Separating MOTHERS and CHILDREN

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Australia's gendered immigration law and policy.

Australia's current immigration law and policy appears to be non-discriminatory at first glance. Its effect, however, is gendered and mothers are often discriminated against and separated from their children.

Family migration

Family migration includes spouse, parent, child, special need relative, orphan relative, aged dependent relative and last remaining relative visa categories. On 3 July 1996 the Minister for Immigration and Multicultural Affairs announced a cut to the family migration intake of 10,000 places in 1996–1997.

More women than men tend to enter under the Family Migration category, whereas more men than women tend to enter under all other categories.[1] The other categories are economic and skills based and fail to recognise skills such as child rearing which many women have acquired at the expense of acquiring trades and other qualifications. A cut to the Family Migration category is, therefore, a form of indirect discrimination which will result in fewer women migrating to Australia in 1996–1997.

A common case scenario presenting itself to the Immigration Advice and Rights Centre (IARC) is that of the unlawful mother with an Australian citizen child. The Australian father has disappeared and the mother has custody of the child. How does the mother become an Australian in order to care for the child?

The obvious solution is for the Australian citizen child to sponsor the mother for a parent visa. Unfortunately there are many obstacles to be overcome.

The mother must leave the country to get a visa

Unless the mother is over the retirement age and not unlawful she cannot be sponsored onshore and must apply for the visa outside Australia. This process is very costly and can result in the separation of the mother and child or in the child being forced to live in the mother's country of origin often with substandard health care and education while the visa application is being processed.

The balance of family test must be met

This test was introduced to create an artificial limit to the number of parent visas issued. The argument was that the more children the parent had residing in Australia, the more likely they were to settle well in Australia. On 3 July 1996 the Minister for Immigration announced changes making the test even tougher than it was already. The balance of family test previously required that at least half of the applicant's children lived in Australia. The test now requires that *the majority of children of the parent are now required to be Australian citizens or permanent residents and must be usually resident in Australia.*

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Where an unlawful mother has one Australian Citizen child and another, unlawful child from a non-Australian father, the Australian citizen child will be unable to sponsor the mother on a parent visa as she fails the balance of family test. The test results in grave injustices. In many cases application of the test will involve the separation of mothers and children.

An assurance of support must be provided and a $3500 bond must be lodged

The provision of an assurance of support is a mandatory requirement for the parent visa category. An assurance of support is a contract which is signed by an Australian citizen or permanent resident in full-time employment which guarantees to reimburse the Government for any social security benefits obtained by the parent in the first two years of residence. The assets and income of the assuror are assessed by the Department of Immigration to ensure that repayment of any debt which arises is feasible.[2] A $3500 bond must also be lodged with the Federal Government and it will be returned at the end of the first two years of the parent's residence if no social security benefits have been claimed by the parent. A non-refundable health services charge of $942 must also be paid on top of a $600 application fee.

Where any of these requirements are not met, the application will be rejected. Australian citizen children from poor families are seriously disadvantaged by these provisions which can result in the separation of families.

An unlawful Fijian single mother with an Australian citizen child has previously been rejected for refugee status and now has to go to Suva to lodge a parent visa application. She has a factory job in Australia. She cannot find anyone to sign the assurance of support and she also needs to find about $7000 to pay for the bond, health services charge, application fee and airfare for her and her child to go to Suva. She cannot save this kind of money and support her child on her factory wage and so she will have to remain unlawful and risk apprehension, detention and deportation.

The health requirements must be met

Applicants for all permanent Australian visas must meet the health requirements. In the Parent visa class there is no provision for waiver of these requirements and where a parent fails to meet the health requirements, the application for a visa will be rejected. The only way to overcome this rejection would be by direct intervention on the part of the Minister for Immigration, which happens very rarely. This means a family can be separated because the mother is in poor health or an Australian child can be forced to live outside Australia in order to be with the mother.

The current health requirement is contained in schedule 4 of the Migration Regulations and reads:

> 4005 The applicant:
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> (a) is free from tuberculosis; and
>
> (b) is free from a disease or condition that is, or may result in the applicant being, a threat to public health in Australia or a danger to the Australian community; and
>
> (c) is not a person who has a disease or condition that, during the applicant's proposed period of stay in Australia, would, be likely to:
>
> (i) result in a significant cost to the Australian community in the areas of health care or community services; or
>
> (ii) prejudice the access of an Australian citizen or permanent resident to health care or community services; and
>
> (d) if the applicant is a person whom a Medical Officer of the Commonwealth has requested a signed undertaking to present himself or herself to a health authority in the State or Territory of intended residence in Australia for a follow-up medical assessment, the applicant has provided such an undertaking.

A single mother with an Australian citizen child has a renal condition of which she is unaware. When she applies for a parent visa a medical officer of the Commonwealth assesses that her kidney condition will deteriorate such that in 10 to 20 years she will require dialysis and perhaps a kidney transplant. She is rejected for her visa and her child has to join her in the mother's home country where health and education standards are lower and the Australian child will be disadvantaged.

The sponsor must be a citizen

On 3 July 1996, the Minister for Immigration announced an additional hurdle to the reunification of families. He said that from 3 July 1996, only Australian citizens will be able to sponsor people under the Preferential Family category. Mr Ruddock said, 'The right to sponsor family members to become part of Australian society is a privilege that should only be available to those who have made a public commitment to Australia by becoming an Australian citizen'. Mr Ruddock's attempts to 'encourage' citizenship directly contradict that other oft-touted Liberal ideal — the importance of the family unit.

The only exceptions will be:

- The 'immediate family' of refugees who were known to the Department of Immigration at the time the refugee visa was granted (immediate family is defined as: spouse of refugee, dependent child of refugee or parent of a refugee who has not turned 18).
- Dependent children under 18 years of age who were born outside Australia to a parent who has permanent residence at the time of birth or whose permanent resident parent has been granted custody of the child either in Australia or overseas or whose overseas parent dies or becomes incapable of caring for the child and the Minister is satisfied it is appropriate in the circumstances for the visa to be granted.
- Permanent residents may still sponsor children under or over 18 where the child was included in the application of the parent that resulted in the grant of permanent residence to the parent.

  Spouses of permanent residents where the permanent resident sponsor made an application for permanent residence before 3 July 1996 and where the spouse relation-

ship existed and was known to the Department of Immigration before that date. This exception will be open only until October 1997. After that time only Australian Citizens will be allowed to sponsor their spouse.

Special provisions for some unlawful spouses of Australians

In May 1996 the Minister for Immigration announced special provisions for some unlawful spouses of Australians which would commence from August 1996. Unlawful persons who are in Australia and who are married or in a *de facto* relationship with an Australian citizen will be able to lodge applications onshore for spouse visas where they can show 'compelling circumstances'. The problem is that any unlawful persons who have already made a prior application for permanent residence and been rejected will be excluded from these special provisions. Most unlawful persons have at some stage made some sort of application for permanent residence so that the special provisions announced in May 1996 have given false hope to many families where one parent will still have to go overseas and apply for a spouse visa from offshore because they don't fit the requirements for the special provisions. Where families are poor and mothers have very young children this creates particular hardship.

Changes to the meaning of de facto relationship

At present *de facto* couples have to prove they are in a genuine and continuing relationship and while it is unusual for *de facto* visas to be issued where there is less then six months co-habitation, no particular length of co-habitation is required by law.

The Federal Government has indicated that it intends to toughen up the *de facto* provisions to require applicants to show two years of co-habitation prior to lodging a *de facto* spouse application. A two-year co-habitation requirement is almost impossible to satisfy if one partner is not Australian and both partners cannot easily get temporary visas either in Australia or the non-Australian's country of origin. Those who can marry will therefore marry. This social engineering is out of step with Australian social norms. A mother of an Australian child who has been in a *de facto* relationship with the child's Australian father for less than two years will be unable to apply for a spouse visa unless she and the Australian father marry. This brings to mind Australia's earlier more blatantly prejudicial immigration policies. In 1960, the then Minister for Immigration Mr A.R. Downer said about *de facto* entry to Australia: 'An immigration policy which smiles on illicit unions would not be in the interests of the Good Life of the Australian community. Those who wish to live in such a way should not expect an easy entry into this country.' (Department of Immigration file 72/77443)[3]

Domestic violence

Women who marry Australians and apply for residence onshore in the spouse visa classes have to stay in the relationship for two years from the date of the visa application in order to get permanent residence. Where they can prove they or their children are victims of domestic violence in the relationship, the regulations currently allow them to be granted permanent residence if they leave the relationship before the two years have expired.

These changes are very important to women and children and are comparatively recent. Before July 1995 if a woman left a relationship because of violence perpetrated by the Australian husband towards her child, she stood to have her visa cancelled. Since July 1995 special provision was made in the Migration Regulations allowing violence against a child as a ground for obtaining permanent residence where the relationship breaks down before two years have passed from the date of the visa application.

The Federal Government is currently reviewing the domestic violence provisions in Immigration Law and has already announced an intention to restrict the operation of the provisions by toughening evidentiary requirements. It is crucial that the importance of these provisions to women and children is recognised and that any narrowing of their operation is resisted. In fact there are strong arguments to extend the operation of the provisions. The domestic violence provisions attach to onshore marriage and defacto visas. In the case of fiancee visas the domestic violence provisions can only be accessed after the fiancee has actually married the Australian citizen.

In IARC's experience many Australian men have already exploited this loophole in the operation of the provisions and are sponsoring women (and in cases where they have dependants, their children) on fiancee visas, and refusing to marry them, forcing them to remain in violent *de facto* relationships and allowing their visas to expire so that they become unlawful. In this way the women are unable to access the existing domestic violence provisions. If they try and leave the relationship or contact the police they will be removed.

Women who suffer domestic violence in an overseas country and apply to migrate to Australia with their children also face problems due to Australian immigration policy. In order to sponsor children to Australia a parent must show there is no overseas parent with access, guardianship or custody rights which would be prejudiced by granting the child a visa to come to Australia. Where a woman and her children leave a relationship due to domestic violence it is often impossible to obtain the agreement of the father to grant her full legal custody and the right to take the children out of the country.

> A woman who has separated from her husband overseas due to domestic violence has a young child of the relationship. All her relatives are now Australian citizens or permanent residents and so she is eligible to apply for a last remaining relative visa. She wants to come to Australia as soon as possible as she is without protection in the overseas country. The police are assisting her ex-husband instead of protecting her. She cannot get a court order granting her sole custody, guardianship and access rights to the child and her ex-husband refuses to sign away his rights to the child thereby preventing her from being able to obtain a visa for the child. If she comes to Australia she will have to leave her child behind.

The capping of parent and preferential family visas

On 1 August 1996, the Minister for Immigration announced that the number of visas available for the Preferential and Parent visa categories would be capped at 6000 for the 1995–96 financial years. Given that the total number of applications for Preferential Family visas in the last financial year was 36,107, this decision will have disastrous consequences for family reunification. Most of the people affected by this will, of course, be women and children.

Mothers with adult children face problems too

The Balance of Family Test which was explained earlier causes particular hardship for ageing mothers who have cultural ties to their Australian children. The balance of family test is stringently applied even where culturally the Australian child is recognised as being the child who is supposed to look after the parent in old age.

The balance of family test needs to be reformed to take account of the psychological and financial ties between an applicant and the sponsoring child as compared with other children and the impact of cultural norms on that relationship.[4]

An elderly woman from Chile approached the Centre (IARC) about her case. She had one child in Australia, one in Argentina, one in Brazil, one in the USA and one in Chile. She had been living for some time with an elderly friend in Chile and they had been supporting each other. Her friend had become sick and was no longer able to offer support. The child living in Chile was extremely poor and lived in a house with three families. The child in Australia had been sending some money to support her mother. The mother had previously been rejected for immigration as an aged dependent relative (where the balance of family is not required to be met but financial emotional or physical dependency must be shown to have existed for 'a reasonable period') and did not pass the balance of family test.[5]

Australian immigration policy and refugees

Most refugees are women and children and yet fewer refugee applications are lodged in Australia by women than by men.[6] This means that recent cuts by the Federal Government to Australia's offshore refugee program will hit women and children the hardest.

Over 80% of the world's 20 million refugees are women and children. Yet the number of onshore refugee visas granted to women and children is nowhere near 80% of the onshore refugee visa program. The reasons for women and children's under-representation in the onshore refugee category are numerous, but the most obvious reason is the difficulty faced by financially destitute and physically vulnerable women and young children trying to travel. For example how do women and children stranded in a war-torn region such as Somalia or Iraq find the airfares and obtain the documents for themselves and their children to travel to Australia.

Women and children's lack of access to onshore refugee visas means that cuts to Australia's offshore refugee program announced on 3 July 1996 will hit women and children the hardest.

If women do manage to arrive in Australia against the odds and lodge applications for refugee status they are detained while their refugee application is being processed. Their children are usually found foster homes in the community during the period of the mother's detention as most mothers would rather their children did not spend time in a detention centre or prison. This results in the separation of refugee mothers and children.

Many onshore refugee applicants arrive as a 'family representative'. Family members have pooled scarce resources to send someone to Australia to seek asylum. A male relative is usually sent. Women and children wait behind in the home country or in refugee camps. It takes months and sometimes

A Kurdish woman arrived from Turkey with her two children, aged 7 and 9, in early November 1995. On arrival they were taken into custody and detained at Villawood Detention Centre where they lodged an application for a Protection Visa. Regulation 2.20 of the Migration Regulations provides for the release of minors from detention where the relevant child welfare authority has certified that it is in the best interests of the child and adequate arrangements have been made for the care of the minor outside detention. There is no provision in the migration legislation for the release of a custodial parent or guardian so the mother agreed to the release of her children into the care of their grandmother, a permanent resident. Her only other option was to subject her children to a lengthy period of detention. The mother was separated from her children for approximately five months. At the second of two interviews with the Department of Immigration the woman expressed her despair at the prolonged separation. In response the interviewing officer said it was her own fault that she was separated from her children as she was the one who had requested they be released.

one or more years for the refugee applicant to have their claim processed. Once they are granted refugee status they now have to wait a further two years before they can become citizens in order to sponsor their wives and children. During this long waiting period the wives and children are exposed to dangers such as political reprisals, famine, rape and robbery in the home country or in a refugee camp.

There is an obvious solution. *Once a refugee applicant is granted a protection visa, visas should automatically be issued to their family members also.* Prior to 1994 this was the case. It seems that when the 1994 Regulations were introduced, this provision was omitted by an oversight. Two successive Federal Governments have not seen fit to rectify the error. Instead the current Federal Government is allowing the already lengthy period of separation of refugee families to be exacerbated by introducing a new requirement that all sponsors be citizens. (Currently it takes two years of residence for a permanent resident to become eligible for citizenship.)

Conclusion

Australia's immigration policy results in the separation of mothers and children in many instances. Several of the discriminatory policy initiatives described in this article have been introduced as recently as July 1996. The Australian community needs to be made aware of the discriminatory nature of these changes in order to enable effective public debate on immigration policy to take place.

The recent changes have resulted in the reconvening of the National Immigration Forum, a group made up of community organisations with an interest in the immigration debate. Hopefully this forum will stimulate public discussion.

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