages are created for women whose migration status is temporary but who are not offered the safety net of the FVP. For those who come to Australia to work or study or on holiday (which may form the basis of their visa status) the experience of family violence that occurs in Australia is largely irrelevant to their migration status. This group have a specific vulnerability in the context of accessing short and longer-term support. This could easily be changed to ensure that funding is provided to protect those in such situations, to ensure that no one remains in a situation of family violence due to limited support in the community.

Recommendation 3: Risk management and service provision

b. Service and risk management funding gaps: There are noted gaps related to accommodation and income that particularly impact women whose migration status is temporary. These gaps are evidenced in this report. It is recommended that the Victorian Government develop a model of funding that will fill these gaps and request COAG to share some of these funding responsibilities in the long term. Specifically, the gaps that must be addressed are:

- Specific funding for accommodation (crisis and shelter) to enable services to accept women whose migration status is temporary and/or whose long-term future in Australia is uncertain, to ensure that uncertainty regarding long-term status in Australia (and the ability to rehouse in longer term accommodation) does not impact women and their children's ability to access housing to escape situations of family violence.
- Immediate access to financial support for temporary partner visa holders: The Victorian Government should lead a discussion at COAG to urgently review current limitations regarding access to welfare support, to enable women to access immediate (short term) and ongoing (medium to long-term) financial support, rather than awaiting finalisation of their FVP application. Recognising that in many cases women are dependent on their partners financially, there is an opportunity for women and their children to be supported by the government, particularly as financial independence is critical in the context of family violence. This should be provided based on evidence that the majority, by far, of those who apply for FVP are successful. The cost to the community will be limited, and the benefit to women and their children substantial.
- As per the VRCFV Recommendation 162, the Victorian Government should also encourage COAG to support changes to the Migration Regulations to ensure that all people seeking to escape family violence are eligible for crisis payments, regardless of their visa status.

6.0 Indicators of trafficking and slavery offences, including forced marriage

The overlap between family violence and trafficking- or slavery-related offences has only recently come to national attention, and primarily, as outlined in section 1.2.4, the focus has been on the issue of forced marriage. Most recently, the VRCFV identified that Victoria should ‘move to expand statutory examples of family violence, specifically section 6 of the Family Violence Protection Act 2008 (Vic), to include forced marriage and dowry-related abuse’ (Recommendation 156). However, as discussed in the Introduction (see section 1.1), while the report recognises that forced marriage is defined in the Criminal Code 1995 (Cwth)³² and notes the number of cases of forced marriage referred to the AFP (VRCFV 2016: 111–12), there is no detailed recognition in the VRCFV report of the Federal Government’s efforts to address offences under this legislation (that is, the broader offences pertaining to slavery and human trafficking, as per sections 270 and 271 of the legislation) and via the efforts of the various Commonwealth departments as reported by the Interdepartmental Committee on Human Trafficking and Slavery (ICHTS 2016). Further, the VRCFV focuses on forced marriage and dowry-related abuse (the latter of which is not specified in the Criminal Code) without reference to offences such as human trafficking, forced labour and other offences.

Offered here is the first comprehensive analysis of family violence data specifically focused on the context of temporary partner migration. In this section, specific forms of abuse and exploitation are detailed as they relate to both the national legal definition and the international indicators pertaining to slavery and trafficking offences. The findings reveal some of the complex issues regarding temporary partner visas and raise the question of whether it should be assumed or demarcated that exploitation experienced by a woman with this migration status is automatically defined as family violence simply due to the visa type. There are legal and support implications of how abuse or exploitation is defined, as will be discussed below, as well as conceptual issues that require further interrogation beyond this report. For the purposes of this section, given the focus of the analysis, the recommendations arising from the discussion are outlined in section 6.5.

For the purposes of data collection, one of the ways in which trafficking and slavery-related practices were captured in the analysis of case files was to note the presence of any evidence of practices that meet the definition (which in and of itself is not a legal test) specified within the existing Commonwealth laws pursuant to sections 270 and 271 of the Crimes Act. This is the data utilised for this report. Data was also captured in regard to the international indicators of trafficking for labour exploitation (which includes measures related to deceptive recruitment, coercive recruitment, recruitment by abuse of vulnerability, indicators of exploitation, indicators of coercion at destination, indicators of abuse of vulnerability at destination) or sexual exploitation (which includes measures related to indicators of deceptive recruitment, indicators of coercive recruitment, indicators of recruitment by abuse of vulnerability, indicators of exploitation, indicators of coercion at destination, indicators of abuse of vulnerability at destination) developed by the International Labour Organization (2012) which offer strong, medium and low indicators. However, given the significant difference between the identification of those practices and the legal process for prosecution in Australia, this data will be examined in detail elsewhere: for the purposes of this report the focus is on offences as per Australian legislation.

It must be reiterated that the case notes are limited for the purposes of this analysis for two important reasons. First, the existing risk assessment and management process at InTouch, as per the family violence risk assessment and management operational across Victoria, does not consistently seek to capture such data (although InTouch has recently introduced an internal risk assessment for indicators of trafficking and slavery offences). Second, there is a significant difference between the identification of potential offences based on the case notes, and the identification of a case that could result in legal charges being laid. It is not suggested that where there is evidence of an offence that this ought to equate to a charge/s being laid and a case prosecuted — there are many obstacles across the broad range of slavery and trafficking offences in relation to laying charges and pursuing prosecutions (see Segrave et al 2017) — yet they should, at the very least, be considered as part of appropriate risk identification and referral processes within specialist family violence services³³.

³² Most recently updated via the Crimes Legislation Amendment (Slavery, Slavery-Like Conditions and People Trafficking) Act 2013 (Cth).

³³ In identifying these cases as potential trafficking- or slavery-related cases, it is also worth noting that there are other possible offences defined within the Migration Act 1958 that could be explored, in relation to sponsor obligations in particular. However, for the purposes of this analysis these are not the focus, and the severity and nature of the details in these cases suggests that in many instances slavery and trafficking offences better capture the gravity of the offence.

6.1 Indicators of human trafficking

There were 11 cases where one or more element of the offence specific to human trafficking in Australia was evident. Importantly, for offences related to human trafficking the broad definition includes the movement (planned or actual, although here only cases where movement has occurred are represented) of someone across a border (or within the nation, although in this study the data pertains only to international border crossings) using coercion, threat or deception to facilitate that movement and to do so for the purposes of exploitation in the country of destination. In 6 of the 11 cases, the deception and potential trafficking occurred with regard to travel from Australia to the victim-survivor's country of origin. For the purpose of this analysis, general indicators that were evident in the cases are utilised, drawing on relevant elements of the legislation.

6.1.1 Coercion, threat, deception with respect to the exit from Australia (s270.2(1A(a&b))

The most common situation involved perpetrators seeking to control or effectively 'remove' women from Australia via sending them overseas (to their country of origin in most cases) via deception, and then to withdraw sponsorship and/or undertake other means to prevent women from returning to Australia. In these cases, what is clearly evident is the utilisation (or attempt to) of the migration system as one means through which to further exercise control and abuse. The following excerpts from the case notes highlight the ways in which perpetrators used the migration and sponsorship system to effectively bring women to Australia under the veil of an intimate partner relationship (and via a partner migration pathway) and then return women to their country of origin, via deceit and coercion, while attempting to strip themselves of the migration-related obligations they had as sponsors:

The victim-survivor was returned to India when the perpetrator told her that he couldn't afford her medical treatment [a sponsorship obligation]. She was abused [by the perpetrator] while she was in Australia, and the perpetrator took all the money given [to them] by her family for the wedding and for her visa. When the victim-survivor returned to India, he stopped contacting her and she then found out he had re-joined the matrimonial website on which they met on. When the victim-survivor returned to Australia he had left the rental property they lived in and taken all her money, jewellery and visa documents.

In the above case, other offences are clearly evident and the specificity regarding coercion to leave and how she returned was not clear. In another case, deception and coercion were more evident and clearly linked to the victim-survivor asserting her rights within the context of the family violence she was experiencing:

After the victim told the perpetrator that she would contact police about the abuse, the perpetrator told the victim-survivor that her mother was sick and she had to return to Afghanistan. When the victim-survivor arrived [in Afghanistan], the perpetrator cancelled her return ticket. He then tried to give her a fake ticket (travel agent confirmed it was fake).

Another victim-survivor also returned to Afghanistan and while she was away the perpetrator sought a divorce from her, to formalise the dissolution of the relationship and remove his sponsorship obligations:

Husband returned victim-survivor to Afghanistan under the impression that she was going to visit her family. On arrival in Afghanistan, husband told her he was withdrawing his sponsorship and sent her the papers to sign. She refused to sign the papers, and instead returned to Australia to work out what was happening. When she returned to Australia [with the help of her family], she called him to pick her up from the airport and he informed her that he had divorced her.

Woman married husband in April ... in Iran. In July he returned to Australia and lodged a spousal visa application. The woman remained in Iran for the two years that it took to receive the visa. She arrived in Australia on [date]. Then 5 months later (after months of abuse at the hands of her husband and her in-laws) [the perpetrator] arranged for her to travel alone to Afghanistan. He told her he needed to go via Iran and would meet her there. When she arrived, she was informed that her traveling alone to Afghanistan was all arranged by his family so they could cancel her visa application. He sent her the forms to cancel the

visa, but she refused to sign them and sold her jewellery to return to Australia. She arrived back in Australia on the [date]. On arrival he refused to take responsibility for her as his wife, and she was homeless for four months (she slept in a park on multiple occasions). He has told her that he wants to separate, divorce and send her back to Afghanistan and is making her life difficult in Australia.

In the first case above it was not clear whether the couple had been married in Australia or overseas, and thus the process for divorce was unclear. In the second case, the victim-survivor had been referred to the AFP and was being supported by the Red Cross Support for Trafficked People program (the Commonwealth-funded support program)- the outcome of this investigation was unknown.

The cases cited above highlight the ways in which some perpetrators seek to effectively dissolve the 'relationship' and separate (geographically and in relation to any legal obligation) themselves from victim-survivors. However, there were other cases where perpetrators undertook significant efforts to control the victim-survivor, in particular by withholding divorce and, as in the first case below, attempting to control her geographical location:

Victim-survivor's husband was highly abusive while she was in Australia and controlled her movements. Then her husband deceived the woman into going to Iran, where he subsequently burnt all her travel documents and left her with nothing. His family in Iran threatened to harm/kill her if she sought a relationship with another person, and under local custom if she tried to leave without an official Islamic divorce she could be stoned to death if she remarried. When he was asked if he would divorce her, he asked her to pay him \$8000 or he would never divorce her for the rest of her life.

After the victim-survivor applied for IVO, her husband told her that they were going on a holiday and returned her to Iran where he left her there. When he arrived back in Australia he contacted her and told her that he had burnt her passport and was withdrawing his sponsorship for the spousal visa in Australia. Despite this, he refused to divorce her.

While there were only a small number of cases where there was evidence of deceptive recruiting (that is, to come to Australia) for the purposes of the forced provision of sexual services, this did occur:

The victim-survivor was brought to Australia and one month into the relationship was forced to have sex with the perpetrator whenever he requested it. The perpetrator would threaten her with deportation and violence if she refused. The victim-survivor, friends and her family referred to her situation as being 'his sexual slave' throughout their stat decs. The victim-survivor was forced to do sexual activities that she did not want to do, such as what the perpetrator watched on porn clips.

The line between the deception involved in this case, which suggested that forced sexual services began almost immediately upon arrival, and the extensive list of cases detailed in section 4.2.5 where migration status was used as leverage by perpetrators to force women into sexual activity and the cases detailed in section 6.2.1 below relating to sexual servitude, is somewhat imprecise. This highlights the need for much closer investigation into such cases and careful consideration of the point at which a case is to be pursued beyond the remit of family violence and within the scope of the Commonwealth Crimes Act. More broadly, the fact that to date no case has been prosecuted in relation to human trafficking from Australia, and/or to Australia under the false pretence of a genuine relationship, raises significant concerns about the level of recognition of these practices occurring. In Australia, generally, prosecution of trafficking cases is very rare (see Segrave et al. 2017; ICHTS 2016), and case notes and immigration documentation alone do not suffice to evince whether any of these cases would constitute an offence that could be prosecuted. Critically, however, cases such as those cited above involve behaviours and practices involving deception regarding movement and/or deception with regards to the reason for movement (i.e. coming to Australia under the pretence of a genuine relationship) that could potentially be trafficking-related offences and yet which appear to largely be unrecognised in both the family violence and the trafficking and slavery context (see ICHTS 2016 regarding AFP investigations). It is not recommended that generalist services seek to identify these practices; rather, key stakeholders should

work with specialised family violence services to develop appropriate risk assessment tools and, critically, referral processes to improve the rate of identification of potential Commonwealth offences.

Further, in relation to support provisions in this context, of the 11 cases where potential elements of human trafficking offences were evident, 3 victim-survivors were not eligible to access the family violence provisions, and in one case the application was refused – highlighting the intersection of vulnerability and the failures of support in this area, as a third of women in these cases had access to only limited support due to migration status. In this regard, section 6.4 provides a brief account of the support available to potential victims of trafficking, and the gaps or limits in both the family violence support system and the trafficking and slavery offences support system.

6.2 Indicators of forced labour and servitude: slavery-like offences

Of the 300 cases in this research, 20 involved discernible evidence of potential offences relating to forced labour and servitude³⁴, and deceptive recruiting for the purpose of these offences. There are three key areas of law pertaining to slavery-like offences (under section 270 of the Criminal Code) that are relevant to this part of the analysis. The first is ‘forced labour’, which is defined under section 270.6 as ‘the condition of a person (the victim) who provides labour or services if, because of the use of coercion, threat or deception, a reasonable person in the position of the victim would not consider himself or herself to be free: (a) to cease providing the labour or services; or (b) to leave the place or area where the victim provides the labour or services’. Second, ‘servitude’, which is under section 270.4, is defined as ‘the condition of a person (the victim) who provides labour or services, if, because of the use of coercion, threat or deception: (a) a reasonable person in the position of the victim would not consider himself or herself to be free: (i) to cease providing the labour or services; or (ii) to leave the place or area where the victim provides the labour or services; and (b) the victim is significantly deprived of personal freedom in respect of aspects of his or her life other than the provision of the labour or services’. The third consideration is evidence of ‘deceptive recruiting’ in this context, which is defined under section 270.7 (c) as causing the victim to be deceived regarding:

‘(i) the extent to which the victim will be free to leave the place or area where the victim provides the labour or services; or (ii) the extent to which the victim will be free to cease providing the labour or services; or (iii) the extent to which the victim will be free to leave his or her place of residence; or (iv) if there is or will be a debt owed or claimed to be owed by the victim in connection with the engagement—the quantum, or the existence, of the debt owed or claimed to be owed; or (v) the fact that the engagement will involve exploitation, or the confiscation of the victim’s travel or identity documents; or (vi) if the engagement is to involve the provision of sexual services—that fact, or the nature of sexual services to be provided (for example, whether those services will require the victim to have unprotected sex).’

As discussed below, the extent to which any of the cases described herein would meet the criteria for one or more of these offences is not easily discernible (or definitive) from the available evidence; however, there are potentially elements of all of these offences across 20 cases within the data set. Of these 20 cases, 4 are identified here as relating to sexual servitude, primarily (although not exclusively as there are also elements of forced labour), while 16 relate to situations of labour exploitation. These are detailed below to illustrate the intersection of these offences with temporary migration status.

However, before detailing the cases, it is important to note that the identification of 20 potential cases (which is an underestimate given that not every case provides sufficient detail to identify indicators of these offences) is very significant within the context of referral and investigation to the AFP annually. In the reporting year 2015–16 from which these cases were taken, the AFP investigated only 36 labour exploitation offences (see ICHTS 2016: 20 – please note that these are not articulated specifically as ‘forced labour’ in the ICHTS report) and 39 sexual exploitation cases (ICHTS 2016: 20). It is understood that very few, if any, of these cases were referred from a family violence service and very few, if any, involved situations where victims were on temporary partner visas. However, the findings detailed below are indicative of the potential to investigate and pursue some offences that come to the attention of family violence services,

³⁴ It is notable that in some research and writing in the field there are references to ‘servile marriage’ (which is distinguished from forced marriage), but this terminology is not used in this report.

particularly specialised services that are best able to identify indicators, as federal offences. It is critical to utilise these findings to move forward a discussion around how and when family violence and forced labour cases are demarcated. This demarcation must also consider the victim-survivor and her needs: the support outcomes depending on how the case is pursued (i.e. as a family violence offence or as a potential trafficking or slavery-related offence) are rarely considered in relation to what victim-survivors may need and, in the case of human trafficking and slavery offences, there is no public accountability regarding the extent to which current support services meet the needs and requirements of those they are supporting (see Segrave et al 2017). This discussion is returned to at the conclusion of this section.

Of the 16 cases that predominantly, but not exclusively, related to situations of labour exploitation, 4 involved cases of victim-survivors who were forced to work in a family business and were either unpaid or poorly paid and subject to work hours and conditions that were exploitative (for example, working seven days a week, from early morning to late in the evenings without a choice, and/or without being paid appropriately). For example:

The victim-survivor came to Australia with the perpetrator after they married. They purchased a [business] about 3 months after arriving. The victim-survivor explained that when they started working together in the shop he became increasingly abusive. He controlled all her movements and accused her of flirting with customers. He began making threats to harm her, and at one stage hit her with a hot oily utensil across the face, causing bruising. When she started working at the shop, she asked the perpetrator to get an account [a bank account she can access] and he refused. If she needed money for herself or the shop she was forced to justify it, and she would often not get any money. She never had access to any money, and yet continued to work 12-14 hours a day at the shop and never got paid.

[E]vidence of the victim-survivor being overworked and underpaid (occasionally not paid at all). Required to work 9am-11pm every day. History of verbal abuse while she was working at the restaurant. When the victim-survivor found out she was pregnant, the perpetrator booked her in to have an abortion, indicating that she could not have the child as she would not be able to work at the restaurant and he had put too much time and money into it... During this [time], found out that the baby was outside the womb and she needed an ultra-sound, but perpetrator refused, saying that it cost too much money. She continued to work the long hours at restaurant, and had a miscarriage shortly after.

Victim-survivor was forced to work at the husband/perpetrator's restaurant 7 days a week for long hours. She was occasionally paid \$50 unless she ate at the restaurant, then this was not given to her. The husband/perpetrator locked away her passport and other identification documents and restricted her movement beyond the restaurant/home. He also sexually abused her, and when she refused [sexual activity with the perpetrator] locked her out of the home for hours at a time (in the middle of the night). Husband threatened to cancel her visa if she tried to leave or report her case to the police, and told another worker (who submitted a stat. dec. for case) that he was going to send her back to Thailand if the restaurant sold.

The final case above is suggestive of a potentially more serious offence given the perpetrator's control over her identification documents and use of threats of deportation.

In the other 12 cases the majority involved women being forced to work within the context of domestic labour. That is, they were forced to maintain the home for the immediate and, often, extended family who shared the home. In most of these cases, the victim-survivor was threatened in response to her complaining about this, failing to complete tasks to the satisfaction of the family members and/or with regards to leaving (i.e. these threats seemed in some cases to be made in anticipation of the victim-survivor wanting to leave, not as a reaction to her stating a desire to leave). In addition, in some cases her passport and other identification documentation was confiscated, her movement confined (this included cases where women were, for example, not given a key to the house so that if they left without approval or unaccompanied they could not return), there was no access to finances or support, and specific references were made by the perpetrator/s to the victim-survivor as a 'slave' and/or as being 'owned' by the perpetrator, as in the examples below:

Victim-survivor was forced to do all the chores by her husband, and if she did not do it to the standards of her mother-in-law, she was forced to do it all again. During the year that she lived with her in-laws, she did all the chores, was made to eat alone in her room and was not to leave the house unaccompanied. The only time she was allowed to leave was to attend church, but that was only with her husband. She was allowed to speak to people there, but was not allowed to attend social events or interact with people outside the church setting.

Victim-survivor stated when she was living with her in-laws she was unable to do anything. [She] stated she was forced to eat in her room and not able to go anywhere. She has been controlled by her husband and his family since they have been married. Victim-survivor says perpetrator's family have turned the perpetrator against her. Woman states that there were times when she was cleaning all day long and if her mother-in-law did not like the way the woman cleaned she would make the woman clean the house all over again, despite the woman crying and begging stating to them she was tired. Woman stated the perpetrator's parents blame her for perpetrator moving out of home ... woman states perpetrator's family were so emotionally abusive towards her she now hates her life and feels emotionally exhausted.

The victim-survivor was forced to serve the perpetrator and his two brothers, and [the perpetrator] threatened her with being kicked out if she did not do so. He would be verbally abusive (called her selfish, mean, and stupid) if she did not have time to serve him or his brothers, and frequently told her to stop complaining and just do the work. She was expected to do all of the housework and also solely look after their daughter. He controlled all finances and would leave the victim-survivor and her daughter without any food.

Victim-survivor was forced to do all housework including during her pregnancy; she was physically assaulted by them [the perpetrator and his family] – which happens every day or every second day.... They controlled what she ate, who she talked to, prohibited her from talking with her family in India; they would check her drawers in the bedroom; they provoked her husband to hit her harder; they threatened to kill her family in India by saying that they have a connection with a terrorist in India and they had a gun; they would take her phone all the time, victim-survivor needs permission to use the phone.

Consistent across the above cases is evidence of myriad forms of abuse that in addition to meeting the definition of forced labour, could be also connected to migration offences (regarding the sponsor's failure to provide adequate support) or family violence offences. In the following additional example, the victim-survivor was locked away at one point, which is potentially akin to the more serious offence of slavery (although this may be limited as the case file only indicated that this occurred once):

The victim-survivor reported in the IVO application that when she arrived all the money and jewellery she was given was taken by the perpetrator and his family, and they were pressuring her to get a dowry for them. She was physically, emotionally and financially abused, and was made to do all the housework, heavy lifting and cooking even whilst pregnant. The victim-survivor had a miscarriage due to the abuse from the perpetrators. When the victim-survivor's cousin came to check in on her the victim-survivor was locked in a room by the perpetrators and [they] threatened to make her disappear if she spoke to her cousin.

Further, as the case below demonstrates, such treatment, involving forced labour within the domestic setting, is not limited to when women are in Australia. In the following case the victim-survivor had to return for some time to her country of origin and stay with her perpetrator's family where she was similarly treated as a domestic servant:

When the victim-survivor had to return to India for a few months due to visa restrictions [unspecified], the mother 'treated me like a servant in their home. I had to cook; clean, wash for whole family and in return I was shown no respect and love. His parent hardly allowed me to see my parent. According to them, Girl has no relation with her family after marriage; only husband's family is real family for her. [...] I came back in Melbourne with them in October. When I lived with them my mother in law behaved very rude.

She always put me down in front of whole family'. The perpetrator's brother in Australia also treated the victim-survivor like a slave, and expected her to do all of his washing and cleaning and cooking. From the victim-survivor's statement, 'Even though I was working from 3 to 11, still I used to wake up at 4am morning and cooked fresh food for him and his brother'. The brother was also verbally abusive.

What is notable is that across the cases details above, if these victim-survivors had come to Australia, formally, to work in the home as domestic labourers, that these conditions would be in violation of existing regulations related to employment and in relation to migrant labour sponsorship. The fact that women come to Australia on a partner visa creates a different set of responses, interpretations of the context of abuse and, subsequently, the definition of the abuse: determining the extent to which and in what circumstances it is better (i.e. more efficient, more impactful for women or more impactful in relation to the pursuit of these offences) to identify such cases as family violence or as forced labour requires very careful and informed review.

6.2.1 Sexual servitude

Of the 20 cases discussed in this section regarding forced labour and servitude, four related almost exclusively to situations of sexual servitude. In two cases, the victim-survivors were forced to sign 'contracts' regarding their sexual obligations to a perpetrator, raped and threatened with deportation if they did not acquiesce to the violence; and in one case a victim-survivor was forced to have sex with other men. These cases reinforced the importance of identifying risk in the context of temporariness, and emphasise that the line between sexual abuse (as per section 4.2.5) and the Commonwealth offences pertaining to sexual servitude (and forced labour as per the first two examples below) is not black and white. The following cases are exemplary here:

[W]hen the victim-survivor arrived in Australia the perpetrator made her do all the domestic work, including looking after his 5 children (all of whom had issues with schooling and bed wetting). She explained that 'I was responsible for all the cooking, cleaning and the chores in the house, teaching the children and their grooming'. If she did not clean the house properly, he would become angry and throw her around the room. He smashed her computer while she was trying to speak to her sister in the US after becoming angry that she didn't finish the gardening. The perpetrator controlled her financially, and did not give her access to any money or bank accounts. She explained that she was constantly sleep deprived, and he had deprived her of food. He also expected sex 2-3 times a day, and when she refused he threatened to cheat or divorce her.

The perpetrator regularly told victim that she had to 'obey' him, would purposely make the house messy and make her clean it up (including throwing food around). He told her if she decided to leave she would have to return the money he 'invested in her', and continually told her that she and her children in Serbia depended on him. He also forced her to have sex with him despite the fact she was ill and was in pain with a back injury.

The victim-survivor was married to the perpetrator after they met online. Shortly after the marriage the perpetrator pressured her into signing a contract that meant she had to provide sex whenever he wanted it... contribute \$116,000 to his debt and not... tell anyone about the contract.

On arrival into Australia and after the marriage the victim-survivor was pressured into signing a contract that meant she had to provide sex whenever he wanted.... He also controlled her, including not allowing her to see anyone, and monitoring her mobile phone.... He also had all of her documents (visa, passport etc.).

Additionally, one case involved potential elements of the intention of the perpetrator to force the victim-survivor into conditions of sexual servitude (it was not clear that this had occurred), and of trafficking for the purposes of sexual exploitation. This case was very serious and the details included a victim-survivor who had previously been trafficked into the Philippines and who had been very seriously sexually assaulted by the perpetrator in Australia, and there was some suggestion that the perpetrator intended to sell the victim-survivor for sex with other men and that he either intended to, or had actually, forced her to return to the Philippines to recruit

women for the same purpose. This victim-survivor had three children, and was eligible for and successfully applied for permanent residency via the FVP, although this took just over six months to finalise, during which time the victim-survivor was extremely concerned about her and her children's future, as she feared returning to the Philippines and had to rely on limited support while her application was being processed. This case was not referred to the AFP (it was closed prior to InTouch establishing a referral process with the AFP).

6.2.2 Deceptive recruiting for labour or services

It is also worth noting that, in some of the cases, as indicated above, the offence of deceptive recruiting for labour or services (s270.7) is relevant. This is based on the evidence above that these women came to Australia on a partner visa, with the expectation of living in an intimate partner relationship with the sponsor/perpetrator whom they had already married or intended to marry, yet found themselves in a situation where they were: coerced into providing both labour and sexual services that they were not free to cease; unable to leave of their own free will; informed that they owed a financial debt to the sponsor/perpetrator, including for the visa application; and where identification documents were confiscated (see s270.7). This is noted simply to reinforce the recognition above that currently such cases are more likely to come to the attention of family violence services, and that these elements of the situation of family violence are not recognised as potential indicators of relevant Commonwealth offences.

6.3 Indicators of forced marriage

As described by the DIBP, a forced marriage in Australia is defined as a situation where 'one, or both parties, has not freely and fully consented to the marriage, because of the use of coercion, threat or deception' (DIBP 2016: 24, see also s270.2A of the Criminal Code). This is distinguished from an arranged marriage which is based upon the presence of the full and free consent of both parties. Forced marriage is criminalised in Australia and is a relatively new offence, having been specifically articulated as a federal offence in 2013 under s270.7A of the Criminal Code Act 1995 (as per Crimes Legislation Amendment (Slavery, Slavery like Conditions and People Trafficking) Act 2013, No. 6, 2013, with further amendments in the Crimes Legislation Amendment (Powers, Offences and Other Measures) Act 2015). The offences apply to both marriages performed in Australia and marriages performed overseas if the offender is an Australian citizen or resident. To date, the cases of forced marriage coming to the attention of the AFP pertain predominantly to situations where young women (often under the age of 18) are seeking support and assistance to prevent their family member/s sending them overseas to be married, rather than situations where women have come to Australia and are in a forced marriage with an Australian resident (see Segrave et al. 2017). Currently, forced marriage cases dominate the type of offences referred to the AFP across the suite of trafficking and slavery offences (ICHTS 2016: 20). In this study, given the VRCFV's focus on forced marriage, there was a concern to pay specific attention to the circumstances in which temporary migrant women experiencing family violence are in situations akin to forced marriage.

It must be reiterated that, as part of the current the risk assessment and management process and the provision of service to women in the family violence arena, case workers are not required to collect details about the circumstances of marriage. Thus, the data is limited with regard to offering an accurate rate, or even a reasonable estimate of the rate, at which women who migrate to Australia are in forced marriages. However, the data does illuminate the complexities around identifying forced marriage (particularly when women are 18 years and over upon their arrival to Australia) and some concerns regarding the adequacy of the current responses when women are in forced marriages.

In this data set, **there were very few indicators of situations of forced marriage**. Among the 300 cases, 48 per cent were not married at the time of contact, and for those who were, there were a number of arranged marriages and it was rarely indicated that the arranged marriage was a forced marriage – that is, either against the will of the victim-survivor and/or undertaken by the victim-survivor within the context of coercion, threat or deception. Thus, the data reflects situations of arranged marriage where the initial meeting was positive, where the victim-survivor indicated that she was happy (or at least did not refer to the presence of any resistance, force or threat) to be married, and where an arranged marriage was seen as culturally appropriate and acceptable. It was more common that the arranged marriage enabled living arrangements and a relationship between the perpetrator, the perpetrator's family (in some cases) and the victim-survivor that later became abusive, as has been outlined earlier (see section 4.1).

In 2 per cent (n=6) of cases there was an indication that the victim-survivor was forced, coerced or threatened into marrying the perpetrator, although the detail of the circumstances surrounding the marriage varied and the extent to which these cases could potentially meet the legal definition of forced marriage was unclear.

In these cases, the circumstances of the marriage ranged from cultural pressure and expectation weighing on the victim-survivor to be married, where the specific presence of coercion, threat or deception could not be ascertained (based on the available information), to clearer indicators of coercion.

In one case, the information provided was insufficient, particularly with regards to indicators of coercion, threat or deception, other than to identify that it was an arranged marriage that was potentially a case of forced marriage given the absence of clear consent:

The victim-survivor's step-mother arranged her marriage without asking her first – a sum of money was exchanged for the marriage and they had a religious ceremony without ever having met. Shortly after, her husband arranged for the wedding ceremony, and this was the first time they had met.

In two cases the victim-survivors were married overseas but were underage under Australian law at the time they were married and although there was no indication in the case file that they did not consent to the marriage, they could potentially still be recognised as forced marriages given their age when they were wed. In one case, the victim-survivor was married to the perpetrator when she was 17 and he was 30 years of age, and while there was no clear indication that she was forced, coerced or threatened to marry the perpetrator, in her statement to the police the victim-survivor said that 'My date of birth is the 24th March 1999. I have had another date of birth that I have used which is the 13th of June 1996, however this is not my date of birth. My husband used this date of birth for me when I moved to Australia'. This case brings to the fore the complexity of migration law and its intersection with protection in relation to family violence: legally, using false identification documents and/or providing misinformation is an offence that is grounds for visa cancellation, yet victim-survivors are not necessarily in a position to challenge the migration application details or process as it places them in a precarious position with regards to further abuse or violence. There is the need for clarification regarding the family violence provisions and the indication of amnesty regarding the provision of false information in situations of family violence. This is legally complex territory which requires closer examination. However, as noted above, given the way in which perpetrators utilise migration law (often falsely) as a threat, it is to be expected that in some cases victim-survivors would be aware that false information has been provided and that this could be grounds for their visa cancellation and removal from Australia. Thus, addressing this issue is critical if the focus is on encouraging and supporting women in such circumstances to come forward.

In the other case involving a woman being married at an age not legally allowed in Australia, the case notes indicated:

The victim-survivor's step mother arranged her marriage without her knowledge and accepted money from her husband's family for the marriage. The woman's age is not confirmed, but she is approximately 20, making her under or around the age of 16 at the time she was engaged, and she stated that she struggled with her duties in the house as she was 'really young'.

In this case, the issue is the point at which a forced marriage is identified as such and the consequences for women who are in forced marriages that occurred many years prior to their arrival in Australia. While the law pertaining to forced marriage came into effect in 2013, it is not clear whether Australia's commitment to pursuing forced marriage offences pertains to marriages that occurred prior to this date and/or whether cases that occurred after this date will be pursued if they come to the fore many years later.

In the final three cases, the articulation that the victim-survivor did not consent to the marriage was clearer. In the first case, the victim-survivor indicated that she had been married against her will, in the second and third case, it was against the will of both the victim-survivor and her family. In the first case, the victim-survivor was forced to marry the perpetrator by her family and the perpetrator's aunty. The victim-survivor had no say in the marriage, and her objections were ignored during the marriage arrangements. The case report detailed that she had agreed to marry the perpetrator because it was expected that she comply with her parents' wishes. If she had refused, it would be assumed that she had another boyfriend (and it was intimated that this

would have serious, negative consequences for her reputation and future marriage and livelihood prospects). Further, the victim-survivor was also not allowed to divorce the perpetrator, although she wanted to leave the abusive marriage – she was pressured to stay in the marriage by both her family and the perpetrator's aunty. The victim-survivor was told that she would bring shame to her family if she divorced, and she was threatened by the perpetrator's aunty that if she divorced the perpetrator, the aunty would spread lies about her bad character. It is critical to recognise that in different cultural and community settings such threats carry varying degrees of weight: while in some contexts this would be of little or limited consequence, for some women the consequence would be the loss of future opportunity to be married, to access a livelihood and/or to return home to their country of origin.

The two other cases where it was indicated in the case notes that the victim-survivor did not consent to the marriage, involved deception:

The perpetrator and his family lied to the victim-survivor and her family to ensure their arranged marriage went ahead. She later found out that the perpetrator had been married before.

The victim-survivor's family accepted the marriage proposal (this appears to have been based on meetings between the families and a picture of the man) and as the wedding approached they realised that the man they had accepted the marriage proposal from was mentally disabled. The family tried to refuse the marriage, however, her husband's family threatened her and her family, indicating that there would be consequences for rejecting the marriage and bringing shame to their family. The victim-survivor's personal statement indicates that her father was scared of their cousins and relatives as they had links to the Taliban and were 'illegal armed men'. She was then forced to marry the man, and move to Australia to live with his family. This is the second marriage she had been forced into.

The first case above, which is not necessarily a case of forced marriage, brings to the fore the importance of understanding the pressure placed on women within the relevant cultural context, such that in some cultures deception about the future husband would easily be grounds for a woman to walk away from such a commitment, and yet in other contexts this is an impossibility because of the consequences for the woman and her family if the marriage does not go ahead.

6.3.1 The weight of expectation to marry

Across the 300 cases what was more common (although, again, this was only noted where relevant rather than routinely collected in the case files) than forced marriage were situations such as the following:

Victim-survivor states that if she did not go through with the traditional wedding, that it would be a 'black mark' on her family and it would ruin both families' reputation. Her marriage was arranged.

In the above case, there was no evidence or detail regarding coercion per se, but familial pressure and the cultural impact of not going ahead with the marriage produced significant pressure to marry. In Australia, this does not legally constitute a forced marriage, as there is no specific or individualised presence of coercion, threat or deception. This is important because it is not only family and the potential family-in-law that can place considerable pressure on women to marry, but also the broader social and cultural context from which women come, whereby not proceeding with a proposed marriage would have significant consequences for the victim-survivor and her family. In another case, the victim-survivor indicated in a journal detailing her relationship (prepared for her case worker and for Immigration purposes) that she felt the perpetrator pressured her to marry him, and to be sexually intimate with him; however, again, this situation does not legally constitute a forced marriage as there was no indication of specific threat, coercion or deception with regards to marrying him. For example, her first journal entry (detailed below verbatim) described how the perpetrator pressured her into marriage:

[H]e seems very demanding in relation he used words 'you better listen to my needs'. We were dating to see how we feel about each other but he was so impatience that I should let go my heart straight away, whether I am sure or not. He forced me to show him love because his brother was so quick in love... I tried to explained him that let love come naturally but I never got such respect. I was mentally tortured if I don't show him love then he gonna leave me. When we used to agree to finish the [relationship] then he always come back and ask for forgiveness.... I never received respect from him.

In another case, the only available details provided were as follows:

Perpetrator raped women prior to being marriage. The woman felt that she then had to go through with the marriage to ensure that her and her family did not lose face.

Again, this case does not equate to a forced marriage, and these cases are not detailed here in order to argue for an expanded understanding of forced marriage in law. Rather, in many respects, such cases highlight the importance of understanding the circumstances surrounding forced marriage, and to considering more broadly the wider cultural issues and conventions that limit women's ability to make choices and decisions, and to which the criminal law is ill-equipped to adequately respond.

Finally, in relation to forced marriage, it is necessary to also consider the way in which the response to forced marriage is described to the public and the limits of support. The majority of cases described above, which point to potential rather than clear cases of forced marriage, involved situations where women's migration status was tied to their perpetrator/sponsor via a temporary partner visa. The DIBP Partner Migration Handbook notes that the "Partner or Prospective Marriage visa may be refused if it is found that one or both of the parties has not consented to the marriage" (2017: 22), while this is a statement intended to reflect Australia's firm stance against forced marriage, it in fact raises concerns regarding protections for women. It suggests that if non-consent to marriage is identified women will not be able to travel to Australia as the visa will be refused: the consequences for women are unaddressed here. It is not clear whether in such cases any form of support will be offered to women, and as detailed above there is the potential for such a policy to in fact encourage women to not report this and/or to refuse to cooperate if this is suspected, if they are concerned about the personal and familial consequences of a refusal of a visa, and the potential breakdown of a marriage, and the other consequences that remaining in their community may have (see regarding fears of returning home, McCulloch et al 2016: 106-109). Further, it is not clear what the outcome will be for women if their marriage is recognised as forced after their arrival in Australia. It suggests that if a marriage is recognised as forced that there is grounds for the visa to be cancelled, which raises questions regarding the limits of the family violence provision and/or the availability of an alternate support mechanism such as the Support for Trafficking Persons program which would be the available avenue for support whilst an AFP investigation is under way. The concern regarding this program, as discussed below and as detailed elsewhere (see Segrave et al 2017), is that following an investigation there is no long-term guarantee of support and/or of secure migration status in Australia. It is clear that greater clarification for victim-survivors is critical in this context to ensure that a stance against forced marriage does not unintentionally undermine women's ability or willingness to come forward to authorities due to concerns regarding the potential migration-related consequences.

6.4 Referral to the AFP

Of the cases identified above where elements of Commonwealth trafficking and slavery offences were potentially present, 11 were referred to the AFP. As indicated, the practice of referral is a recent one for InTouch, and while it has not publicly reported, personal communication with the AFP indicates that no other specialist or generalist family violence services routinely refer cases to the AFP (personal communication, 5 August 2016).

In four cases, it was not clear whether the AFP was still investigating as the case had been closed. In a further case, the AFP had investigated and the victim-survivor had moved onto the Support for Trafficked People program provided by Red Cross; however, it was indicated that the case had been closed and the victim-survivor had exited the Red Cross program and returned to her country of origin. In one case, the victim-survivor returned to the perpetrator and the case was closed. In four cases the AFP indicated that the situations were outside its jurisdiction (one had occurred overseas, one did not meet the threshold of the trafficking and slavery offences, one was recommended to be pursued via the Fair Work Ombudsman, and one was identified as a potential sexual crime under Victorian legislation). In a final case the victim-survivor was too traumatised by her experience and refused to meet with the AFP.

There are some important considerations in relation to the value and impact of pursuing a Commonwealth offence in cases that occur within an actual or apparent intimate partner violence context. While the Commonwealth is committed to pursuing these cases, trafficking and slavery offences remain largely dependent on the victim witness to pursue the case (Segrave et al. 2017). However, the support program provided by the Red Cross, on behalf of the Commonwealth government, is not designed to cater to the needs of women and their dependants generally and more specifically, to support those who have experienced family violence. Further, the service is limited to the timeframe within which the case is progressing through the criminal justice process (with some additional time at the end of the period to transition out of the program), which is a timeframe that bears no relationship to the timeframe women may require in relation to establishing an independent and safe life away from the perpetrator. Given that this report is focused on temporary migrant women, the issue of migration status looms large in relation to accessing support. For those who are eligible for the FVP there is a safety net, however for those who are not, there is the potential to access short- to medium-term migration stability via accessing the Bridging Visa made available to victim-witnesses whose case is under investigation with the AFP. However, this system remains precarious for victim-survivors in relation to long-term certainty. Thus, an important question is raised about how best to pursue these cases and the perpetrators. With regard to criminal law, the Commonwealth offences carry more gravity than family violence offences, yet the Commonwealth system is not designed to support or respond to situations that involve complex family/intimate partner elements. It is also clear that the context within which these cases occur — which tends to be interpersonal and interfamilial by nature— creates significant obstacles to pursuing many cases given the evidentiary requirements of these Commonwealth offences as the victim-survivor may be the only witness. The concern here is that it will only be the rarest of cases – those that involve women subject to the most abject forms of abuse – that will be successfully pursued.

6.5 Review of trafficking and slavery issues

The VRCFV recommended that the Victorian Government introduce legislation to include forced marriage and dowry-related abuse as new offences under the Family Violence Protection Act 2008 (Vic). However, the Commission did not consider the broader implications for the national response to slavery and trafficking offences, including, but not limited to, issues pertaining to policing and investigation, issues pertaining to the overlap between Commonwealth and Victorian offences, and the differential location of forced marriage within family violence compared to slavery and trafficking law. The data above identified potential cases of exploitation that to date have been less readily identified as Commonwealth offences, due in part to the existence of a relationship between the victim-survivor and the perpetrator and the pursuit of these cases within family violence law and support. There is a clear need to enable family violence providers to be alert to the potential for elements of trafficking and slavery offences to be present in some cases of family violence, to understand how to brief clients and then, if the client agrees, how to refer to the AFP. This work needs to extend beyond recognition of forced marriage, which has been the focus to date, and it should primarily be the work of specialist rather than generalist family violence support agencies, to enable efficiency in the identification and referral process. It is also important that review of migration processes is undertaken in light of the evidence detailed above. Currently the FVPs require proof of a genuine relationship and there are no clauses related to being in a situation of family violence in a relationship that was the result of a forced marriage, which can undermine this proof and/or result in a decision that the evidence provided on different occasions regarding a genuine relationship is contradictory. Currently a forced marriage is the legal antithesis of a genuine relationship; yet for women who marry Australian citizens or permanent residents, they must participate in the application process and provide evidence that the relationship is genuine in order to access a visa. With care and thought, these issues can be addressed in a way that would prioritise victim-survivor recognition, without undermining the migration system.

In summary, for the majority of cases detailed in this section of the report (indeed across the report), the situations are complex and contingent. These findings and these observations cannot be and are not, definitive. Rather, they lay the ground for an important, detailed and evidence-based discussion at the state and national level regarding the intersections of family violence, partner migration and human trafficking and slavery offences.

Recommendation 2: Risk assessment

- c. *Specialist risk assessment for immigrant and refugee, and temporary migrant women:* Where migration status is temporary (regardless of whether migration status is connected to the partner), additional questions should be asked by specialised services in relation to:
 - iv. the identification of indicators pertaining to potential slavery or trafficking offences, with a referral model to direct cases to the AFP and to determine the support and management model for this group of victim-survivors as their cases are reviewed and investigated in relation to these offences.

Recommendation 3: Risk management and service provision

A review of the existing risk management and service provisions in relation to family violence should pay attention to the following:

- a. *Service provision model:* The ideal risk management and service provision model should include:
 - a specialist service model whereby case work, migration agents and family law experts work collaboratively to support victim-survivors.

This would ensure:

- specificity of risk assessment and management that can attend to the complexity of cultural, faith and other migration-related contexts, including knowledge and training to direct cases to the AFP as required where potential slavery or trafficking offences may be indicated. This will ensure tailored, targeted and impactful case management and service responses.

Recommendation 4: Legislative responses

Consideration should be made to the following:

a. Migration Act 1958 and Migration Regulations 1994: COAG should consider the following amendments or inclusions:

- i. *An appeal process:* potentially on the basis of evidence of family violence to enable relevant migration processes (such as passport applications) where one parent (the perpetrator) is refusing to sign the relevant documentation as an act of control.
- ii. *Criminal law consequences for sponsors who enact family violence:* COAG should consider criminal law consequences for sponsors who enact family violence, recognising that currently a sponsor's failure to meet their obligations is a civil and administrative offence.
- iii. *Review of the family violence provision application process:* this should include more specific articulation/recognition that a genuine relationship can be difficult to prove in the context of family violence and clearer provisions need to be made regarding evidentiary requirements and when these may not be necessary, as in the case of forced marriage.
- v. As per the VRCFV Recommendation 162, COAG and the Commonwealth Government should review and broaden the definition of family violence in the Migration Regulations 1994 (Cth) to ensure consistency with the Family Violence Protection Act 2008 (Vic).

b. Divisions 270 and 271 of the Commonwealth Criminal Code Act and the Family Violence Protection Act 2008 (Vic): The intention, provisions and clarity of the law at both the state and federal level require careful consideration, as do the implications of different systems of support including funding models and responsibilities for family violence and trafficking and slavery victim support.

- i. In light of VRCFV Recommendation 156, for Victoria to include new offences of forced marriage and dowry-related abuse in the Family Violence Protection Act (2008) (Vic), the Victorian Government should review the consistency and relationship of these laws to existing Commonwealth legislation, as well as the potential benefits to supporting the pursuit of these offences at the Commonwealth level. Specific consideration should be given to the following:
 - Policing, specialisation and jurisdiction: currently the AFP undertakes investigation related to forced marriage and the Commonwealth Government sponsors a national victim support service (contracted to Red Cross), but there needs to be clarity regarding whether the intention is to separate the Victorian and national response. There are important consequences for Victoria Police, as well as other agencies, in relation to training and specialisation with regards to these offences. There are also important considerations regarding which offences are pursued (state or Commonwealth) and which require the input of the Commonwealth Department of Public Prosecutions and the Victorian Department of Public Prosecutions.
 - The extent to which other trafficking and slavery offences (such as human trafficking, forced labour and domestic servitude) should also be considered within the suite of proposed new offences.
 - The consequences of creating specific legislation for the broader response to slavery and trafficking offences, including consideration of whether this will dilute the national response to human trafficking and modern slavery.
- ii. The Victorian Government should urge COAG to undertake a review of the existing slavery and trafficking legislation in relation to family violence and partner migration. Specific consideration should be given to the following:
 - The limited identification and referral of trafficking and slavery offences when they occur within a domestic setting/familial relationship: this should include recognition that, in addition to forced marriage, situations akin to human trafficking, forced labour, domestic servitude and other offences under the Commonwealth legislation occur within the context of partner migration but have rarely been pursued as such.
 - The implications for the existing national response to trafficking and modern slavery if states and territories begin to pursue selected offences, such as forced marriage, under relevant family violence legislation.

7.0 Conclusion

This report offers important and unique empirical data to an issue that is only just beginning to be considered: the intersections of family violence and migration status. Importantly migration status does not equate exclusively to culturally and linguistically diverse [CALD] communities, as defined by major policy and reports (see VRCFV 2016, Special Taskforce on Domestic and Family Violence 2015), as temporary migration status brings specific uncertainties and vulnerabilities. It offers a particular platform from which to leverage control over victim survivors. Recognising and responding to this, and reducing the level of control perpetrators have, is further complicated by an immigration system that on the one hand seeks to recognise and offer some protections to avoid such abuse and exploitation, but which is also striving to ensure that the system is not easily 'abused' for the purpose of 'false' migration applications (be it, false in relation to the nature of the relationship or false in relation to the claim of family violence). These tensions require careful consideration, weighing up where Australia's priorities lay. As we move towards grappling with the complexity of family violence, it must be family violence that is prioritised over and above migration status.

There is an urgent need to accept that currently the systems of support in relation to the intersection of migration status and family violence are very limited. There are significant gaps in service provision and support, that are due to migration status, and these could be easily rectified with relatively limited financial cost to state and Federal governments. This ought to be considered a priority.

It is also clear that in relation to human trafficking and slavery, we need to consider pathways to referral, and demarcations of law. In so doing, the intention is to seek to protect and support victims, whilst identifying and punishing appropriately convicted offenders. It is important to resist the urge to sensationalise these issues and women's experiences: while there are horrific situations of abuse that are enacted against women on temporary partner visas, we cannot focus only on the worst of these situations. No doubt, Australia will soon have a conviction that brings to the fore the intersection of family violence and trafficking or slavery offences. However, one case successfully prosecuted does not equate to impactful change. As per human trafficking and slavery offences more generally, there are very serious offences occurring that are not clear cut in relation to the appropriateness of trafficking or slavery legislation, or family violence law. We must move forward with care. Importantly a primary consideration must be how victim-survivors are supported in this context: victim-survivors cannot become the pawns in a process of determining which charges are most likely to result in a successful prosecution.

This report contributes to and lays the ground for an empirical, robust and independent evidence base. Across Australia this evidence needs to be heard, to be considered in the context of policy and law reform, and it must be utilised to shape our responses. This is a moment in time to capitalise on the community commitment to ending family violence: may this commitment continue apace and achieve the goals that the nation has endorsed- a future free of all forms of gendered violence.

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Appendix One

Application stages

You are applying from outside Australia

3 step process

Step 1: Temporary visa

Subclass 300 – Prospective Marriage (temporary)

You:

- plan to marry your Australian fiancé(e);
- make an application for a subclass 300 visa either online or at the nearest office outside Australia. See 'Part 5 – Prospective Marriage visa'.



Step 2: Temporary visa

Subclass 820 – Partner (temporary)

- Once the subclass 300 visa is granted, you:
- travel to Australia;
 - marry your Australian partner (while the subclass 300 visa is valid); AND
 - make an application for a subclass 820 visa (in Australia) to stay in Australia. See 'Part 6 – Partner visa'.



Step 3: Permanent visa

Subclass 801 – Partner (residence)

- Two years after first applying for the subclass 820 visa, you:
- are still in the relationship with your Australian partner (sponsor); AND
 - make an application for a subclass 801 visa and provide the required documentation. See 'Part 6 – Partner visa'.

OR

2 step process

Step 1: Temporary visa

Subclass 309 – Partner (provisional)

You and your Australian partner:

- are legally married; OR
- intend to legally marry before a decision is made on your visa; OR
- have been in a de facto relationship for at least the entire 12 months prior to the date of application.
- make an application for a subclass 309 visa either online or at the nearest office outside Australia. See 'Part 6 – Partner visa'.



Step 2: Permanent visa

Subclass 100 – Partner (migrant)

- Two years after first applying for the subclass 309 visa, you:
- are still in the relationship with your Australian partner (usually your sponsor); AND
 - make an application for a subclass 100 visa and provide the required documentation. See 'Part 6 – Partner visa'.

You are applying from inside Australia

2 step process

Step 1: Temporary visa

Subclass 820 – Partner (provisional)

You and your Australian partner:

- are legally married; OR
- have been in a de facto relationship for at least the entire 12 months prior to lodging your application; AND
- (and all the applicants included in your application) are in Australia when you make an application for a subclass 820 visa. See 'Part 6 – Partner visa'.



Step 2: Permanent visa

Subclass 801 – Partner (migrant)

- Two years after first applying for the subclass 820 visa, you:
- are still in the relationship with your Australian partner (sponsor); AND
 - make an application for a subclass 801 visa and provide the required documentation. See 'Part 6 – Partner visa'.

This is taken from DIBP (2017) *Partner Migration*, p9. PDF: <https://www.border.gov.au/FormsAndDocuments/Documents/1127.pdf>

