



## Navigating the Family Law Provisions: Migrant Women's Voices

**Ana Borges Jelinic**

Australian College of Applied Psychology, Australia

### Abstract

This article considers the voices of migrant women engaging with Home Affairs to guarantee permanent residency (PR) in Australia after experiencing domestic violence. Data collected from longitudinal interviews with 20 participants were considered, with two participants' stories analysed in detail. The research indicates how the legal immigration system is set up in a way that does not listen to women and disadvantages them. Particular issues pointed out include extended timelines, lack of concern for cultural differences and inconsistencies in the process, and how they affect women undermining the goal of the law, which is to protect migrants from sponsors' violence.

### Keywords

Domestic and family violence; migration law; visa processes.

*Please cite this article as:*

Borges Jelinic A (2021) Navigating the family law provisions: Migrant women's voices. *International Journal for Crime, Justice and Social Democracy* 10(4): 131-145. <https://doi.org/10.5204/ijcjsd.2017>

Except where otherwise noted, content in this journal is licensed under a [Creative Commons Attribution 4.0 International Licence](https://creativecommons.org/licenses/by/4.0/). As an open access journal, articles are free to use with proper attribution.  
ISSN: 2202-8005



## Introduction

The history of women migrating to Australia has never been simple. Single women, in particular, were never the ideal migrants when Australia was expanding its population (Eubel 2010; Langfield 2002). Governments aimed for families and single men as migrants and created barriers multiple times for the migration of women (Eubel 2010; Piper 2006). Consequently, women became the largest category of people to migrate indirectly as dependants on other people's visas, mostly family migrant visa categories, and particularly under partner visas (Ahmadzai, Stewart and Sethi 2016; Akbari and MacDonald 2014). When women on partner visa pathways to permanent residency (PR) experience domestic and family violence (DFV), they experience added barriers to leave the relationship, including, but not limited to, a fear of deportation and lack of independent rights in the new country, resulting in restricted access to public housing and welfare payments (Voolma 2018; Zadnik, Sabina and Cuevas 2016). Such limitations and uncertainties are common traits to migrant women's experiences. Nevertheless, partner visa is one of the very few visa categories that accepts DFV as a genuine reason for breaching visa conditions (e.g., to remain in the relationship) and allow migrants a pathway to PR in Australia, by accessing the family violence (FV) provisions (*Migration Regulations 1994* [Cth]: div. 1.5).

This paper analyses the interaction of migrant women and the Australian Department of Home Affairs (hereafter Home Affairs) by engaging with women's voices, in an attempt to understand how women experience this interaction and the effect of the migration process on women. This analysis is part of a larger longitudinal research project on the experience of women engaging with the FV provisions, undertaken at the University of Queensland. The research received ethical approval from the university.

## Understanding Domestic and Family Violence and Legal Responses

Generally, violence worldwide has been decreasing, but violence against women specifically has been increasing (Walby et al. 2017). Further, a quarter of women worldwide are subjected to DFV at least once in their lifetime (Walby and Towers 2018). DFV can be defined in many ways, assuming diverse manifestations in different places and attracting a variety of state interventions aimed at its elimination. It is widely accepted that it can involve physical, psychological, sexual, or material and economic abuse between former or current partners irrespective of whether the perpetrator shares or has shared the same residence with the victim (Douglas, Harris and Dragiewicz 2019; Voolma 2018). Research in the area continuously points to a scenario of male perpetrators and female victims (Walby et al. 2017) with ongoing elements of coercive control from the part of the abuser (Stark 2010; Walby and Towers 2018; Walklate and Fitz-Gibbon 2019).

It is the fact that DFV happens mostly in private, its gendered nature and its purpose (coercive control) that differentiates it from other forms of violence (Ahmadzai, Stewart and Sethi 2016). Legal strategies to deal with DFV turn this violence public and a matter of social importance (Walby 2012).

In Australia, DFV has been treated as mainly a civil matter since 1975 (Caruana 2005). This attracted criticism because the approach treats criminal acts committed in the context of DFV differently to the same criminal acts committed in other contexts (Douglas 2019). It was expected to operate in conjunction with criminal law and, in this way, the Australian approach was intended to provide better protection to victims than that provided by criminal law alone (Special Taskforce on Domestic and Family Violence in Queensland 2015). Recent changes in Australian law are aimed at stronger criminal responses to abusers as part of the National Plan to Reduce Violence against Women and their Children (2010–2022), which includes prevention and provision of services. There are also state plans to eliminate DFV; however, migration law is mainly addressed in the National Plan (Department of Social Services, 2019).

Overall, research in legal systems has demonstrated that laws have historically changed and improved outcomes for women in some areas, but emphasises that these systems are still resistant to hearing women's voices (Ailwood, Eastaer and Kennedy 2012). Legal researchers have argued (particularly from a feminist framework) that feminist perspectives are critical to understand and respond to violence inside

and outside legal institutions, often proposing legal reform or ideas on addressing violence without engaging with legal institutions, because feminists understand the legal system as frequently engaged in silencing and victimising women (Auchmuty and Van Marle 2012; Carrington et al. 2020; Kaladelfos and Featherstone 2014).

Whenever women are silenced by perpetrator isolation techniques or the law, and justice systems fail to listen, it is likely that the law will have a limited effect in eliminating DFV (Ailwood, Easteal and Kennedy 2012). Nevertheless, the law remains important in addressing violence, and women continue to turn to legal responses searching for empowerment (Auchmuty and Van Marle 2012; Douglas 2012).

### **Family Violence Provisions in Migration Law**

After separating from their partners and visa sponsors due to DFV, migrant women on partner visa pathways can apply for the FV provisions (*Migration Regulations 1994*: div 1.5) to remain eligible for PR. Evidence of a genuine relationship—and after approved, evidence of ‘relevant’ DFV—must be presented to Home Affairs (Borges Jelinic 2020).

The Australian *Migration Act 1958* (Cth) establishes a two-step process for people applying for partner visas, including a two-year waiting period for PR (Gray, Easteal and Bartels 2014; *Migration Act 1958*). The FV provisions are applicable when migrant partners separate at any point during that waiting period due to DFV (Australian Law Reform Commission [ALRC] 2012).

Migrant partners applying for PR through the FV provisions will require judicial or non-judicial evidence to prove that ‘relevant’ DFV occurred and made the applicant fearful for their life, safety or wellbeing (*Migration Regulations 1994*: div. 1.5). Division 1.5 of the *Migration Regulations 1994* defines relevant family violence as ‘conduct, whether actual or threatened, towards (i) the alleged victim ... that causes the alleged victim to reasonably fear for, or to be reasonably apprehensive about, his or her own wellbeing or safety’ (reg. 1.21). Indeed, relevant family violence is not limited to physical harm. It may also include other forms of abuse such as psychological and/or financial abuse, which is consistent with the above definition. When applicants are refused PR for any reason, they can appeal the decision to the Administrative Appeals Tribunal (AAT) that may affirm or overturn the visa decision (Borges Jelinic 2019).

### **‘Relevant’ Domestic and Family Violence**

Throughout the application for the FV provisions, material and legal proof is favoured. Court-issued protection orders, marriage certificates, joint bank accounts and bills or evidence of a perpetrator’s criminal charges are all considered important or even undisputable evidence in the case of court orders (Gray, Easteal and Bartels 2014). Migrant partners (mostly migrant women) have limited ways to insert their voice into the process. They are required to write a statement (about the genuineness of the relationship and the violence), and in the absence of court orders or criminal convictions they may rely on professional reports from ‘competent persons’ (*Statutory Declarations Act 1959* [Cth]: s. 1) that were able to listen to them and are convinced there was ‘relevant’ DFV (Borges Jelinic 2019, 2021). These reports associated directly to listening to women have less legal weight than the documents mentioned earlier in the paragraph, as, different from court orders, they can be disputed (ALRC 2012).

In the absence of evidence of violence or if Home Affairs is not convinced by the professional reports, they may request women to be interviewed by independent experts (IEs) (ALRC 2012; Borges Jelinic 2021; Migration Amendment Bill 2016), who are subcontracted psychologists providing final assessments regarding the presence and severity of DFV (Borges Jelinic 2019, 2021). Complaints regarding IE assessments are emerging in professional and academic research, including critique to their capacity to identify DFV and understand the legal definitions of ‘relevant’ DFV (Borges Jelinic 2019, 2020), and inappropriate cross-cultural engagement, including limited use of interpreters (Judicial Council on Cultural Diversity 2016).

Therefore, researchers in the area have recommended an expansion of the kind of evidence accepted by Home Affairs including an approach similar to the specialised teams in the United States, New Zealand and Canada (ALRC 2012; Borges Jelinic 2020), even though these systems have their own limitations (ALRC 2012).

### **Women's Voices in Research**

Research concerns with 'voice' are prevalent particularly in feminist academic work. This is mainly because ongoing constraints on women's voices characterise and maintain a patriarchal society, making hearing women's voices fundamental in relation to social justice projects (see Gilligan and Eddy 2017; Saroca 2013).

A feminist epistemology understands women's lived experiences as sources of knowledge, and a feminist methodology embodies a concern for how these life stories are shared through the research process (Campbell and Wasco 2000). Thus, feminist research centres on women's experiences and attempts to find ways to capture women's voices (and silences) that are consistent with feminist ideals, display reflexivity and empower women (Campbell and Wasco 2000).

Feminist research regarding migrant women on uncertain visa status has highlighted the intersection of sex, race, class and migration status (Cho, Crenshaw and McCall 2013; Walby and Armstrong 2012). Uncertain migration status frequently appears as a salient characteristic in the intersection of these axes (Chiu 2017). The saliency of migration status means that this is an intersecting axis to which we need to be particularly attentive when studying social injustices directed at this group of people (Chiu 2017).

### **Methodology**

Twenty adult migrant women accessing the DFV provisions consented to participate in a longitudinal study consisting of two interviews one year apart. They were approached in South East Queensland by women's services' staff. The in-depth semi-structured interviews explored experiences of DFV, immigration and social support. Further, self-assessment tools were utilised to assess women's mental health considering mood and trauma symptoms. Women were encouraged to bring official immigration letters and reports to aid their memory, and many women read parts of these materials during the interview. Pseudonyms were used and nationalities were not always clearly stated to preserve women's identities. Women were overwhelmingly from Latin America (7) and Asia (9). All women were in relationships for over two years at the time of separation, and eleven women had been separated for less than one year at the time of the first interview. Most women did not have children migrating with them and none had children with the partner in Australia.

Most women (17) presented poor mental health at the time of the first interviews, with symptoms of PTSD and depression. Interviews were conducted in English, Spanish and Portuguese, and two women required interpreters in Thai and Vietnamese. Recorded interviews were transcribed, and women had access to their transcripts and recorded material after each interview for approval and clarification of the content. All quotations were only altered, when necessary, for comprehension.

Institutional Human Research Ethics approval was received from the University of Queensland (Approval No. 2016001732).

### ***The Listening Guide***

This study applies Carol Gilligan's feminist theory of women's voice to the analysis of qualitative research and the Listening Guide analytical method (Doucet and Mauthner 2008). At the core of this methodology is the concern with voice (asking who is speaking and who is listening) not only during a research interview, but also in the interpretative analyses of interview transcripts. It is a method that claims to reinsert the act of listening into the act of reading an interview transcript. The method obliges the

researcher as reader/interpreter of the text to listen attentively to the voice relaying the story (Byrne, Canavan and Millar 2009).

In the Listening Guide, the recorded and transcribed interviews are simultaneously listened to and read in four steps. The first step identifies the scene, the characters and the story. In the second step the researcher re-reads and listens to the text, this time with the aim of identifying the 'self' represented by the participant through 'I' statements (Pinto 2004). Often at this step, 'I' statements become even clearer when grouped in what are called 'I' poems (Pinto 2004).

The third listening is often called 'listening for contrapuntal voices'. This involves listening for different voices and their interplay, harmonies or dissonances to reveal the different positions a woman takes or has to take in this narrative (Gilligan and Eddy 2017). It shows how participants speak about relationships with others and the consequences of these relationships (Byrne, Canavan and Millar 2009).

The fourth reading of interview transcripts focuses on the structured power relations and dominant ideologies that frame narratives. It reflects a concern to linking micro-level narratives with macro-level processes and structures (Doucet and Mauthner 2008), and the larger sociopolitical context in which the interview takes place.

Participants average 36.7 years, with more than half living in Australia over three years, and 50 per cent of the women had separated over one year before the first interview (see Appendix 1).

All women described verbal abuse during the relationship. Nine mentioned physical violence such as pushing, slapping and strangling; six mentioned sexual violence; and three of them reproductive coercion (see Miller and Silverman 2010). Fifteen women described financial abuse, 14 identified social control, and nine 'male privilege' (when men made all the important decisions in the family). While acts of male privilege can be perceived as financial violence or social control, they are categorised as abusive actions here, as they were by the women and competent persons (*Statutory Declarations Act 1959: s. 1*) when reporting to Home Affairs.

Three women complained that their abuse included abuse towards their children (from previous relationships), as well as threats of violence and psychological violence, and verbal abuse and neglect. These experiences were reported to Home Affairs.

### ***Experience of Proving 'Relevant' Domestic and Family Violence***

While all women interviewed were applying for the FV provisions, only some experienced submitting evidence of DFV to Home Affairs. After all, only women who prove genuineness of a relationship can proceed with a claim of DFV. During the interview period, only nine of the participants were requested to provide evidence of DFV, even though they all had evidence prepared in advance. As described in Borges Jelinic (2019), the number of women refused a visa at this first stage (genuine relationship) is considerable, and it was higher than expected (six women) in this research.

Five of the 20 women had court-issued final domestic violence protection orders (DVPOs) that consist of undisputable evidence of violence (ALRC 2012). Women without judicial evidence of DFV had to submit non-judicial evidence, including statutory declarations from 'competent persons' (such as psychologists, social workers and caseworkers) (See, *Statutory Declarations Regulations 2018*) stating that in the professional's opinion, the woman experienced 'relevant' domestic violence.

Aurora was the only woman in the sample not asked for further documentation by Home Affairs after presenting non-judicial evidence and received her PR. Six other women (Melissa, Sierra, Patti, Rhiannon, Zelia and Jasmine) submitted non-judicial evidence and the evidence was contested. Upon questioning the evidence, Home Affairs requested the evaluation of an IE. While Zelia was considered by the IE to have suffered 'relevant' DFV, the other five women were considered not to have suffered 'relevant' DFV and their visas were refused. All of them appealed the decision to the AAT and in all cases the tribunal decided



to send the women to another IE for a final decision. This resulted in a favourable decision in all cases, and all women were considered eligible for PR.

Sierra's and Melissa's stories illustrate the issue of having to engage with so many professionals and government spheres to prove that relevant DFV occurred.

## **First Case: Melissa**

### *1. Setting the Scene*

Melissa told the researcher how she met her husband in her country in Africa while he was on holiday. He was over 60 and she was in her mid-30s. She fell in love when he started helping her family financially. He brought her to Australia after paying for a surgery she required and that would allow them to conceive a child. The abuse started soon after her arrival. He demanded her company at all times, so she worked in his office without wages. Melissa eventually realised he would not pay her wages and would even control her food consumption. He was verbally abusive and embarrassed her in public several times calling her names. He called the police after a fight while he was teaching her to drive. Melissa was arrested that night and accused of DFV and elder abuse. She had to defend those accusations in a Magistrates' court to avoid having a DVPO made against her. A DVPO could mean losing eligibility for PR on 'character' grounds (ALRC 2012). The ex-partner was a retired police officer and so was his only daughter. Melissa was convinced that the police mistreated her and applied for a DVPO on his behalf because of his past in the police force and because Melissa was a migrant. As she explained in her interview, 'I don't have anybody here. So, he is police'.

### *2. Listening to the Plot*

Melissa tells a story of extreme confusion regarding the legal system and her partner's behaviour. She could not understand the system into which she was inserted, and Melissa was not understood when she voiced or demonstrated her beliefs based on her experience and cultural background.

First, Melissa said she did not even know what DFV was when it all happened:

I never know anything about domestic violence, because in my country if a woman or the husband [fight], we don't go to police. Is the two family, the husband's family would come, the woman's family would come together, then they will judge. So, when my friends were asking me in Africa, they didn't say this is domestic violence [and] they say I should even call the Iman [religious and community leader for her community].

Her cultural understanding was that the community would be invested in helping the couple even in case of abuse. However, she was not part of a community in Australia on which she could call for support. Melissa was in Australia for around three months before the separation. She had neither the knowledge of where to look for help, nor the time to learn her rights.

Melissa had one of the worst interactions with the police described in this research. She expressed extreme fears in her 'I' poem:

I thought because when they bring me,  
I thought the police will want to bring me back to Africa.  
I don't know anything, because they come arrest me ...  
... took me to court,  
I have never been in court in my life in Africa.  
I've never been to court,  
I've never had a problem in my life with police in Africa. So, is this Australia?

Melissa's 'I' poem illustrates how she feared deportation. She did not understand if what was happening was typical in Australia. She also felt that her husband held power over her because of her isolation and his connection with the police.

She was arrested, removed from her partner's property, and she spent the night in the police watch house (see Queensland Government 2021). The following day, the police directed her to a phone line that supports victims of DFV, even though, throughout this process, the police treated her as the perpetrator of violence. Melissa accessed accommodation, material support and legal services:

They help me, I get the learner's license. Red Cross, yes, these people too some time they give voucher; Sunnybank Hills, the community sometimes I call them, they give me voucher, 40 dollars; RAILS; Immigrant Women, Salvation Army, lawyer. When I got anxiety, a doctor.

Melissa accessed so many support services for financial help because she struggled to find consistent paid work. After the separation, she was entitled to a welfare benefit called Special Benefit (*Social Security Act 1991* [Cth]: para. 1.2). However, once her visa was refused, she received a bridging visa, making her ineligible to any welfare payments during her appeals process to the AAT. Women in this research often referred to the issue of acquiring consistent work when issued a temporary visa. They also mentioned the issue of loss of welfare payments after a visa refusal. Melissa's process took over three years and at least half of this time was a waiting period holding a bridging visa.

Despite Melissa's fears that the significant age, class and cultural background differences would be used against her in the process, the relationship was considered genuine. Still, she was not considered a survivor of 'relevant' DFV. Melissa allowed me to read her refusal letter that quoted the first IE's report:

Provided examples of undesirable behaviour on [her husband's] part, her description of the emotional impact that this has had on her is not consistent with her feeling fear or apprehension for her safety or wellbeing. In addition, some inconsistencies in the accounts themselves are noted, and when questioned about these, [Melissa] was unable to give a plausible explanation. ... Thus, on the evidence [Melissa] is not a victim of defined family violence as defined by the *Migration Regulations 1994*.

Melissa explained the interview differently:

I thought it [the interview with the IE] would be well, because  
I thought,  
why I am lying?  
why must I lie?  
I don't know anyone here, the only one is my husband.  
Why must I lie? Then they say that 'this woman don't have domestic violence'.  
... So, they believe my husband.

Melissa said that she did not have an interpreter present at the IE interview and that she cried copiously. At no point was her educational and cultural background acknowledged in the process by government workers before the AAT, resulting in her behaviour and emotions being perceived as 'inconsistent' without any cultural explanation being considered. Behavioural consistency is certainly a context-dependent concept (Fischbach and Herbert 1997; Hochschild 2011). Melissa's behaviours described to the researcher—crying copiously, shaking while unable to calm herself down, and fixation on being believed—and not the details of the violent event are consistent with common behaviours from survivors of trauma and abuse (National Center for PTSD 2021). According to her description of her interview, she behaved as a woman who is scared and confused in a foreign environment, and someone who is not in control of the situation and is fearful of the consequences.

The interview process with the IE was unclear for Melissa. She did not know what was expected from her. The IE may have also not known how to interpret Melissa's attitude. Melissa found that her role was to voice her resistance to being called a liar, instead of explaining the violence and her reactions to it, resulting in being considered not having experienced violence at all.

Melissa appealed the decision to the AAT that requested another IE interview (she calls them 'psychologists'). That second IE determined she was a survivor of 'relevant' DFV, and her visa was approved. Melissa described the effect when cultural and educational differences were minimally acknowledged:

They have translator from my country ... [and] it helped. ... Two weeks ago [migration agent] told me they want me to see another psychologist. ... I said, I have seen psychologist over two years now. So, they bring another one ... that was on Friday, on the eight. ... I went there with [support worker]. When I get inside there, I said to the lady, 'How can I convince you again that this man is not saying the truth?'

Everything they are doing, I want Women's House<sup>1</sup> to come, because of me. I am not educated. ... They ask me [the receptionist of the second IE] I want anybody to call, I said Women's House. In Australia, I don't have anybody.

## Second Case: Sierra

### 1. *Setting the Scene*

According to Sierra, soon after she moved from Italy to Australia and married the sponsor, the financial and emotional abuse started. Her sponsor would intimidate her with words and his body size, demanding her full salary to buy alcohol and illicit drugs, and she felt threatened and coerced to comply. During the interviews, she spoke of the violence:

I was considered like a dog, not a person.  
I was completely in his power.  
I didn't have any friends, anywhere where to go, any money, any possibility, any chance, nothing.  
I felt just abandoned just with no way to escape.

Sierra eventually left the house and never tried to contact her ex-husband again. After separating, he contacted Home Affairs to cancel his sponsorship and blamed her for ending the marriage. Sierra learnt of these actions when her private migration agent applied for freedom of information to determine what extra information Home Affairs had received on the case. This request was prompted by Home Affairs' earlier request for Sierra to answer accusations of infidelity. She learnt that her ex-husband had attacked her character in a letter accusing her of having affairs and marrying him for the visa. She defended herself in a letter. Months later, Home Affairs requested her evidence of 'relevant' DFV. She presented non-judicial evidence and it was questioned, so she was sent to an IE interview.

### 2. *Listening to the Plot*

Sierra told a story about feeling she was not believed and, as a result, of having to keep arguing her case for her visa. The visa process consequently became a central part of her life. She described the process as 'exhausting and deflating'. Sierra had to interact with the department, but she did not believe they would listen. She felt judged, mistrusted and consistently threatened with deportation:

They [Home Affairs] want proof for everything, for every breath, for every step that you are doing they want the proof, for photo, for evidence. There is no evidence. You have to create the evidence, to make them happy, or you have to justify why you don't have the evidence of



something stupid. They go in the details for something really superficial—that you have sex, that you don't have sex, ... something really obvious.

In the first interview, she read the first IE's report quoted in the visa refusal letter:

Sierra's account of her relationship is plausible. ... His demands for money became increasingly frequent as, she suspected, his use of illicit substances increased. ... He would follow her around the house to continue the argument and she would eventually lock herself into a room in order to end the debate. She reported that he would often cause her public and private embarrassment by calling her derogatory names and occasionally threatening her with deportation and/or homelessness. She felt trapped in the relationship with limited finances, no personal transport and a restricted social support network.

Those observations lead to the IE's conclusions:

She was unable to satisfactorily explain why she might reasonably fear for her safety and well-being within this relationship context. Despite claiming a fear of their altercations escalating to physical violence, ... the incidents she has described do not meet the definition of family violence under current legislation and cannot be considered to have caused her to reasonably fear for her safety and well-being.

While Sierra had the opportunity to answer the points raised, there was usually little hope of a different outcome because IE decisions are legally binding (Borges Jelinic 2019). The IE had access to the same immigration evidence that previously convinced two competent persons that Sierra was a survivor of 'relevant' DFV and these competent persons' reports. Sierra told the researcher in the second interview that she had attended her hearing at the AAT and they had sent her to another IE who believed she was the survivor of 'relevant' DFV. By the time her visa was granted, she had been separated for almost four years and had been living in Australia for almost seven years.

During the second interview, Sierra highlighted the problems she experienced with her visa process. Sierra emphasised that besides the challenge of being alone in Australia, she felt that Home Affairs was hostile and dismissive in their engagement with her, not respecting time frames, being very invasive in the process and making her feel threatened.

Sierra spoke of feeling threatened with deportation by Home Affairs in the same way her husband once threatened her. First, she referred to the time frame issue:

Because all the time that I did one application, I had to wait months and months and a year. When I did my last appeal, I had to wait maybe 18 months before getting called for the appeal. Wait for so long, it is frustrating because you wait the same. 'We call you in six months', after they don't call you, 'we call you in 10 months' and after they don't call you, 'we call you in one year, because the maximum time is one year' and nobody call you, and after one year and a half they call me. Is frustrating, is painful, is terrible condition, but have to live day by day with this apprehension, yeah.

Later, she referred to the threats of deportation:

They call you, they want explanation, justification, they treat you like you are a criminal; they don't consider you like a person. ... Yeah, I felt to be a criminal. ... It is the same feeling, I suppose, when you have to go in the prison, when they decide to send you in prison ... or not, you feel exactly the same, as a criminal—like a criminal and waiting for their decision, prison or be free. You don't feel like a ... normal person.

## Discussion

Melissa's and Sierra's stories illustrate difficulties presented by most of the women interviewed and particularly all of the five women that had their visas refused at the DFV evidence stage. Melissa was subjected to a process that she struggled to engage with and that was unable to engage with her. She did not mention any attempt by the government agents to address cultural and educational barriers until the moment she attended the AAT. While her cultural and educational background was not used against her directly, ignoring them had direct negative consequences, as considering them was fundamental to understand Melissa's story.

Previous research in the United States has indicated similar difficulties for migrant women, particularly concerning unsympathetic interviewers, inconsistency in eligibility for services, wait times, and the treatment dispensed to women, besides women's emotional state contributing to a perception of heightened confusion in an already confusing legal process (Ingram et al. 2010; Orloff and DePalo 2013). Barriers that women encountered in the visa process in both countries were extensive and were both emotional and tangible.

Regarding the difficulties in interviews, there was an absence of alternatives to collecting information from women, relying on documents and IEs' interviewing only. The women were neither subjected to any psychological assessment tools by the IE, nor any standardised testing. There was only a clinical interview, the observations of which have a subjective component. There are many tools used to assess DFV (that are specific to DFV and general mental health) that can complement the information shared in an interview process (Borges Jelinic 2020; Canadian Domestic Homicide Prevention Initiative 2018). Integrating assessment strategies is a way to attempt to prevent false negatives ('relevant' DFV in this case). The risk of false negatives increases in cross-cultural assessments (White and Satyen 2015; Wong et al. 2016). However, the benefits of using integrating assessment tools were ignored in favour of an interview process in which the women struggled to engage emotionally and linguistically, creating a potentially retraumatising experience.

None of the women have access to interpreters in their first IE interview, and both had been separated for over one year before the first IE interview. Indeed, both time of separation and untreated trauma affect memory retrieval (Casey, Pallot and Pieszko 2016; National Center for PTSD 2021).

Women's emotions (such as love, pride, fear, hope, guilt and shame) are also an important source of data to be integrated when trying to understand the presence of DFV. Emotions can be accessed through people's behaviours (Borges Jelinic 2019), and while women from different cultures will likely express their emotions regarding marriage, violence, migration and divorce differently depending on their social class and cultural background (Hochschild 2011), research has indicated how the embodiment of emotions can reveal important information in a process like this (Hochschild 2011). Since the meanings of those expressions may not be accessible to people who do not understand the cultural context, 'feelings rules' of that culture, knowledge of that culture is required to have access to the information communicated (Hochschild 2011).

Melissa's displays of emotion could have contributed with data in her interview process preventing much of the distress that followed. She cried talking about her fears, her loneliness and her traumatic memories, shaking and openly questioning how to be believed. Despite this, her emotions were not only ignored, but also were seen as inconsistent and were, therefore, a reason for a visa refusal.

For Sierra, having Home Affairs question her after her ex-partner's correspondence resulted in her loss of trust in the process. She felt 'frustrated', 'apprehensive' and threatened 'day by day'. After an experience of DFV that made her fearful and feel 'abandoned', interactions with Home Affairs only worsened her situation and, most likely, her mental health. She described feeling treated 'like a criminal' and that she had to 'create evidence' to 'make them happy'. Elements of Sierra's experience appeared in most of the women's accounts of their own experiences.

Both women described fear of deportation, a common thread in all interviews conducted in this research. Participants in this study experienced Home Affairs echoing the voice of their partners, as threats of deportation are prevalent among violence against migrant women with uncertain visa status (Borges Jelinic 2019; Shabbar 2012). These women responded to those threats with fear and suspicion.

On a material level, both women experienced a loss of income, difficulty to find stable work and loss of access to public health. Women lose their right to welfare benefits once their visa is refused and many experience difficulties in accessing a Medicare card for their access to health services (Borges Jelinic 2021). All women in the study, and particularly Sierra, mentioned the long waiting times and poor communication around the issue. The issue is amplified because so many rights are visa dependent. Finally, there is a potential delay between the AAT setting a decision aside and the Home Affairs granting the visa. This is meaningful because rights to welfare and certain work entitlements can be delayed for months even after women have their visas approved (Borges Jelinic 2021).

## Conclusion

While it is important to acknowledge that eventually both women described in this article received PR, the research shows the negative consequences of the FV provisions not engaging with women's full relationship history and their voice, cultural understandings of marriage, abuse and emotions. As a result, women are disadvantaged in the process.

Women described feeling threatened and mistreated by the system. Unclear time frames had a significant effect on women's emotional and material outcomes. Further, women identified Home Affairs as reproducing the power imbalance and control experienced in their relationships. This put women in a defensive position rather than providing an opportunity to tell their stories and be believed. Most women were very discouraged by the second interview and even had a negative image of Australia as a result of the process.

This visa process creates a hierarchy within the abusive relationship and this issue continues beyond the end of the relationship. The conclusion is that even when women have agency, in the decision to separate or in some other relationship decision, the power imbalance embedded in abusive relationships persists through the visa process (Qureshi, Charsley and Shaw 2014). Research indicates that severe violence is higher against women who are very dependent on their partners (Walby 2009). The immigration process and FV provisions do not mitigate this dependency and, in fact, seem to perpetuate it. Put simply, Home Affairs demands reduce women's agency instead of supporting it both during and after separation.

Some of the alternatives include adopting a trauma-informed legal and supportive model such as specialised teams in other migrant-seeking countries that combine the roles of informing women of their rights, referral to support services, gathering evidence for the visa process and making visa decisions. Not engaging with women's stories and not emphasising their physical, emotional and material safety risks mean migrant women returning to perpetrators. Migrant women should not be put in a situation where they trust their abuser more than the immigration system.

*Correspondence:* Dr. Ana Borges Jelinic: Lecturer, Australian College of Applied Psychology, 410 Ann Street, Brisbane 4000, Australia. Email: [ana.jelinic@acap.edu.au](mailto:ana.jelinic@acap.edu.au)

---

<sup>1</sup> According to Melissa, this was her main support service.

## References

- Ahmadzai M, Stewart CC and Sethi B (2016) Study on visible minority immigrant women's experiences with domestic violence. *Open Journal of Social Sciences* 4(5): 269–286. <https://doi.org/10.4236/jss.2016.45030>
- Ailwood S, Easteal P and Kennedy J (2012) Law's indifference to women's experience of violence: Colonial and contemporary Australia. *Women's Studies International Forum* 35(2): 86–96. <https://doi.org/10.1016/j.wsif.2012.02.010>
- Akbari AH and MacDonald M (2014) Immigration policy in Australia, Canada, New Zealand, and the United States: An overview of recent trends. *International Migration Review* 48(3): 801–822. <https://doi.org/10.1111/imre.12128>
- Auchmuty R and Van Marle K (2012) Special issue: Carol Smart's feminism and the power of law. *Feminist Legal Studies* 20: 65–69. <https://doi.org/10.1007/s10691-012-9203-z>
- Australian Law Reform Commission (2012) Family violence and Commonwealth laws—improving legal frameworks. *ALRC Report 117*. [https://www.alrc.gov.au/wp-content/uploads/2019/08/whole\\_alrc\\_117.pdf](https://www.alrc.gov.au/wp-content/uploads/2019/08/whole_alrc_117.pdf)
- Borges Jelinic A (2019) 'I loved him and he scared me': Migrant women, partner visas and domestic violence. *Emotion, Space and Society* 32: 1–8. <https://doi.org/10.1016/j.emospa.2019.100582>
- Borges Jelinic A (2020) Australia's family violence provisions in migration law: A comparative study. *Flinders Law Journal* 21(2): 259–294.
- Borges Jelinic A (2021) Reflections on the 're-victimization' of migrant women by legal and social systems. In Ávila TP, Yamamoto A, Faria CE, McCulloch J, Carrington K (eds), *Reflections on prevention policies for gender-based violence against women & girls: Debates in Brazil & Australia*: 154–161. Brasília, DF: UN Women, MPDFT. <https://www.mpdft.mp.br/portal/index.php/conhecampdft-menu/nucleos-e-grupos/ndh/12615-brazil-australia>
- Byrne A, Canavan J and Millar M (2009) Participatory research and the voice-centred relational method of data analysis: Is it worth it? *International Journal of Social Research Methodology* 12(1): 67–77. <https://doi.org/10.1080/13645570701606044>
- Campbell R and Wasco SM (2000) Feminist approaches to social science: Epistemological and methodological tenets. *American Journal of Community Psychology* 28(6): 773–791. <https://doi.org/10.1023/A:1005159716099>
- Canadian Domestic Homicide Prevention Initiative (2018) Domestic violence and homicide in immigrant and refugee communities: Culturally informed risk and safety strategies. *Domestic Homicide Brief No. 4*. [http://cdhpi.ca/sites/cdhpi.ca/files/Brief\\_4-Online-Feb2018-linked-references.pdf](http://cdhpi.ca/sites/cdhpi.ca/files/Brief_4-Online-Feb2018-linked-references.pdf)
- Caruana C (2005) Changes to federal family law and state domestic violence legislation. *Family Matters* 70: 66–67.
- Carrington K, Guala N, Puyol MV and Sozzo M (2020) How women's police stations empower women, widen access to justice and prevent gender violence. *International Journal for Crime, Justice and Social Democracy* 9(1): 42–67. <https://doi.org/10.5204/ijcisd.v9i1.1494>
- Casey N, Pallot C and Pieszko R (2016) Family violence assessments. Under the Migration Act: Issues of procedural fairness and non-transparency. *Brief for the Refugee and Immigration Legal Service, June 2016*.
- Chiu T (2017) Marriage migration as a multifaceted system: The intersectionality of intimate partner violence in cross-border marriages. *Violence Against Women* 23(11): 1293. [10.1177/1077801216659940](https://doi.org/10.1177/1077801216659940).
- Cho S, Crenshaw K and McCall L (2013) Toward a field of intersectionality studies: Theory, applications, and praxis. *Signs, Intersectionality: Theorizing Power, Empowering Theory* 38(4): 785–810.
- Department of Social Services (2019) *The national plan to reduce violence against women and their children 2010–2022*. <https://www.dss.gov.au/women/programs-services/reducing-violence/the-national-plan-to-reduce-violence-against-women-and-their-children-2010-2022>
- Doucet A and Mauthner NS (2008) What can be known and how? Narrated subjects and the Listening Guide. *Qualitative Research* 8(3): 399–409. <https://doi.org/10.1177/1468794106093636>
- Douglas H (2012) Battered women's experiences of the criminal justice system: Decentring the law. *Feminist Legal Studies* 20(2): 121–134. <https://doi.org/10.1007/s10691-012-9201-1>
- Douglas H (2019) Policing domestic and family violence. *International Journal for Crime, Justice and Social Democracy* 8(2): 31–49. <https://doi.org/10.5204/ijcisd.v8i2.1122>
- Douglas H, Harris BA and Dragiewicz M (2019) Technology-facilitated domestic and family violence: Women's experiences. *British Journal of Criminology* 59(3): 551–570. <https://doi.org/10.1093/bjc/azy068>
- Eubel S (2010) 'Flying Fräuleins': The construction of single migrant women in discourses on migration in Australia and West Germany in the 1950s and 1960s. *Gender, Place & Culture* 17(6): 743–758. <https://doi.org/10.1080/0966369X.2010.517024>
- Fischbach RL and Herbert B (1997) Domestic violence and mental health: Correlates and conundrums within and across cultures. *Social Science & Medicine* 45(8): 1161–1176. [https://doi.org/10.1016/s0277-9536\(97\)00022-1](https://doi.org/10.1016/s0277-9536(97)00022-1)
- Gilligan C and Eddy J (2017) Listening as a path to psychological discovery: An introduction to the Listening Guide. *Perspectives on Medical Education* 6(2): 76–81. <https://doi.org/10.1007/s40037-017-0335-3>



- Gray L, Eastaer P and Bartels L (2014) Immigrant women and family violence: Will the new exceptions help or hinder victims? *Alternative Law Journal* 39(3): 167–171. <https://doi.org/10.1177/1037969X1403900306>
- Hochschild A (2011) Emotional life on the market frontier. *Annual Review of Sociology* 37: 21–33. <https://doi.org/10.1146/annurev-soc-081309-150137>
- Ingram M, McClelland DJ, Martin J, Caballero MF, Mayorga MT and Gillespie K (2010) Experiences of immigrant women who self-petition under the Violence Against Women Act. *Violence Against Women* 16(8): 858–880. <https://doi.org/10.1177/1077801210376889>
- Judicial Council on Cultural Diversity (2016) *The path to justice: Migrant and refugee women's experience of the courts*. [https://jccd.org.au/wp-content/uploads/2021/06/JCCD\\_Consultation\\_Report\\_-\\_Migrant\\_and\\_Refugee\\_Women.pdf](https://jccd.org.au/wp-content/uploads/2021/06/JCCD_Consultation_Report_-_Migrant_and_Refugee_Women.pdf)
- Kaladelfos A and Featherstone L (2014) Sexual and gender-based violence: Definitions, contexts, meanings. *Australian Feminist Studies* 29(81): 233–237. <https://doi.org/10.1080/08164649.2014.958121>
- Langfield M (2002) 'A chance to bloom': Female migration and salvationists in Australia and Canada, 1890s to 1939. *Australian Feminist Studies* 17(39): 287–303. <https://doi.org/10.1080/0957126022000018106>
- Miller E and Silverman JG (2010) Reproductive coercion and partner violence: Implications for clinical assessment of unintended pregnancy. *Expert Review of Obstetrics & Gynecology* 5(5): 511–515. <https://doi.org/10.1586/eog.10.44>
- National Center for PTSD (2021) *PTSD checklist for DSM-5 (PCL-5)*. <https://www.ptsd.va.gov/professional/assessment/adult-sr/ptsd-checklist.asp>
- Orloff L and DePalo L (eds) (2013) Collaboration, confidentiality and expanding advocacy. In *Breaking barriers: A complete guide to legal rights and resources for battered immigrants*: 6–55. Washington, DC: National Immigrant Women's Advocacy Project. <http://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/pdf/FAM-Manual-Full-BreakingBarriers07.13.pdf>
- Pinto KC (2004) Intersections of gender and age in health care: Adapting autonomy and confidentiality for the adolescent girl. *Qualitative Health Research* 14(1): 78–99. <https://doi.org/10.1177/1049732303259674>
- Piper N (2006) Gendering the politics of migration. *Gender and Migration Revisited* 40(1): 133–164. <https://doi.org/10.1111/j.1747-7379.2006.00006.x>
- Queensland Government (2021) *Being held in police custody*. <https://www.qld.gov.au/law/crime-and-police/being-arrested-and-police-custody/being-held-in-police-custody>
- Qureshi K, Charsley K and Shaw A (2014) Marital instability among British Pakistanis: Transnationality, conjugalities and Islam. *Ethnic and Racial Studies* 37(2): 261–279. <https://doi.org/10.1080/01419870.2012.720691>
- Saroca C (2013) The absent and silenced voice in media representations of Filipina victims of homicide in Australia. *South East Asia Research* 21(3): 517–543. <https://doi.org/10.5367/sear.2013.0161>
- Shabbar F (2012) Protecting our non-citizens: Iraqi women on Australian temporary spouse visas. *The Sociological Review* 60(1): 149–168. <https://doi.org/10.1111/j.1467-954X.2011.02046.x>
- Special Taskforce on Domestic and Family Violence in Queensland (2015) *Not now, not ever: Putting an end to domestic and family violence in Queensland*. <https://www.csyw.qld.gov.au/campaign/end-domestic-family-violence/about/special-taskforce>
- Stark E (2010) Do violent acts equal abuse? Resolving the gender parity/asymmetry dilemma. *Sex Roles* 62(3–4): 201–211. <https://doi.org/10.1007/s11199-009-9717-2>
- Voolma H (2018) 'I must be silent because of residency': Barriers to escaping domestic violence in the context of insecure immigration status in England and Sweden. *Violence Against Women* 24(15): 1830–1850. <https://doi.org/10.1177/1077801218755974>
- Walby S (2009) *Globalization and inequalities: Complexity and contested modernities*. London: SAGE.
- Walby S (2012) Violence and society: Introduction to an emerging field of sociology. *Current Sociology* 61(2): 95–111.
- Walby S and Armstrong S (2012) Intersectionality: Multiple inequalities in social theory. *Sociology*.
- Walby S and Towers J (2018) Untangling the concept of coercive control: Theorizing domestic violent crime. *Criminology & Criminal Justice* 18(1): 7–28. <https://doi.org/10.1177/1748895817743541>
- Walby S, Towers J, Balderston S, Corradi C, Francis B, Heiskanen M, Helweg-Larsen K, Mergaert L, Olive P, Kelly E, Stöckl H and Strid S (2017) *The concept and measurement of violence against women and men*. Bristol: Policy Press.
- Walklate S and Fitz-Gibbon K (2019) The criminalisation of coercive control: The power of law? *International Journal for Crime, Justice and Social Democracy* 8(4): 94–108. <https://doi.org/10.5204/ijcjsd.v8i4.1205>
- White ME and Satyen L (2015) Cross-cultural differences in intimate partner violence and depression: A systematic review. *Aggression and Violent Behaviour* 24: 120–130. <https://doi.org/10.1016/j.avb.2015.05.005>
- Wong JYH, Tiwari A, Fong DYT and Bullock L (2016) A cross-cultural understanding of depression among abused women. *Violence Against Women* 22(11): 1371–1396. <https://doi.org/10.1177/1077801215624791>



Zadnik E, Sabina C and Cuevas CA (2016) Violence against Latinas: The effects of undocumented status on rates of victimization and help-seeking. *Journal of Interpersonal Violence* 31(6): 1141–1153.  
<https://doi.org/10.1177/0886260514564062>

**Legislation cited**

*Migration Act 1958* (Cth)

*Migration Amendment (Family Violence and Other Measures) Bill 2016*

*Migration Regulations 1994* (Cth)

*Social Security Act 1991* (Cth)

*Statutory Declarations Act 1959* (Cth)

*Statutory Declarations Regulations 2018* (Cth)

## Appendix 1: Participants

No.	Pseudonym	Women's place of origin	Age (1st interview)	Religion	Partner's background	Relationship status	Time in Aus (1st interview)	Separation time (1st interview)	Immigration stage (1st interview)	Immigration stage (2nd interview)	Children (in Australia or away)	Decided to leave the house
1	Tiana	Asia	26	Not stated	Asia (same country)	De facto	5 years	10 months	Immigration	Refused	0	No
2	Sierra	Europe	44	Not stated	Australia	Marriage	5.5 years	3 years	Post-AAT	Granted PR	0	Yes
3	Patti	Asia	47	Buddhism	Australia	N/A	6 years	4.5 years	Post-AAT	Granted PR	0	No
4	Belle	Asia	35	Not stated	Australia	Marriage	1.5 years	1 year	AAT	AAT	Girl (9 yrs) in Australia	No (She left once before.)
5	Zelia	Asia	29	Not stated	Australia	Marriage	4.5 years	1.5 years	Immigration	Granted PR	0	No
6	Isobel	Europe	32	Not stated	Australia	De facto	6 years	1.5 years	AAT	Post-AAT	0	Yes
7	Esmeralda	Latin America	29	Not stated	Middle East	De facto	3.5 years	1.5 years	AAT	Post-AAT	0	Yes, but he forced her to leave before.
8	Melissa	Africa	38 (approx.)	Evangelical Christianity	Australia	Marriage	2.5 years	2.2 years	AAT	Post-AAT	0	No
9	Aurora	Asia	34	Not stated	Australia	De facto	1.5 years	5 months	Immigration	Immigration	0	No
10	Gina	Asia	53	Buddhism	Australia	De facto	2.5 years	5 months	Immigration	Granted PR	0	Yes
11	Rhiannon	Asia	36	Christian	Asia	Marriage	4 years	5 months	Immigration	AAT	0	No
12	Elis	Latin America	44	Catholicism	Middle East	Marriage	2 years	5 months	Immigration	Granted PR	Boy (20 yrs) away + Boy (8 yrs) in Australia	No. He left, and then made her leave.
13	Simone	Asia	34	Not stated	Australia	De facto	8 years	3 months	Immigration	Immigration	0	No. He left, forcing her to move.
14	Mercedes	Latin America	24	Not stated	Australia	De facto	3 years	6 months	Immigration	Granted PR	0	Yes
15	Maria	Latin America	28	Not stated	Latin America	De facto	2 years	2 months	Immigration	Granted PR	0	Yes
16	Elza	Latin America	38	Christianity	Australia	N/A	4 years	1 year	AAT	Post-AAT	Boy (17 yrs) in Australia	No
17	Nala	Latin America	30	Not stated	Latin America	Marriage	2 years	2 months	Immigration	Immigration	Girl (18 yrs) in Australia	No
18	Kim	Africa	58	Islam	Europe	Marriage	3 years	2.6 years	Post-AAT	Post-AAT	Girl (18 yrs) in Australia	No
19	Lea	Asia	41	Not stated	Australia	Marriage	2.6 years	11 months	AAT	AAT	0	No. He left and forced her to move.
20	Jasmine	Asia	34	Not stated	Asia	De facto	4 years	1.5 years	AAT	AAT (day before)	0	Yes