

WHEN SYSTEMS COLLIDE

DOMESTIC VIOLENCE, VISAS AND SOCIAL SECURITY

Ann Emmanuel – Sally Cameron – Emily Singh

30 AUGUST 2022

At the Economic Justice Australia conference



HELPING
PEOPLE
NAVIGATE
| AUSTRALIAN
IMMIGRATION LAW



Acknowledgement of country

We acknowledge that we meet today on Aboriginal land and pay our respects to the traditional owners of this country and elders past and present.

We extend our respect to any Aboriginal and Torres Strait Islander people present today, and in doing so recognise our own heritage as migrants to this land.

Disclaimer

This presentation is intended to be a guide only to the law. It does not constitute legal advice and should not be used as a substitute for advice from a competent and appropriately qualified professional.

Although all care has been taken in preparing this presentation, IARC, Welfare Rights Centre and Economic Justice Australia do not guarantee the accuracy, adequacy or completeness of any information and are not responsible for any errors or damage suffered as a result of it being relied upon.

Overview of session



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1. No access to social security – Ann Emmanuel, IARC
2. Access with barriers – Sally Cameron, Welfare Rights Centre
 - The Newly Arrived Residents Wait Period
 - New Zealand citizens
 - Special Benefit children
3. Access tied to your relationship status – Emily Singh, Economic Justice Australia
4. The need for reform
5. Questions and discussion

A common scenario

Case study 1 - Ali

Ali is in Australia on a Student visa (subclass 500). She has been in long-term a relationship with Mark who is an Australian citizen. Ali and Mark have two young children who are born in Australia and are Australian citizens.

Mark had promised to apply for a Partner visa for Ali. But over time, he has used this promise to force Ali to do things she did not want to do. Mark also stopped her from contacting family and friends, from seeking work and from attending her classes on campus.

In the last few months, Mark has started to physically assault Ali. She is scared for her immediate safety and that of her children. She wants to leave Mark and take the children with her.

But Ali has no income. She has also reached out to some homelessness services, but they have said they cannot help her because she is on a temporary visa. They told her she needed to get permanent residency before they could assist.

**No access:
temporary visa holders**
Ann Emmanuel
Immigration Advice and Rights Centre

Immigration-related abuse

- Using temporary visa status to coerce, manipulate and control an individual
- Examples:
 - Threats to cancel visa or deport from Australia
 - Threats to separate a parent from their child/ren
 - Threats to report to Immigration (Dept of Home Affairs)
 - Using promise of visa sponsorship to control
 - Trying to coerce person to return to home country

Migrant and Refugee Women in Australia: The Safety and Security Study

National survey of 1392 migrant and refugee women.

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



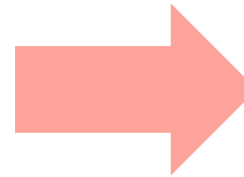
No immigration solutions

No general visa for DFV victim-survivors or compelling circumstances.

Many temporary visa holders do not have a pathway to a permanent visa, regardless of experience and risk of DFV.

Overview of permanent visas

Partner
Other Family (e.g. Parent, Carer, Child)
Humanitarian/Protection
Employer Sponsored
Skilled/Point-based



Pathway to **continue with existing** visa application based on:
Family violence and/or
Child of relationship provisions

Other barriers to safety

Generally not eligible for Centrelink, child care subsidies, public housing and Medicare

Limited/no family support

Language barriers

Fear of social stigma/pressure from community or family to keep DFV private

Negative experiences or perception of police and courts

Unable to access shelters/other support due to visa status (e.g. housing).

Refer to IARC

Caseworkers

- Online referral form: <https://iarc.org.au>
- DV priority line:
(02) 8234 0777



Clients

- Information line: 02 8234 0700
- Enquiry form: <https://iarc.org.au/help/>

A screenshot of the IARC website's referral form page. The page is titled "Referrals to IARC" and includes a progress bar showing "Step 1 of 3". The "Your Details" section contains input fields for Name (First and Last), Organisation, Phone, and Email. A "NEXT" button is at the bottom. The right sidebar features links for "Legal Advice", "Get Advice", "Learn more", and "Resources". The top navigation bar includes "Home", "Legal Advice", "Referrals to IARC", "Legal Advice", "About IARC", "Support Our Work", "Resources", and "Contact Us".

Questions?

Access with barriers: the Newly Arrived Residents Waiting Period

**Sally Cameron
Welfare Rights Centre**

But what if ...

One night Mark assaults Ali so badly that he breaks her nose and cracks 2 ribs and Ali is hospitalised for 3 days. He begs her to tell medical staff that she tripped and fell off their back deck, hitting a railing on the way down. He says he now sees he has a problem and it will never happen again and that he'll put in the forms for a partner visa, which he does.

For a while, things are fine but gradually his controlling and threatening behavior increases. On the day they get the letter telling them Ali has been granted a Temporary Partner Visa (820) he loses it, physically assaults her, smashing things and punching holes in the wall.

Ali realizes she has to leave.

Main issue relates to residency status

Eligibility decided by visa category

Must be an Australian citizen or permanent resident visa holder

Visa subclass number	Visa name	Permanent residence visa	AoS	Sponsored/nominated	Payments & concession cards residentially qualified for
010	Bridging A	No - temporary	No AoS	Not sponsored	Not residentially qualified
020	Bridging B	No - temporary	No AoS	Not sponsored	Not residentially qualified
030	Bridging C	No - temporary	No AoS	Not sponsored	Not residentially qualified
040	Bridging (Prospective Applicant)	No - temporary	No AoS	Not sponsored	Not residentially qualified
041	Bridging (Non-applicant)	No - temporary	No AoS	Not sponsored	Not residentially qualified
050	Bridging (General)	No - temporary	No AoS	Not sponsored	Not residentially qualified
051	Bridging (Protection Visa Applicant)	No - temporary	No AoS	Not sponsored	Not residentially qualified
060	Bridging F	No - temporary	No AoS	Not sponsored	SpB , FTB , PLP , DAPP and HCC (Note A) Has a NARWP exemption.
070	Bridging (Removal Pending)	No - temporary	No AoS	Not sponsored	SpB , FTB , PLP , DAPP and HCC (Note A) Has a NARWP exemption.

Residency status

Visa subclass number	Visa name	Permanent residence visa	AoS	Sponsored/ nominated	Payments & concession cards residually qualified for
812	December 1989	Yes - permanent	Discretionary AoS (Note F)	Not sponsored	All payments and concession cards NARWP (Note C) and qualifying residence periods (Note D) apply.
813	Special Equivalent 1989 (Permanent)	Yes - permanent	No AoS	Not sponsored	All payments and concession cards NARWP (Note C) and qualifying residence periods (Note D) apply.
814	Interdependency	Yes - permanent	No AoS (from 1 January 2012)	Sponsored	All payments and concession cards NARWP (Note C) and qualifying residence periods (Note D) apply.
815	PRC (Permanent)	Yes - permanent	No AoS	Not sponsored	All payments and concession cards NARWP (Note C) and qualifying residence periods (Note D) apply.
816	Skilled Former Refugee Applicants	Yes - permanent	No AoS	Not sponsored	All payments and concession cards NARWP (Note C) and qualifying residence periods (Note D) apply.
817	Protection	Yes - permanent	No AoS	Not sponsored	All payments and concession cards Has a QRE (Note A) and NARWP exemption (Note B).
818	Highly Qualified (Onshore)	Yes - permanent	No AoS	Not sponsored	All payments and concession cards NARWP (Note C) and qualifying residence periods (Note D) apply.
819	Aged Parent	Yes - permanent	Mandatory unless former holder of visa subclass 410. (Note F)	Sponsored	All payments and concession cards NARWP (Note C) and qualifying residence periods (Note D) apply.
820	Partner (from 1 July 2009) Previously: Spouse/Extended Eligibility (Spouse/Partner) (until 30 June 2009)	No - temporary	No AoS (from 1 January 2012)	Sponsored	Access to SoB , FTB , PLP , DAPP and HCC NARWP applies (Note C).

Newly Arrived Residents Wait Period (NARWP)



Newly Arrived Residents Waiting Period (NARWP)

- Period people must wait to receive Centrelink payments despite otherwise eligible
- Affects most social security and family assistance payments
- Starts date arrived in Australia or date granted permanent residency – whichever later
- Length of NARWP different for different payments
- **Exempt** Australian citizens, refugee, family member of a refugee, or on a temporary humanitarian visa
- Some people covered by old NARWP - pre-Jan 2019



NARWP: how long you have to wait

* arrived on or after 1 Jan 2019

4 years (208 weeks)

- Jobseeker Payment
- Youth Allowance
- Parenting Payment
- Special Benefit
- Austudy
- Mobility Allowance
- Sickness Allowance
- Pensioner Education Supplement
- Farm Household Allowance
- Com. Seniors Health Card
- Low Income H. Care Card

2 years (104 weeks)

- Carer Payment
- Parental Leave Pay
- Dad and Partner Pay

1 year (52 weeks)

- Family Tax Benefit A
- Carer Allowance

No NARWP

- Family Tax Benefit B
- Child Care Subsidy

Qualifying Residence Period

10 years (520 weeks)

- Age Pension
- Disability Support Pension

NARWP Exemption for Special Benefit

Exemptions may apply if:

- In financial hardship
- Significant change in circumstances
 - Homeless
 - Serious injury or declining health
 - Family and domestic violence

Significant change of circumstances

Significant change in circumstances beyond person's control after arriving in Australia

Generally, change must have occurred after:

- * getting permanent residency and arriving in Australia, or
- * granting of onshore visa & commencement of NARWP

BUT more flexibility with timing if the change in circumstances is caused by domestic violence. Can have started after arriving in Australia but before getting permanent visa

Special Benefit

Discretionary payment of last resort:

Unable to receive any other Social Security pension or benefit, and

In financial hardship and unable to obtain or earn a sufficient livelihood for themselves and any dependent, and

Present in Australia throughout the period seeking the payment

Harsh conditions

- Dollar-for-dollar income test reduction
- Additional short- or long-term available funds test apply
- Generally, payment can be cancelled if liquid assets exceed \$5,000
- Take into account contribution of board and lodging to reduce payment

Intersection of social security & migration provisions

If Ali is able to make way through Centrelink system

➤ Special Benefit (NARWP waived) & Family Tax Benefit B (no NARWP)

Visa Note

If Ali holds a temporary partner visa (subclass 820) and she separates from Mark, she may still be able to obtain the permanent partner visa (subclass 801) on the basis of the child of the relationship and/or family violence provisions

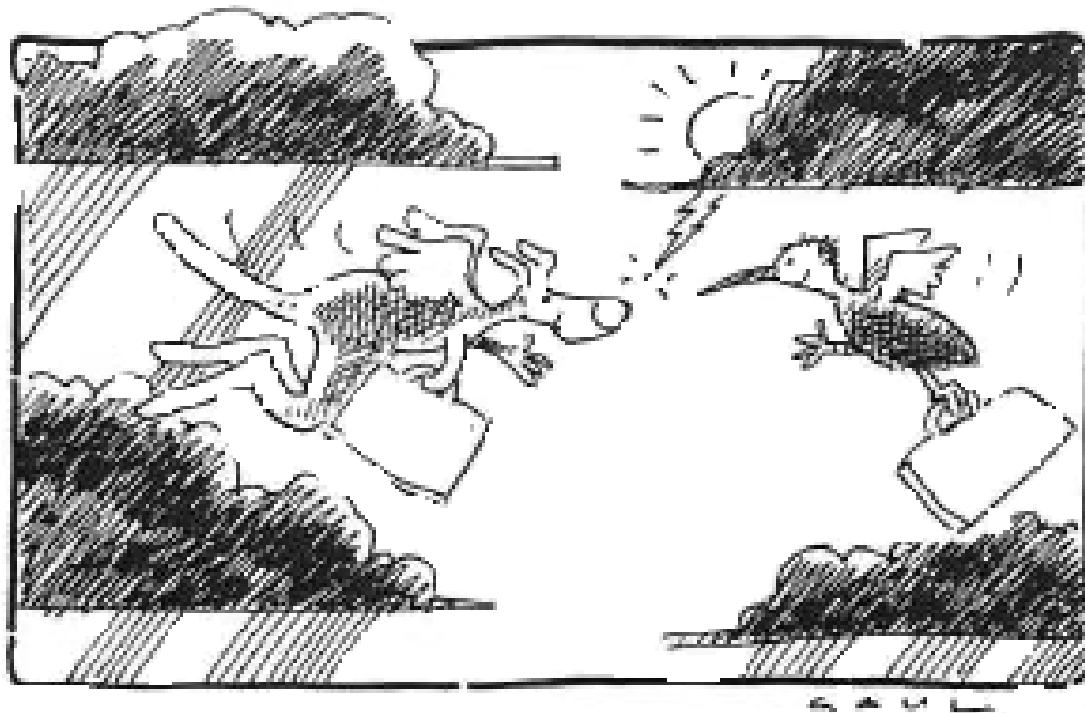
Access with barriers: New Zealand citizens

Sally Cameron
Welfare Rights Centre

Case study 2 – Kerry

Kerry came to Australia from New Zealand in 2013 and over the next 7 years enjoyed working her way to a management position in a bank. In 2020, she married Dave and shortly after got pregnant. After having the baby, Dave insisted she could not return to work. He then started blocking her access to their bank accounts, giving her \$200 week to pay for food, utilities and everything else. He refused to pay for medical treatment for her or their daughter saying he didn't see why he had to pay for everything. When she told him their daughter had grown and needed clothes, he told her to go to an op shop. When she asked for an extra \$50 to have a 2nd birthday party for their daughter, he pushed her down their back stairs. She told him she was leaving him. He put a stop on their daughter's passport.

Treatment of New Zealanders



Evolution of the special treatment of New Zealanders

... or the myth of the Bondi bludger

- 1994** New Zealand passport holders free to enter Australia
- Automatically granted a Special Category visa
 - Can live and work in Australia indefinitely
- 1996** 6 month waiting period for unemployment benefits
- 2000** 2 year waiting period
- 2001** Amendment to definition of 'Australian resident' to exclude New Zealanders

New Zealanders locked out of payments

Many New Zealanders arrive on a **Special Category visa** (SCV) as don't need to apply for a visa before arriving

If instead they apply for a visa they need to go down the skilled visa (or other comparable) pathway

No system of prompting people on SCV to become permanent residents so unaware of their situation until crisis hits

If arrived after 26 Feb 2001 - non-protected SCV holder & considered not Australian residents for social security purposes

Income support limited to a one-off 6 month payment of JobSeeker Payment if lived in Australia continuously for at least 10 years

Special Benefit Children

- If adult/parent not eligible for income support due to residency, their child may be eligible if Australian citizen or permanent resident - not just New Zealanders
- Special Benefit can be paid to child with no lower age limit
- Child's eligibility for payment stops once parent becomes permanent resident
- Child cannot get Special Benefit while parent getting Family Tax Benefit

If Kerry is able to make her way through the social security system

➤ Special Benefit for daughter or Family Tax Benefit

Visa Note

Doesn't affect Kerry's current visa status but will need advice if wants to become permanent resident

Questions?

Access linked to relationship status: the 'Member of a Couple' conundrum

**Emily Singh
Economic Justice Australia**

Case study 1 – Ali continued

Let's return to our case study from earlier...

Thinking about Ali's situation again – but this time Ali decided to stay with Mark because it was so difficult for her to leave. She was facing homelessness and poverty, for her and her children, if she left.

Sometimes Mark's behaviour towards Ali would improve, and she thought maybe things would get better over time.

Ali and Mark decided to apply for a Partner visa, which is initially a temporary visa (Subclass 820). Ali is then granted this **temporary** visa.

She becomes eligible for some Centrelink income support.

She applies for Special Benefit and Family Tax Benefit to support herself and her children as she is unable to work.

Centrelink 'Member of a Couple'

Ali has to tell Centrelink what her relationship status is. She tells them she is in a relationship with Mark.

Centrelink decide Ali is a 'Member of a Couple' with Mark. She's married, living under the same roof and meets most of the 'five factors'.

This means:

- - All of Mark's income and assets affect Ali's eligibility for Centrelink and the amount of income support she can receive.
- - All of Mark's income and assets affect the rate of Family Tax Benefit she is eligible for.

Ali continues to experience family violence, including economic abuse. She is not able to access any of Mark's money and has no financial independence.

Ali's relationship status

You can see that Ali's relationship status is relevant to BOTH her Centrelink eligibility and her visa eligibility.

What happens for Ali when Mark's income pushes her over the income limit for Centrelink eligibility? She no longer has an independent source of income? What can she do?

‘Special reason’ discretion

If Ali isn’t planning to leave, or can’t leave, the violent home.

She will likely continue to be considered a ‘Member of a Couple’ by Centrelink.

She could ask Centrelink to start considering her as not being a member of a couple ‘for a special reason’ per section 24 of the *Social Security Act 1991*.

‘Special reason’ discretion

The ‘special reason discretion’ enables a Centrelink decision maker to decide that there is a 'special reason' NOT to treat a person as a member of a couple.

Three questions:

- Is there a special reason to be considered in this couple's circumstances?
- Is there a lack of being able to pool resources for the couple as a result of the circumstances?
- Is there financial difficulty as a result of the couple's circumstances?

Think about Ali's case – how might these questions be answered?

Using the 'special reason' discretion in Ali's case

Family and domestic violence can be one of the reasons for Centrelink to apply the section 24 discretion and decide that someone IS a member of a couple but should **NOT BE CONSIDERED a member of a couple for a special reason.**

Ali could ask Centrelink to use discretion and, if the discretion is applied, she would be able to be assessed for Centrelink income support eligibility regardless of Mark's income and assets.

How might this impact her visa status?

Using the 'special reason' discretion in Ali's case

Remember – Ali is currently holding a temporary partner visa which requires that she is in a ongoing relationship with the sponsor of the visa.

Whilst she might be eligible to engage the *Migration Act 1958* family violence provisions, it is crucial for Ali and those assisting her to aware of the potential impacts of advocating for, or applying, the section 24 discretion in Ali's circumstances.

‘Special reason’ discretion - what does it mean at law?

What DOES this a section 24 finding mean
and how SHOULD it be interpreted?

It’s a finding that you ARE still a member
of a couple but should not be treated as
being a member of a couple for the
purposes of your social security
entitlements.

How the 'special reason' can become problematic

How is the 'special reason' discretion often applied and how can this impact a visa holder's eligibility?

Recent Administrative Appeals Tribunal decision of GRYB and Secretary, Department of Social Services (Social services second review) [2022] AATA 2156 (1 July 2022), in which the applicant (GRYB) was experiencing family violence, the Tribunal stated:

*“The Tribunal sets aside the reviewable decision and remits the matter to the respondent for reconsideration with **a finding that there is a special reason why the applicant should not be treated as a member of a couple with Mr CC.**”*

What might this type of decision mean for visa eligibility for people like Ali and others?

Family violence provisions of the *Migration Act 1958*

Whilst this is putting it simply, and there are certain pathways ('family violence pathways') towards permanent residency for SOME visa holders who experience family violence, for others, the migration 'family violence pathway' does not exist.

For example, imagine if Ali held a:

- Temporary Protection Visa and Safe Haven Enterprise visa holders.
- Skilled or student visa as a dependent on Mark's visa.

Could you argue no 'couple' exists?

It is also possible, in circumstances like Ali's, to advocate that there is no 'couple'.

This would depend on:

- How Ali defines and views the relationship or lack thereof.
- How the '5 factors' (financial aspects, nature of the household, social aspects, sexual relationship, commitment) are considered by Centrelink when assessing whether there is a 'couple' are viewed through the lens of the presence of family and domestic violence.
- How the '5 factors' considered by Centrelink when assessing whether there is a 'couple' are viewed through the lens of economic abuse and/or lack of 'pooling' of income and assets.

IMPORTANT: Always consider visa impacts when helping your client decide whether she deems there to be NO relationship or wants to ask Centrelink to apply the 'special reason' discretion.

What would be best for Ali?

Section 24 'special reason' discretion

Or

Is not a 'Member of a Couple' at all?

What are the relevant considerations?

Questions?

The need for reform

What can WE do?

As advocates, support workers, lawyers, decision makers we need to be attune to our clients/customers visa/residency status and consider how this is relevant to the advocacy or decision making we are involved in!

What can WE do?

Should also consider whether our client should be referred for:

- immigration legal advice
- social security legal advice
- family law advice
- family and domestic violence support

and/or whether they already have other workers in these fields.

Ensure we are communicating and are working together!

Is reform possible? History of the NARWP

Pre- 1997	Introduction of 6 month waiting period for Newstart Allowance
March 1997	Introduction of 2 year waiting period for most income support <ul style="list-style-type: none">* Did not include FTB* Did include Special Benefit – with current special circs exemption
January 2012	Revoked <u>income support</u> exemption for family member of Australian citizen or permanent resident (820 visa)
January 2017	Revoked <u>health care card</u> exemption for family member of Australian citizen or permanent resident (820 visa)
January 2019	Introduction of current system
March 2020 – 21	Suspension of NARWP for JobSeeker, Parenting Payment, Sp Benefit, Youth Allowance & Austudy

NARWP expansion

4 years (208 weeks)

- Jobseeker Payment
- Youth Allowance
- Parenting Payment
- Special Benefit
- Austudy
- Mobility Allowance
- Sickness Allowance
- Pensioner Education Supplement
- Farm Household Allowance
- Com. Seniors Health Card

- Low Income H. Care Card

Carer Payment

- Parental Leave Pay
- Dad and Partner Pay
- Family Tax Benefit A

Carer Allowance

- Family Tax Benefit B

No NARWP

Child Care Subsidy

defeated

[*Social Services Legislation Amendment \(Consistent Waiting Periods for New Migrants\) Bill 2021*](#)

Legislative
brief



VIOLENCE OR POVERTY

SOCIAL SECURITY REFORM IS KEY

Every person affected by family and domestic violence should be able to access adequate financial support to leave an abusive situation and rebuild their life in a safe home. Especially for those not currently in the paid workforce, as a result of the violence or caring for children, economic security in the form of social security income support is key.

To ensure that essential social security reform remains a priority over the next decade:

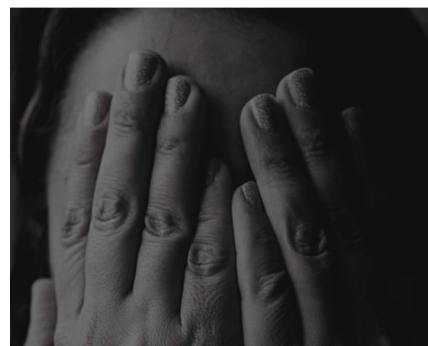
**WE CALL ON THE GOVERNMENT TO ENSURE THAT
SOCIAL SECURITY IS EMBEDDED IN THE NEW NATIONAL PLAN
TO END VIOLENCE AGAINST WOMEN AND CHILDREN**

Modest reforms to the social security system have the potential to greatly improve the lives of many victim/survivors of violence, particularly those who are most vulnerable, increasing their capacity to escape abuse and its ongoing effects.

Recommendations for changing the law in first action plan

The following recommendations for changes to legislation are in line with the economic security aims of the National Plan and, if implemented, could constitute immediate and concrete achievements against any new measurable social security-related targets included in the first action plan - at minimal or no cost.

EJA's recent advocacy



DEBT, DURESS AND DOB-INS:
Centrelink compliance processes
and domestic violence



How well does Australia's
social security system
support victims of family
and domestic violence?



Recommendations

Increase FADV training of general staff and access to social workers to flag domestic violence and streamline access to services – including NARWP waiver

Amend Act to enable non-protected Special Category Visa holders to access Special Benefit, particularly if unreasonable to expect them to leave Australia

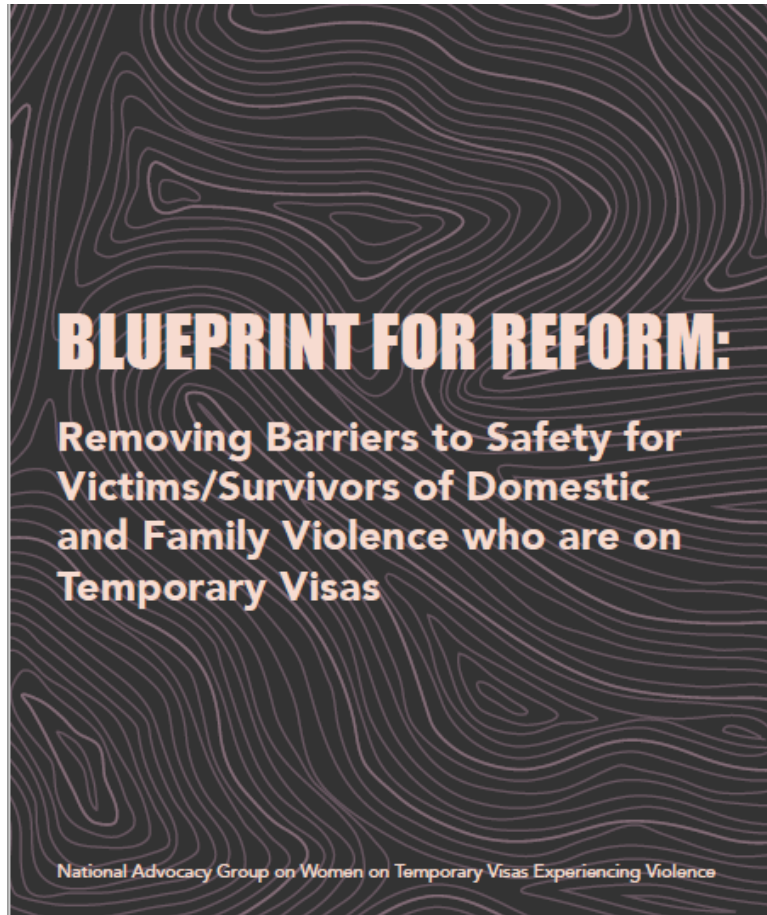
Review particularly harsh treatment of New Zealand permanent residents living in Australia enabling access to Special Benefit where a 'substantial change of circumstances beyond their control' so treated equitably with newly arrived migrants

Amend section 24 to make it clear that family or domestic violence may be considered grounds for a decision that a person in a relationship should not be treated as a member of a couple

- Extend social security system to victim/survivors who don't yet permanent residency

Aware of tension with migration process & working to ensure
we don't remove options for victims/survivors of FADV

Advocacy



Seeking:

Improvements to migration system

Better eligibility and access to social supports

Long-term funding for specialist services.

The big picture

Needs to push onto the agenda for:

- Women's policy
- FADV policy

Is it right that some women in Australia experiencing FADV are locked out?



QUESTIONS?

Immigration Advice and Rights Centre: www.iarc.org.au

Welfare Rights Centre: www.welfarerightscentre.org.au

Economic Justice Australia: www.ejaustralia.org.au

THANK YOU!



HELPING
PEOPLE
NAVIGATE
| AUSTRALIAN
IMMIGRATION LAW

