



Review

Spouse Sponsorship Policies: Focus on Serial Sponsors

Nafiseh Ghafournia 1 and Patricia Easteal 2,* (D)



- Faculty of Education and Social Work, The University of Sydney, Camperdown, Sydney 2006, Australia; ngha6128@uni.sydney.edu.au
- School of Law and Justice, University of Canberra, Bruce, Canberra 2601, Australia
- Correspondence: patricia.easteal@canberra.edu.au; Tel.: +61-6201-5779

Received: 28 September 2017; Accepted: 26 October 2017; Published: 1 November 2017

Abstract: Australian citizens or permanent residents can sponsor a spouse or prospective spouse for immigration, and concerns have been raised particularly in regards to serial or repeat sponsorship and the rights to safety for sponsored partners who are victims of domestic violence. There has been little research to date though on this type of family migration. By bringing together immigration statistics and policies from current national and international literature, this paper provides a more nuanced portrayal of patterns of spouse sponsorship and the potential problems of serial sponsorship and protection of those sponsored from intimate partner violence (IPV). We identify the limitation of the existing immigration policy and law for protecting the right of sponsored spouses who are mainly women. Some recommendations to better support these sponsored people are also explored.

Keywords: serial spouse sponsorship; domestic violence; intimate partner violence; immigration policy

1. Introduction

Immigrants form a significant part of Australian society and have contributed to the country's development. The 2016 Census shows that nearly half (49 per cent) of Australians had either been born overseas (first generation Australian) or one or both parents had been born overseas (second generation Australian) (Australian Bureau of Statistics 2017). The Australian migration program includes three streams: skilled, family, and special eligibility, while the humanitarian program offers resettlement to refugees and to displaced persons. The family stream enables family formation and reunion by allowing the migration of family members, such as spouses, children, parents, and certain other members of extended families. It is the second-largest component of Australia's immigration program, and according to the Department of Immigration and Border Protection (2016a) has three main categories: partner, which includes prospective marriage (fiancé) and partner (provisional and permanent) visas; parent, which includes contributory and non-contributory parent visas; and other family, which covers carer, remaining relative, aged dependent relative, and orphan relative visas.

The partner category—the focus of this paper—includes visa categories for married and de facto partners who are in or outside Australia and prospective marriage visas for fiancés who are outside Australia (Department of Immigration and Border Protection 2015). Partner visas allow migrants to move to Australia based on their spousal or de facto relationship with an Australian citizen or permanent resident (Australian Law Reform Commission 2011, p. 490). Some researchers identify two categories within the spouse/partner migration: family reunion and marriage migration, in which there are other subcategories (Khoo 2001; Charsley et al. 2012; Birrell 1995). Given the different terms and the link between categories, we use the term 'partner' or 'spouse' for any person who is sponsored by an Australian citizen.

Intimate partners (such as spouses, de facto partners, and fiancés) of Australian citizens or permanent residents do not have an automatic right to permanent residency in Australia. Partner visas

Laws 2017, 6, 24 2 of 13

are usually granted in a two-stage process, with a provisional visa given initially and the permanent visa being considered two years after the initial application (Department of Immigration and Border Protection 2015), as the Australian government needs to be satisfied that the relationship is genuine (Shabbar 2012).

There is an exception to this two-year requirement of cohabitation. First introduced in 1989 and now referred to as the Family Violence Exception, this piece of legislation, which has been amended numerous times over the past 25-plus years (Gray et al. 2014), allows applicants who have experienced domestic violence to still be considered for permanent residence. The family violence exception did, at least in theory or on paper, protect sponsored spouses in cases of domestic violence. However, there have been limitations in its implementation, which we discuss later.

In addition, gaps in policy particularly relating to serial spouse sponsorship have been identified (Cunneen and Stubbs 2000; Easteal 1996a; Ghafournia 2011; Iredale 1995; Lyneham and Richards 2014; Quinn 2009; Quinn 2009). Multiple or serial sponsorship refers to a person 'who has previously petitioned for the immigration of more than one partner, with no derogatory from the said earlier partnership(s). Cases range from domestic violence, pornography, and drug addiction, among others' (Cabilao-Valencia 2015, p. 164). In the Australian context, 'repeat sponsors are people who have sponsored more than one spouse or fiancé to come to Australia. Serial sponsors are defined by the Department of Immigration and Ethnic Affairs ('DlEA') as 'repeat sponsors of concern', for example, 'where there is evidence to suggest that the sponsor has been abusive in at least one relationship' (Iredale 1995, p. 38). Schloenhardt and Jolly (2010, pp. 678–79) define serial sponsorship as a situation 'where an individual may sponsor multiple persons to enter Australia where they may then be subjected to exploitative situations'. There is limited information about the prevalence of this type of sponsorship in Australia.

We do know that there are concerns regarding the power imbalance between sponsor and sponsored individuals including those sponsored serially. This inequality can place abused immigrant women in a vulnerable position (Merali 2009). In line with some international studies, current literature in the Australian context underline the vulnerability of sponsored spouses, in particular overseas-born women, to domestic violence and the role of discriminative immigration laws vis-a-vis this vulnerability (Cunneen and Stubbs 2000; Easteal 1996a; Ghafournia 2011; Iredale 1995; Quinn 2009; Schloenhardt 2009; Vaughan et al. 2015; Gray et al. 2014). Easteal (1996b) focused on immigration policies' limitations as one of the main barriers for abused immigrant women seeking help. Quek (2010) also explored the vulnerability of migrant wives who are often dependent on their husbands due to their fragile legal status that requires the continuation of their marriage.

There has been limited literature and data highlighting the issue of serial sponsorship of spouses by Australian partners; the fact that almost three quarters of serial sponsors had a history of family violence is very disturbing (Schloenhardt 2009). Ghafournia (2011) specifically addressed immigration policy and family violence in Australia, noting that some outstanding issues in Australia's immigration policy should be addressed, such as the lack of monitoring of male perpetrators who serially sponsor immigrant women and subject them to abuse. Historically, attention to the issue of spouse serial sponsorship in Australia arose from research on Filipino migrant women and their experience of domestic violence. Domestic violence among Filipino women was often linked to repeat sponsorship (Iredale 1995). Cuneen and Stubbs (1997) also explored the specific vulnerability of Filipino immigrant women to domestic violence and homicide, with the stereotyped misrepresentation of Filipino women as compliant, ultra-feminine, and obedient wives for western men adding to their susceptibility.

In the following article, first we overview some immigration statistics, in particular data on spouse migration visas. As we see next, this type of migration accounts for a significant number of Australia's migrants, and this is the type of visa that serial sponsors and violent individuals may abuse. The rest of the paper is devoted to a review of the current national and international literature concerning the relevant immigration policies. It is important to understand these in order to identify gaps in the law and to provide recommendations for the better protection of sponsored spouses.

Laws 2017, 6, 24 3 of 13

2. About Spouse Migration Visas to Australia

Almost one third (30.2 per cent; 57,400 places) of the total 2015–2016 migration programme fall within the family stream; 83.3 percent of these were partner sponsored. As Table 1 indicates, between 2012–2013 and 2015–2016, 189,544 people migrated to Australia on a partner migration (partner or prospective marriage) visa as a fiancé, spouse (including de facto partnerships), or interdependent (same sex) partner (2016a)

Year	2012–2013	2013–2014	2014–2015	2015–2016
Partner	46,325	47,752	47,825	47,642
Family	60,185	61,112	61,085	57,400

^{*} Table is drawn from numbers provided by Department of Immigration and Border Protection (2016a).

The number of persons granted a partner migration visa to enter or reside permanently in Australia each year has remained stable between 2006 and 2015. The Family stream outcome for 2015–2016 was 57,400 places (30.2 per cent of the total migration programme outcome). Demand for places in the Family stream in 2015–2016 was 24.1 percent lower than in 2014–2015 (Department of Immigration and Border Protection 2016a).

As expected demographically, New South Wales (NSW) and Victoria were by far the States in which most of those in the family stream intended to live (Department of Immigration and Border Protection 2015). Nearly 40 percent of the partner visas were granted to people from just four countries in 2014–2015: Republic of China (11.8 per cent); India (10.9 per cent); the United Kingdom (8.3 per cent); and the Philippines (5.4 per cent). Prior to 2009–2010, the UK was the main source country for this visa category (Department of Immigration and Border Protection 2015). We note too that between 2001 and 2011, two thirds (n = 222,313) of principal applicants for spouse visas were female (Lyneham and Richards 2014), which is reflective of the gendered nature of this type of visa in Australia.

Turning to serial sponsorship, there have been limited data concerning its prevalence in Australia. One study by the then Department of Immigration, Local Government, and Ethnic Affairs showed that between 1990 and 1992 there were 110 repeat sponsors. All but nine of the men sponsored women from Asia; 80 (73%) were known to have perpetrated some form of domestic violence (Schloenhardt 2009). The report further stated that these figures possibly underestimate the true scale of the issue due to the way in which the data were gathered (Iredale 1995).

Despite regulation 1.20J of the Migration Regulation Act (Cth) (1994) discussed below that dictates a five-year interval between sponsorship, a more recent study using data provided by the Department of Immigration and Border Protection confirms that between 1 July 2005 and 30 June 2011, there were a total of 288 repeat sponsors in Australia (Lyneham and Richards 2014). Each of these people had sponsored one partner on *two* separate occasions; none had sponsored more than two individual partners on a partner or prospective marriage visa.

Another potential type of harm involving partner migration (and possibly serial sponsorship), which has had little research, concerns victims of human trafficking generally and those trafficked for the purpose of domestic servitude specifically (Schloenhardt and Jolly 2010). There have been some studies on the trafficking and sexual servitude of immigrant women in Australia (Burn et al. 2011; Cullen and McSherry 2009; David 2010); however, little attention has been given to domestic servitude largely because of the furtive nature of human trafficking and in particular the hidden nature of exploitation that occurs in domestic settings (Lyneham and Richards 2014).

3. Spouse Sponsorship: A Sample of International Policies or Regulations

There are some regulations for sponsoring family members and in particular spouses in several immigrant-receiving countries (discussed next), but the focus of the regulation is normally not serial

Laws 2017, 6, 24 4 of 13

spouse sponsorship. For example, both Denmark and Norway require the individual to have a certain standard of housing in order to sponsor a foreign spouse or other family members (Leinonen and Pellander 2014). Denmark has also introduced a new 'attachment requirement' for all couples involving a Danish citizen who wish to reunite with a spouse who is not a citizen of the E.U. or the European Economic Area (EEA) (D'Aoust 2013). The 'attachment requirement' means that both the sponsor's and the spouse's combined attachment to Denmark should be greater than their combined attachment to any other country (New to Denmark 2012). A sponsor who is not a Danish or Nordic citizen must have held a permanent residence permit for at least three years. The effective minimum age for both entry and sponsorship has been 24 since 2002 and is the highest in Europe (Wray 2013).

Another mechanism to regulate sponsorship and also protect the rights of sponsored spouses in Denmark is the criterion concerning a sponsor's past history in regards to violence against a former spouse/partner. A partner cannot sponsor his/her spouse if he/she has been convicted of violence against a former spouse/partner in the past ten years. Violence includes rape, manslaughter, aggravated assault, and coercion, which includes forcing a person into marriage, confinement, and human trafficking (New to Denmark 2012).

Finland does not impose any condition of housing; however, the granting of a residence permit is based on family ties and requires that a sponsor's livelihood in Finland is secured through means other than benefits paid by the government (Finish Immigration Service 2017). Furthermore, there are expectations concerning the couple's living arrangement (Leinonen and Pellander 2014).

Similarly in the U.K., limits are imposed by immigration provisions requiring evidence of a sponsors' ability to financially provide for the applicant, as the incomer is not entitled to welfare provisions for the first two years until they obtain indefinite leave to remain (Chantler et al. 2009). Since July 2012, U.K. citizens and settled residents applying to bring a non-EEA partner to the country must meet a minimum income requirement of £18,600 per year before tax (Sumption and Vargas-Silva 2016). Although not directly targeting serial sponsors, in 2003 the United Kingdom enacted an eligibility criterion, which could minimise the risk of multiple sponsoring by increasing the age at which a British national could sponsor a foreign (outside the European Union) national from 16 to 18 years on a spousal or fiancé(e) visa as part of cross-governmental measures to tackle forced marriage (Chantler et al. 2009). In England and Wales, however, a migrant woman who joins her spouse has temporary leave to remain, and cannot apply for indefinite leave until after a five-year probationary period (Gower 2013). This restriction 'problematically traps immigrant women in abusive relationships, as they face a stark choice between remaining in the relationship or leaving the relationship and being subject to deportation' (Chantler et al. 2009).

Other European countries, such as the Netherlands and Germany, have also recently raised the age to 21 for a sponsor or spouse entering the country. In the Netherlands, the increase in age was accompanied by an income condition for the sponsor equivalent to at least 120 percent of the statutory minimum wage (Rude-Antoine 2005).

Other mechanisms used to monitor family sponsorship include specific measures to combat 'marriages of convenience' for visa purposes, which are often conflated with forced marriages. These measures are to extend the required period of proven cohabitation in UK, Denmark, France, and Belgium and to give courts the power to decide whether a cohabitation requirement has been met in France and Belgium (2005).

In the United States, permanent residence status is conditional if it is based on a marriage that was less than two years old on the day the spouse was given permanent residence. To remove these conditions, the sponsored spouse should prove that she/he is still married to the same U.S. citizen or permanent resident after two years; is a widow or widower who entered into the marriage in good faith; entered into a marriage in good faith but the marriage ended through divorce or annulment; or entered into a marriage in good faith, but either the sponsored spouse or his/her children were battered or subjected to extreme hardship by a U.S. citizen or permanent resident spouse (López 2017). Furthermore, the U.S. government has introduced new minimum income requirements

Laws 2017, 6, 24 5 of 13

for U.S. citizens seeking to sponsor a spouse for legal permanent residency. The minimum proven income threshold should be at least 125 percent of the poverty level (Lopez 2017). To show that the marriage is authentic and not a sham to enable the sponsored person to obtain a green card, the sponsor and sponsored spouse have to provide copies of documents such as joint bank statements, children's birth certificates, photos of the wedding and afterwards, love letters, and more (US Visas 2017). In the U.S. though unlike England, since 2000, under the *Violence Against Women Act*, battered immigrant women can petition for permanent residency without their spouses if they were victims of intimate partner violence (Menjivar and Salcido 2002, p. 912).

With the exception of Denmark, we can see then that the main mechanisms used to monitor spouse sponsorship in these countries are mainly around applying a minimum of age for sponsor and sponsored spouse, cohabitation requirements, and a guarantee of income support by the sponsor. Among the major western immigrant-receiving countries, Canada and Australia are the only governments which have tried to target serial sponsorship. In particular, Canada has an extensive policy in regards to protecting the rights of sponsored spouses. It is recognized there that sponsorship policies may place women at risk for being abused due to the government-enforced dependency of the sponsored person on the sponsor. This dependency may intensify the gendered power difference that already exists in relationships (Citizenship and Immigration Canada (CIC)).

A number of steps have been taken to protect sponsored women from being mistreated in Canada. First, as the sponsored individual may not receive any social assistance while under sponsorship, the sponsor must sign an undertaking promising to provide for the spouse's basic needs and those of any dependent children for three years. Support includes housing and financial resources. An undertaking of sponsorship remains effective for its duration even if the sponsor and immigrant are not living under the same roof anymore. In case of domestic violence, if abusive sponsors refuse to meet their support obligations and if sponsored spouses cannot support themselves, they may apply for social assistance (Regehr and Kanani 2006).

Second, individuals cannot sponsor a spouse if they previously sponsored and signed an undertaking for a spouse or partner and it has not been three years since he or she became a permanent resident (Government of Canada 2017). Furthermore, sponsors with a criminal record or history of domestic violence have been barred from being able to sponsor foreign spouses; if the individual has been convicted of a crime that caused bodily harm to any relative including a spouse, that person cannot sponsor anyone under the family class (Citizenship and Immigration Canada (CIC)).

In addition, statements were added to sponsorship contracts and documents to improve women's understanding of their status as sponsored persons in Canada and the protections that exist for them (Citizenship and Immigration Canada (CIC)). The forms that the sponsored person signs now include a sentence stating that the sponsor does not have the power to remove the sponsored person from Canada. The forms also include a few sentences making women aware that if they are abused they should seek safety from their sponsors, even if this would require applying for social assistance. In the event of making an abuse report, there is a breakdown of sponsorship, and the woman becomes eligible for government social assistance (Citizenship and Immigration Canada (CIC)). Canada also reduced the length of time that the sponsored spouses are dependent on their sponsors from 10 years to 3 years (2002). If an immigrant woman has left an abusive situation, her application for permanent residency must include the history of domestic violence and any documentation from service providers or other professionals as evidence of abuse (Community Legal Education Ontario 2011).

Furthermore, after being determined as eligible based on the above-mentioned criteria, applicants must provide information about their relationship in a 'sponsored spouse/partner questionnaire'. A key part of the questionnaire is 'the story of the development of the relationship' (Citizenship and Immigration Canada (CIC)). Applicants are also asked to submit documentary evidence to support their story, including photographs, letters, emails, web chat logs, telephone bills, bank statements, insurance policies, and wills (Satzewich 2014).

Laws 2017, 6, 24 6 of 13

In 2012, conditional permanent residence was introduced for sponsored spouses of Canadian citizens and permanent residents who were in a relationship of two years or less and had no children in common at the time of their sponsorship application. The condition was introduced as a means to deter people from seeking to immigrate to Canada through non-genuine relationships. It required the sponsored spouse or partner to live in a conjugal relationship with their sponsor for two years unless they were the victim of abuse or the sponsor died (Citizenship and Immigration Canada (CIC)).

As a result of this conditional residency, an imbalance was created between the sponsor and the sponsored individual, as only the sponsored spouse or partner could lose their status if the two-year cohabitation condition was not met. Stakeholders expressed concerns that this placed abused spouses and partners in a vulnerable position. Even though there was an exception to the condition for those experiencing family violence in such situations, it is possible that a victim may not have been aware of the exception or may have chosen to stay in the abusive relationship for a number of reasons, such as social isolation, lack of knowledge about the legal system and available support services, threat of deportation, financial dependency to abuser, and fear of Police. In April 2017, in response to these concerns, conditional permanent residence was eliminated, meaning that any case that was under investigation for non-compliance with the cohabitation condition has ceased. However, cases involving marriage fraud will continue to be investigated (Citizenship and Immigration Canada (CIC)).

4. Australian Spouse Sponsorship Policies

To enter Australia with a partner visa and a prospective marriage visa, applicants must be sponsored by an Australian citizen, permanent resident, or eligible New Zealand citizen. Sponsors must normally be adults aged 18 years or older to sponsor a partner; however, there is an exception to this rule: if the sponsor is aged 16 or 17 years and the application is made on the basis of a married relationship, their parent or guardian must be the sponsoring person (Lyneham and Richards 2014).

Prior to 1 January 2012, sponsors were obliged in some cases to provide an 'Assurance of Support' (AoS). This was 'a commitment to provide financial support to a partner category visa applicant so that they will not have to rely on any government forms of support' ((Department of Immigration and Border Protection DIBP, p. 29)). The Assurance of Support requirement for partner visas was removed and sponsors instead must sign a sponsorship undertaking. Based on the undertaking, a sponsor becomes responsible for all financial obligations to the Australian Government that the sponsored partner may acquire while in Australia. Also, the sponsor agrees to provide adequate accommodation and financial assistance as required to meet the partner's sensible living needs. This assistance covers the two years after the grant of a temporary partner visa. Providing financial and other support, such as childcare, that enables the sponsored partner to attend English classes is another responsibility of a sponsor. By signing the undertaking, sponsors are agreeing to provide information and advice to help their partners settle in Australia, including informing their partner about employment opportunities in Australia. Another obligation is to notify the department if the relationship breaks down, or if sponsors withdraw their support for their spouses before their application is finalised (Department of Immigration and Border Protection 2017b). If sponsorship is withdrawn, the sponsored person is required to notify the Department of Immigration and Border Protection that their relationship has ended. The sponsored partners can utilise the Family Violence Exception, which allows them (as discussed below in theory) to continue their application for permanent residency (Department of Immigration and Border Protection 2017a).

The Australian government has also applied some limitations, in particular to partner/spouse sponsorship. These affect people who have been sponsored as a partner themselves or have previously sponsored a partner to enter or remain permanently in Australia. Since 1996, sponsors have been required to advise immigration authorities of any prior sponsorship. The Minister must not approve the sponsorship of an applicant for a partner visa of any kind unless satisfied that only one person has been sponsored for a visa. A sponsor is only permitted to nominate one person within a five-year period

Laws 2017, 6, 24 7 of 13

unless he or she can demonstrate 'compelling circumstances' (Crock 2009). If there are compelling circumstances affecting the sponsor, these limitations may be waived. An example would be if the migrating partner dies or abandons the relationship leaving young children, if the current relationship is longstanding, or if there are children from the relationship (Department of Immigration and Border Protection (DIBP)). The Full Federal Court in *Babicci v Minister for Immigration and Multicultural and Indigenous Affairs* (2005) 141 FCR 285; [2005] FCAFC 77 at [8] chose to interpret 'compelling' according to the dictionary definition as 'to force or drive, especially to a course of action' (Crock 2010, p. 333).

Legislative amendments were made in 2005 to prevent a sponsor, whose relationship had broken down due to the sponsor perpetrating domestic violence against their partner, from sponsoring another person. Prior to this, 'visas granted following cessation of the relationship as a result of domestic violence committed by the sponsor were not counted against the sponsor' (Vanstone 2005, cited in Lyneham and Richards 2014, p. 17). This meant that individuals with 'an unfavourable record from their previous relationship' (Schloenhardt 2009, p. 5) were not limited on the number of times they could be a sponsor.

On 18 November 2016, new requirements for partner and prospective marriage visas were introduced in regulation 1.20KC of the Migration Regulations 1994 (Cth). The Government's intention with these amendments was 'to strengthen the integrity of the programme and improve support for applicants' (Minister for Immigration and Border Control 2016). Sponsors of these visa applications now need to provide Australian and/or foreign police checks when requested and also give consent to the department to disclose their convictions for *relevant offences* to the visa applicant(s). If the sponsor does not provide this consent, the visa application will be refused. Two factors in the sponsor's criminal record are considered: the nature of the offence(s) and the length of sentences.

Relevant offences include: violence, including murder, assault, sexual assault and the threat of violence, harassment, molestation, intimidation, or stalking; the breach of an apprehended violence order, or a similar order; firearms or other dangerous weapons; people smuggling; human trafficking, slavery, or slavery-like practices (including forced marriage), kidnapping or unlawful confinement; and attempting to commit any of these offences or aiding, abetting, counselling, or procuring such offences (Department of Immigration and Border Protection 2016b).

Sentencing is considered too, as the department will not refuse a visa application if a sponsor has convictions for a relevant offence but does not have what the provisions deem as a significant criminal record (significant is defined as sentenced to death or received imprisonment for life, a term of imprisonment of 12 months or more or two or more terms of imprisonment, where the total of those terms is 12 months or more.) If a sponsor has both convictions for a relevant offence and a significant criminal record, the visa will be refused unless the Department assesses that it is reasonable not to. When making this assessment, variables will be considered, such as the length of time since the sponsor completed the sentence(s) for the relevant offence(s), the best interest of any children of the sponsor or primary visa applicant, and the length of the relationship between the sponsor and primary visa applicant (Department of Immigration and Border Protection 2016b). As we discuss further in the next section, it is therefore quite possible for domestic violence-related offences to be discounted in the Department's assessment.

In addition, from 1 July 2017, before an application can even be lodged, Australian Partner Visa applicants now need to go through the same sort of approval process as potential sponsors for Business visas. According to the new Migration Regulations provision 1.20KC(5), part of this process includes police clearance certificates if requested when the sponsorship application is lodged. This allows the department to introduce enforceable sponsorship undertakings and gives them the ability to refuse or bar sponsorships based on a criminal history or failure to comply with undertakings (Easivisa 2017).

5. Gaps in Spouse Sponsorship Policies

Immigration policy in Australia, similar to most western countries, has undergone significant changes in recent years. It is in response to the economic challenges of domestic population aging,

Laws 2017, 6, 24 8 of 13

fertility decline, and the internal migration of people (Akbari and MacDonald 2014). 'The abolition of the White Australia Policy coincided with quite dramatic changes in thinking about immigration as a social tool, with increasing emphasis being placed on the skills of migrants and on their economic potential' (Crock 2009, p. 4) Accordingly, the Australian government introduced some regulations to monitor the family migration process, including partner migration. These were intended to regulate migrants rather than to protect them and could have negative ramifications for many sponsored spouses who are mainly women. Applying gender perspectives in policy analysis reveals the lack of neutrality and gender–biased nature of these policies, which 'can indeed counteract inequality, and often they are meant to do so, but they can also produce or reproduce it' (Lombardo et al. 2017).

Although being female does translate into some commonalities in oppression, marginalisation, and exclusion, there are many other socio-demographic factors that constitute the 'dominants' in western industrial culture, such as ethnicity, age, sexuality, and physical and mental ability. Women's experiences of violence and their ability to access justice are therefore not homogeneous as gender is not the only source of marginality, with intersectionality (coined by Crenshaw 1991) further marginalising the non-dominants. Carline and Easteal (2014) analyse the myriad of factors which construct (but are not determinative of) identity and experience, and how these interact with immigration laws and policies. They conclude therefore that policies pertaining to responses to violence against women display a conflict between a human rights perspective and an immigration control approach, with the latter seeming to be prioritised.

A good example of this can be seen in the Australian migration law regulations to better meet the needs of women who were experiencing domestic violence. As mentioned in the Introduction, the Family Violence Exception was originally enacted in 1989 to ameliorate the plight of women who migrated to Australia as (potential) spouse of an Australian citizen who then abused them and acted to have them denied permanent residency if they left the violent home. Despite several rounds of amendments, the process and evidentiary requirements of the Family Violence Exception remain arguably difficult for some overseas-born women:

The amendments fail to address ongoing problems such as the definition of violence, the requirement that the violence must have occurred while the relationship was in existence, the range of people who are able to give evidence about the violence and the way in which that evidence must be given. (Gray et al. 2014, p. 171)

Further, the applicants continue to have to satisfy the delegate that their relationship was genuine until it ceased and that the family violence took place *during* the relationship (Department of Immigration and Border Protection 2017a).

Another example of the collision of human rights viewpoint and the governmental policy perspective may be found in the context of spouse sponsorship policy. Some concerns, for instance, have been identified with the issue of serial sponsorship and consequently the potential abuse of sponsored women. For example, the replacement of an Assurance of Support with a sponsorship undertaking can be an area of concern. Although an undertaking is very inclusive and covers most of the basic needs and rights of a sponsored partner, providing evidence that the sponsor has refused the responsibility for the financial obligations is very complicated. Providing an Assurance of Support might have been a more practical mechanism for monitoring sponsors.

Most of the policies on spouse sponsorship are targeted at protecting sponsors rather than the sponsored spouses. For example, before 2016, only the female applicant had to undergo a health and character check and not the Australian male sponsor (Quinn 2009, p. 8). Criminalising sham marriages (situations where a person misuses the immigration system that permits Australian citizens and permanent residents to sponsor a partner who lives abroad so that the person may migrate to Australia permanently) (Schloenhardt and Jolly 2010, p. 678) is another such example where legal reform was not based on the safety and human rights of sponsored women but mainly reflected a concern about the rights of sponsors and controlling immigration flow. Moreover, the mechanism now in place to

Laws 2017, 6, 24 9 of 13

prove a genuine relationship and the correlated extended waiting process places greater hardship on sponsored women and may increase their vulnerability (Shabbar 2012; Cote et al. 2001). Women in Shabbar (2012) study, for instance, explained that the processing waiting period for their immigration application was very challenging particularly if they did not know their husband before marriage. This time did not give them a chance to get to know their husbands. Even for those who already knew their husband before marriage, it was difficult to see the changes in their partners' behaviour.

Further, as mentioned above, the limited data on serial sponsorship shows that repeated sponsorship is still happening (Lyneham and Richards 2014) despite policies aimed to stop the practice. It was the view of the Australian Law Reform Commission (2010), however, that the existing protections regarding serial sponsorship—a limit of no more than two sponsored in a lifetime and a five-year period between sponsorships—did protect victims of family violence. No further reform was recommended by the ALRC.

However, it does appear that these limitations do not prevent male sponsors from using other types of visas, such as student and tourist visas, to bring women legally to Australia (Quinn 2009). Furthermore, there have been concerns that despite the existing limitations on sponsorships, 'there are a number of ways to subvert the existing protections, such as marrying within the newly arrived migrant sector/community as opposed to re-sponsoring from outside Australia' (Karlsen and Coombs 2016, para 20.77).

Providing Australian and/or foreign police checks for sponsors can be a useful mechanism to monitor the criminal history of the sponsor. However, the exception applied to this requirement runs counter to the aims of the policy, with the department possibly not refusing a visa application even if the sponsor has convictions for a relevant offence (but does not have a significant criminal record). Nevertheless, on a positive note, the convictions will be disclosed to the visa applicants to help them decide about continuing with their application (Department of Immigration and Border Protection 2016b). The question remains though whether domestic violence or sexual assault acts or offences constitute a significant criminal record and/or whether the perpetrator has been convicted or even charged for them. Different countries and their respective legal systems have different understandings and laws concerning family violence. In addition, just as family violence is under-reported in Australia, incidents may not be recorded by the police in that country (Federation of Ethnic Communities' Councils of Australia (FECCA)).

In addition, there is inadequate provision of detailed information about the rights of sponsored spouses, including their sponsors' financial obligations and their responsibility to facilitate sponsored spouse access to education and employment. Further, importantly, the literature shows that most sponsored women do not have enough knowledge about their rights in Australia and available support services in case of abuse and domestic violence (Easteal 1996b; Ghafournia 2011; Rees and Pease 2007; Vaughan et al. 2015; Zannettino 2012).

6. Recommendations

The following six recommendations are ideas for policy and procedural changes that could act to reduce serial sponsorship, further ensure the integrity of the sponsor, and better protect the person sponsored from any partner abuse.

1. The Australian government should take the initiative to empower sponsored partners through education and information ensuring that a rights-based orientation is provided for sponsored women entering Australia. For example, all sponsored spouses could be interviewed separately from their Australian sponsors before being granted entry into Australia as the Coalition Against Trafficking in Women Australia (2011) recommended. Somewhat pessimistically, we note that this was also recommended over 20 years ago by Easteal (Easteal 1996a, 1996b).

The aim would be to provide adequate information and advice on the rights and entitlements of sponsored spouses in relation to those of their sponsors, their residency status, and the protections that exist in the event that they are treated badly. This education should ideally be delivered in

the women's first languages. After the counselling sessions, all sponsored spouses should also be provided with a list of support services for immigrants in Australia (Cabilao-Valencia 2015).

- 2. It has been suggested that welfare checks be undertaken several months after arrival and separately from the sponsoring partner and family members to ensure the safety and wellbeing of those on partner visas ((Tomison 2012), cited in (Lyneham and Richards 2014)). Such checks also can act to monitor the signed undertakings of Australian sponsors to provide support for their migrant partners to settle in Australia.
- 3. The Family Violence Exception needs to be made more user-friendly and accessible to victims. The drafting must be less legalistic and obscure and the evidentiary requirements less restricted.
- 4. Some changes to current immigration policies that are essential to prevent spouse serial sponsorship and to better respond to incidents of sponsored partner abuse by their sponsors are recommended. *All* sponsors should undergo a character check and be screened for antecedent family violence and violent behaviour. The current exception discussed above concerning the need for a 'significant criminal record' needs to be abolished. As in Canada, any previous act of domestic or sexual violence should translate into ineligibility for sponsorship, thus closing potential legislative loopholes and better protecting women.
- 5. As mentioned earlier, introducing limitations on the number of times that a person can be a sponsor does not appear to be translating into the desired outcome as repeated sponsorship is still taking place. There is an urgent need to identify serial sponsors through the Department of Immigration and Border Protection database. It is necessary to determine with research how these individuals are working the system to their advantage.
- 6. Information about sponsors' marital and criminal histories, health and mental health, living conditions, family, and employment should be provided to all partner visa applicants, enabling them to make informed decisions concerning the relationship.

7. Conclusions

The phenomenon of spouse sponsorship is commonly viewed within a migration and border protection framework in most western immigrant-receiving countries. Therefore, responses are developed from a regulatory perspective targeted at maintaining the integrity of border control programs. Accordingly, the primary focus in Australian efforts to regulate spouse sponsorship has been and continues to be on the rights of Australian sponsors.

Conversely, legislative solutions tend to lack the voice of the sponsored spouses and their rights. Enforcing measures to monitor sponsors' eligibility to sponsor a partner in particular in recent years is a significant step forward. However, the available data suggest that serial spouse sponsorships are more prevalent than previously thought. More policy initiatives are required to genuinely improve the management of spouse sponsorship and to better protect women from family violence. Legislative amendments need to be underpinned with a solid framework of empirical research.

Author Contributions: Nafiseh Ghafournia was responsible for the original design and aims of the paper while Patricia Easteal refined both. Nafiseh Ghafournia conducted the initial literature review. Patricia Easteal conducted supplementary legal research and added the theoretical perspective. Both shared in writing the manuscript.

Conflicts of Interest: The authors declare no conflict of interest.

References

Akbari, Ather H., and Martha MacDonald. 2014. Immigration Policy in Australia, Canada, New Zealand, and the United States: An Overview of Recent Trends. *International Migration Review* 48: 801–22. [CrossRef]

Australian Bureau of Statistics. 2017. Census: Multicultural, Census reveals a fast changing, culturally diverse nation. Available online: http://www.abs.gov.au/ausstats/abs@.nsf/lookup/Media%20Release3 (accessed on 1 November 2017).

Australian Law Reform Commission. 2010. Migration law. The Family Violence Exception. Available online: http://www.alrc.gov.au/publications/20-migration-law%E2%80%94-family-violence-exception/partner-visa-sponsorships-_ftnref88 (accessed on 28 October 2017).

- Australian Law Reform Commission. 2011. Family Violence and Commonwealth Laws—Improving Legal Frameworks; Sydney: Australian Law Reform Commission.
- Birrell, Bob. 1995. Spouse Migration to Australia. People and Place 3: 9–16. [PubMed]
- Burn, Jennifer, Frances Simmons, Jemma Hollonds, Kate Power, Pam Stewart, and Nicole Watson. 2011. From women's labour force to women's forced labour, migration & marriage, Understanding the gaps in prevention and protection needs in trafficking and exploitation of women and girls in Australia. Available online: https://www.sosj.org.au/wp-content/uploads/_cknw/files/Labour%20Rights%20in% 20Australia.pdf (accessed on 1 November 2017).
- Cabilao-Valencia, Minda I. 2015. Filipino Marriage Migration. *Sosiohumanik: Jurnal Pendidikan Sains Sosial dan Kemanusiaan* 8: 161–70.
- Carline, Anna, and Patricia Easteal. 2014. *Shades of Grey—Domestic and Seual Violence Against Women*. London: Routledge. Chantler, Khatidja, Geetanjali Gangoli, and Marianne Hester. 2009. Forced Marriage in the UK: Religious, Cultural, Economic or State Violence? *Critical Social Policy* 29: 587–612. [CrossRef]
- Charsley, Katharine, Brooke Storer-Church, Michaela Benson, and Nicholas Van Hear. 2012. Marriage related Migration to the UK. *International Migration Studies* 46: 861–89. [CrossRef]
- Citizenship and Immigration Canada (CIC). 2002. Gender-based analysis chart. Available online: http://www.cic.gc.ca/ (accessed on 28 October 2017).
- Citizenship and Immigration Canada (CIC). 2013. *IMM5490, Sponsored Spouse/Partner Questionnaire*. Ottawa: Citizenship and Immigration Canada, Available online: http://www.cic.gc.ca/english/pdf/kits/forms/IMM5490E.PDF (accessed on 28 October 2017).
- Citizenship and Immigration Canada (CIC). 2017a. Notice—Government of Canada Eliminates Conditional Permanent Residence. Available online: http://www.cic.gc.ca/english/department/media/notices/2017-04-28.asp (accessed on 28 October 2017).
- Citizenship and Immigration Canada (CIC). 2017b. Sponsor Your Spouse, Common-Law Partner, Conjugal Partner or Dependent Child Complete Guide (IMM 5289). Ottawa: Citizenship and Immigration Canada.
- Coalition Against Trafficking in Women Australia. 2011. Marriage Trafficking through Prospective Marriage Visas and Citizenship, Letter to Chris Bowen MP, Minister for Immigration. Available online: file:///Users/s614984/Downloads/Letter+to+Minister+Bowen_July+2011_FINAL.pdf (accessed on 28 October 2017).
- Community Legal Education Ontario. 2011. Immigrant Women and Domestic Violence. Available online: http://onlinetraining.learningtoendabuse.ca/sites/default/files/lessons/CLEO%20Immigrant%20and% 20Refugee%20Fact%20Sheet.pdf (accessed on 28 October 2017).
- Cote, Andree, Michele Kerisit, and Marie-Louise Cote. 2001. Sponsorship for Better or for Worse: The Impact of sponsorship on the Equality Rights of Immigrant Women. Available online: http://epe.lac-bac.gc.ca/100/200/301/swc-cfc/sponsorship-e/010504-0662296427-e.pdf (accessed on 28 October 2017).
- Crenshaw, Kimberle. 1991. Mapping the Margins Intersectionality Identity Politics and Violence against Women of Colour. *Stanford Law Review* 43: 1241–300. [CrossRef]
- Crock, Mary Elizabeth. 2009. Women and Immigration Law. Legal Studies Research Paper, 09/77, The University of Sydney Law School, Camperdown, NSW, Australia.
- Crock, Mary Elizabeth. 2010. Women and Migration Law. In *Women and the Law in Australia*. Edited by Patricia Easteal. Sydney: LexisNexis, pp. 328–49.
- Cullen, Miriam, and Bernadette McSherry. 2009. Without sex: Slavery, trafficking in persons and the exploitation of labour in Australia. *Alternative Law Journal* 34: 4–10. [CrossRef]
- Cuneen, Chris, and Julie Stubbs. 1997. Violence against Filipino women in Australia: Race, Class and Gender. *Sydney Law Review* 29: 131–54.
- Cunneen, Chris, and Julie Stubbs. 2000. Male violence, male fantasy and the commodification of women through the internet. In *Domestic Violence: Global Responses*. Edited by Edna Erez and Kathy Laster. Bicester: AB Academic Publishers, pp. 5–28.
- D'Aoust, Anne-Marie. 2013. In the Name of Love: Marriage Migration, Governmentality, and Technologies of Love. *International Political Sociology* 7: 258–74. [CrossRef]

David, Fiona. 2010. *Labour Trafficking*; Canberra: Australian Institute of Criminology. Available online: http://aic.gov.au/publications/currentseries/rpp/100-120/rpp108.html (accessed on 28 October 2017).

- Department of Immigration and Border Protection (DIBP). 2013. Partner migration. Available online: www.immi. gov.au/allforms/booklets/1127.pdf (accessed on 28 October 2017).
- Department of Immigration and Border Protection. 2015. Department of Immigration and Border Protection Annual Report 2014–2015; Canberra: Department of Immigration and Border Protection. Available online: https://www.border.gov.au/ReportsandPublications/Documents/annual-reports/DIBP-Annual-Report-2014-15.pdf (accessed on 28 October 2017).
- Department of Immigration and Border Protection. 2016a. 2015–16 Migration Programme Report; Canberra: Department of Immigration and Border Protection. Available online: https://www.border.gov.au/ReportsandPublications/Documents/statistics/2015-16-migration-programme-report.pdf (accessed on 28 October 2017).
- Department of Immigration and Border Protection. 2016b. New sponsor requirements for Partner and Prospective Marriage visa applications. Available online: https://www.border.gov.au/Trav/Brin/sponsor-requirements (accessed on 28 October 2017).
- Department of Immigration and Border Protection. 2017a. Fact sheet—Family violence provisions. Available online: http://www.border.gov.au/about/corporate/information/fact-sheets/38domestic (accessed on 28 October 2017).
- Department of Immigration and Border Protection. 2017b. Sponsorship for a partner to migrate to Australia, form 40SP. Available online: http://www.border.gov.au/forms/Documents/40sp.pdf (accessed on 28 October 2017).
- Easivisa. 2017. Australian Partner Visa Changes 2017. Available online: http://easivisa.com/2017/05/04/australian-partner-visa-changes-2017/ (accessed on 28 October 2017).
- Easteal, Patricia. 1996a. Domestic Violence in Immigrant Communities. *Bureau of Immigration, Multicultural and Population Research Bulletin* 17: 42–46.
- Easteal, Patricia. 1996b. Double Jeopardy: Violence against Immigrant Women in the Home. Family Matters 45: 26–30. Federation of Ethnic Communities' Councils of Australia (FECCA). 2016. Submission to Senate Legal and Constitutional Affairs Committee, Inquiry into Migration Amendment (Family Violence and Other Measures) Bill 2016. Available online: http://parlinfo.aph.gov.au/parlInfo/download/legislation/billsdgs/4868979/upload_binary/4868979.pdf (accessed on 28 October 2017).
- Finish Immigration Service. 2017. Marriage/registered partnership—Family member of a person with a Finnish residence permit. Available online: <a href="http://www.migri.fi/moving_to_finland_to_be_with_a_family_member/filling_in_the_application/family_member_of_a_person_with_a_finnish_residence_permit/spouse/marriage_registered_partnership (accessed on 28 October 2017).
- Ghafournia, Nafiseh. 2011. Battered at Home, Played down in Policy: Migrant Women and Domestic Violence in Australia. *Aggression and Violent Behavior* 16: 207–13. [CrossRef]
- Government of Canada. 2017. Sponsor your spouse, common-law partner, conjugal partner or dependent child, Complete Guide (IMM 5289); Ottawa: Government of Canada.
- Gower, Melanie. 2013. *Changes to Immigration Rules for Family Members*. Commons Library Standard Note 6353; London: House of Commons Library.
- Gray, Lauren, Patricia L. Easteal, and Lorana Bartels. 2014. Immigrant Women and Family Violence: Will the New Exceptions Help or Hinder Victims? *Alternative Law Journal* 39: 167–71. [CrossRef]
- Iredale, Robyn R. 1995. Serial Sponsorship: Immigration Policy and Human Rights. Just Policy 3: 37–43.
- Karlsen, Elibritt, and Moira Coombs. 2016. Migration Amendment (Family Violence and Other Measures) Bill 2016. Available online: http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1617a/17bd021 (accessed on 28 October 2017).
- Khoo, Siew-Ean. 2001. The Context of Spouse Migration in Australia. *International Migration* 39: 11–132. [CrossRef] Leinonen, Johanna, and Saara Pellander. 2014. Court decisions over marriage migration in Finland: A problem with transnational family ties. *Journal of Ethnic and Migration Studies* 40: 1488–506. [CrossRef]
- Lombardo, Emanuela, Petra Meier, and Mieke Verloo. 2017. Policymaking from a Gender+ Equality Perspective. *Journal of Women, Politics & Policy* 38: 1–19.
- López, Jane Lilly. 2017. Redefining American Families: The Disparate Effects of IIRIRA's Automatic Bars to Reentry and Sponsorship Requirements on Mixed-Citizenship Couples. *Journal on Migration and Human Security* 5: 236–51. [CrossRef]

Lyneham, Samantha, and Kelly Richards. 2014. *Human Trafficking Involving Marriage and Partner Migration to Australia*; Canberra: Australian Institute of Criminology.

- Menjivar, Cecilia, and Olivia Salcido. 2002. Immigrant Women and Domestic Violence: Common Experiences in Different Countries. *Gender and Society* 16: 898–920. [CrossRef]
- Merali, Noorfarah. 2009. Experiences of South Asian Brides Entering Canada after Recent Changes to Family Sponsorship Policies. *Violence against Women* 15: 321–39. [CrossRef] [PubMed]
- Minister for Immigration and Border Control. 2016. Explanatory Statement, Migration Legislation Amendment (2016 Measures No. 3) Regulation 2016. Available online: https://www.legislation.gov.au/Details/F2016L01390/Explanatory%20Statement/Text (accessed on 1 November 2017).
- New to Denmark. 2012. The Attachment Requirement. Available online: http://parlinfo.aph.gov.au/parlInfo/download/legislation/billsdgs/4868979/upload_binary/4868979.pdf (accessed on 28 October 2017).
- Quek, Kaye. 2010. Empowering the consumer and buying a wife online: Mail-order bride websites and the commodification of women. Paper presented at the The Australian Political Studies Association Conference, University of Melbourne, Melbourne, VIC, Australia, September 27–29.
- Quinn, Irena. 2009. Violence and gender inequality in cross-cultural marriages. Paper presented at the The Federation of Ethnic Communities' Councils of Australia Biennial Conference, Shepparton, VIC, Australia, October 29–30.
- Rees, Susan, and Bob Pease. 2007. Domestic Violence in Refugee Families in Australia. *Journal of Immigrant and Refugee Studies* 5: 1–19. [CrossRef]
- Regehr, Cheryl, and Karima Kanani. 2006. Essential Law for Social Work Practice in Canada. Toronto: Oxford University Press.
- Rude-Antoine, Edwige. 2005. Forced Marriage in Council of Europe Member States. A Comparative Study of Legislation and Political Initiatives. Strabourg: Council of Europe, Directorate General of Human Rights.
- Satzewich, Vic. 2014. Canadian Visa Officers and the Social Construction of "Real" Spousal Relationships. *Canadian Review of Sociology* 51: 1–21. [CrossRef]
- Schloenhardt, A. 2009. A Trafficking in Persons and Sham Marriages in Australia. Bisbane: Human Trafficking Working Group.
- Schloenhardt, Andreas, and Jarrod Jolly. 2010. Honeymoon from hell: human trafficking and domestic servitude in Australia. *Sydney Law Review* 32: 671–92.
- Shabbar, Fatin. 2012. Protecting our non-citizens: Iraqi women on Australian temporary spouse visas. The Sociological Review 60: 149–68. [CrossRef]
- Sumption, M., and C. Vargas-Silva. 2016. *The Minimum Income Requirement for Non-EEA Family Members in the UK*. Oxford: The Migration Observatory, Available online: www.migrationobservatory.ox.ac.uk (accessed on 28 October 2017).
- Tomison, A. 2012. Inquiry into Marriage Visa Classes, Legal and Constitutional Affairs References Committee, Senate Committee Hansard. Available online: http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=yes;orderBy=customrank;page=0;query=marriage%2Bvisa%2Bclasses;rec=2;resCount=Default (accessed on 28 October 2017).
- US Visas. 2017. Immigrant Visa for a Spouse of a U.S. Citizen (IR1 or CR1). Available online: https://travel.state.gov/content/visas/en/immigrate/family/immediate-relative.html (accessed on 28 October 2017).
- Vanstone, A. 2005. Explanatory statement. Select legislative instrument 2005 no 134. Available online: http://www.comlaw.gov.au/Details/F2005L01502/ExplanatoryStatement/Text (accessed on 28 October 2017).
- Vaughan, Cathy, Erin Davis, Adele Murdolo, Jasmin Chen, Linda Murray, Karen Block, Regina Quiazon, and Deb Warr. 2015. *Promoting Community-Led Responses to Violence against Immigrant and Refugee Women in Metropolitan and Regional Australia: The ASPIRE Project: State of Knowledge Paper*. Sydney: Australia's National Research Organisation for Women's Safety.
- Wray, Helena. 2013. Regulating Spousal Migration in Denmark. *Immigration, Asylum and Nationality Law* 27: 139–61. Zannettino, Lana. 2012. "... There is No War Here; It is Only the Relationship That Makes Us Scared": Factors Having an Impact on Domestic Violence in Liberian Refugee Communities in South Australia. *Violence Against Women* 18: 807–28. [CrossRef] [PubMed]



© 2017 by the authors. Licensee MDPI, Basel, Switzerland. This article is an open access article distributed under the terms and conditions of the Creative Commons Attribution (CC BY) license (http://creativecommons.org/licenses/by/4.0/).