

The Senate

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Legal and Constitutional Affairs  
References Committee

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Practice of dowry and the incidence of dowry  
abuse in Australia

February 2019

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# Recommendations

## Recommendation 1

**4.28** The committee recommends that the term 'economic abuse' is included as a form of family violence in subsection 4AB(2) of the *Family Law Act 1975*, and the subsection provide a non-exhaustive list of examples of economic abuse, including dowry abuse.

## Recommendation 2

**4.51** The committee recommends that the Australian government work with the states and territories to harmonise existing legislation providing for intervention/violence orders to explicitly recognise dowry abuse as an example of family violence or economic abuse.

## Recommendation 3

**4.54** The committee recommends that the Australian government give further consideration to legal and decision making frameworks to ensure that victims of dowry abuse are not disadvantaged in family law property settlements, given the community concerns about inconsistent approaches under the current family law framework.

## Recommendation 4

**5.31** The committee recommends that the Australian government:

- give further consideration to the recommendation of the Victorian Royal Commission into Family Violence to broaden the definition of family violence in the Migration Regulations 1994; and
- ensure that those who are forced to marry their partner or experience family violence from their partner and/or their partner's family members are protected through the family violence provisions in the Migration Regulations 1994, such that the regulatory framework is consistent with the policy intention to protect victims of domestic or family violence within the migration context.

## Recommendation 5

**5.67** The committee recommends that the Australian government act to address the injustice whereby family violence protection is not available to victims on many temporary visas and consider:

- extending the family violence provisions in the Migration Regulations 1994 beyond temporary Partner visa holders, Prospective Marriage visa holders who have married their sponsor and dependent applicants for a Distinguished Talent visa, to apply to other family visa subclasses; and

- the creation of a temporary visa—for example a 'Woman at Risk in Australia' visa—to be available for non-family temporary visa holders who have suffered serious and proven family violence including dowry abuse.

#### **Recommendation 6**

**5.71** The committee recommends that the Australian government ensure decision makers consider the nature of alleged family violence when making an assessment on whether the relationship was genuine prior to it ending.

#### **Recommendation 7**

**5.76** The committee recommends that the Australian government consider innovative use of the sponsorship mechanism and the new family sponsorship framework to prevent previous perpetrators from sponsoring multiple spouses, and by requiring sponsors to provide disclosures and give undertakings in relation to their circumstances and to dowry.

**5.77** The committee also recommends that the Australian government look explicitly at ensuring that the work of the Department of Home Affairs is included in National Family Violence Prevention Strategies, not just from the point of view of access to visas, but also visa processing and assessment.

#### **Recommendation 8**

**6.27** The committee recommends that the Australian government, together with state and territory governments, work with culturally and linguistically diverse communities and service providers in order to determine ways in which to establish a firm evidence base on the incidence of dowry abuse.

#### **Recommendation 9**

**6.30** The committee recommends that the Australian government work with the States and Territories to improve and strengthen the governance of data collection practices and standards by implementing a system to capture and measure the extent and incidence of all forms of family violence in Australia, including dowry abuse as a form of economic abuse.

#### **Recommendation 10**

**6.63** The committee recommends the Department of Social Services Family Safety Pack is provided individually to all visa applicants in their first language, such as during the health examination required as a condition of their visa application.

#### **Recommendation 11**

**6.67** The committee recommends that the Australian, state and territory governments engage with stakeholders in order to develop ongoing education and awareness raising campaigns about family violence, including dowry abuse, in conjunction with the development of further training of frontline professionals



**including social workers, police, doctors, judges and decision makers in the Department of Home Affairs.**

**Recommendation 12**

**6.68 The committee recommends that the Australian government include dowry abuse as a possible indicator of exploitation for the purposes of divisions 270 and 271 of the *Criminal Code Act 1995* and ensure that this is included in any training programs.**



# Chapter 1

## Introduction and background

1.1 On 26 June 2018, the Senate referred the following matter to the Legal and Constitutional Affairs References Committee (the committee) for inquiry and report by 6 December 2018:

The practice of dowry and the incidence of dowry abuse in Australia, with particular reference to:

(a) the extent and nature of knowledge regarding cultural attitudes to, the practice of, and the prevalence of dowry in Australia, both before and after marriage;

(b) the appropriateness and impacts of dowry as a cultural practice in modern Australia, taking account of our national commitment to gender equality and human rights, and approach to multiculturalism;

(c) reports of dowry abuse, including potential links to family violence, pretext for arranged marriage, forced marriage, modern day slavery, financial abuse, domestic servitude, murder, and other crimes, as well as any connections between dowry abuse and adverse mental health outcomes for affected women, including self-harm and suicide;

(d) the adequacy of the family law system, including how divorce and property settlement proceedings deal with dowry and dowry abuse, and the operation of and need for extra-jurisdictional (including international) enforcement mechanisms;

(e) confirmed and potential links between dowry, dowry abuse and forced and/or arranged marriages, both in Australia and in connection with Australia's migration program;

(f) the adequacy of Australia's migration law system in terms of addressing dowry and dowry abuse, including:

(i) the extent to which the requirements for spouse and family visas may enable or prevent dowry abuse,

(ii) vulnerabilities experienced by women suffering dowry abuse as a result of temporary migration status, including disincentives to report dowry abuse and the ability of victims to access the family violence protections afforded by the *Migration Act 1958* and associated regulations, and

(iii) recommendations for change if necessary;

(g) training and reporting regimes that apply to Commonwealth, and State and Territory police forces and family violence services in relation to dowry and dowry abuse;

(h) investigation of laws and practices in international jurisdictions, in relation to defining dowry and combating dowry abuse, with particular regard to how these approaches could be applied the Australian context;

(i) the adequacy of current Commonwealth and State and Territory laws in establishing broadly accepted community norms and in preventing dowry abuse, and specific recommendations for change if laws need to be strengthened; and

(j) any other related matters.<sup>1</sup>

1.2 On 12 November 2018, the Senate extended the committee's reporting date to the second last sitting day in February 2019.

### **Conduct of the inquiry**

1.1 Details of the inquiry were advertised on the committee's website, including a call for submissions to be received by 17 August 2018. The committee also wrote directly to a number of individuals and organisations inviting them to make submissions.

1.2 The committee received 84 submissions, including eight accepted in confidence. Public submissions are available on the committee's website. A list of all submissions received is at appendix 1 of this report.

1.3 The committee held public hearings in:

- Melbourne on 21 September 2018;
- Sydney on 30 November 2018; and
- Canberra on 3 December 2018.

1.3 A full list of all witnesses who gave evidence to the committee at this hearing is at appendix 2 of this report.

### **Structure of this report**

1.4 There are six chapters in this report:

- This chapter outlines the administrative details of the inquiry, and defines the terms dowry and dowry abuse.
- Chapter 2 sets out the relevant legislative frameworks in federal, state and international jurisdictions.
- Chapter 3 examines the arguments for and against criminalising the practice of dowry, the adequacy of existing federal criminal law provisions, and the adequacy of the existing extradition arrangements between Australia and the Republic of India.
- Chapter 4 examines the adequacy of federal family law in protecting victims of dowry abuse.
- Chapter 5 examines the adequacy of the migration framework in protecting victims of dowry abuse.

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1 *Journals of the Senate*, No. 103—26 June 2018, pp. 3306–3307.

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- Chapter 6 examines issues of data collection with respect to the incidence of dowry abuse, and how to raise awareness of this issue amongst victims, the community and professionals.

## Background

1.4 This section defines 'dowry' and 'dowry abuse', and outlines how dowry abuse is a form of economic abuse. Chapter 2 sets out existing legislative definitions with respect to dowry in the Indian and Victorian jurisdictions.

### *What is dowry?*

1.5 The practice of dowry relates to money, property, goods or other gifts that are transferred by a person to their partner's family before, upon or after marriage. Some submissions to the inquiry contained definitions of dowry. For example, the submission from Good Shepherd Australia New Zealand & inTouch Multicultural Centre Against Family Violence (GSANZ & inTouch) stated:

The practice of dowry usually involves the giving of gifts by one family to another before, during or any time after marriage. It is a practice that has different customary characteristics across different communities. Dowry exchange in South Asian communities is characterised by the woman's family providing goods (including but not limited to money, jewellery, furniture and appliances) to the male and his family. In North African communities dowry is characterised by the man's family providing goods (predominantly in the form of money or cattle) to the female and her family.<sup>2</sup>

1.6 The Australian Centre for Human Rights and Health (ACHRH) discussed the nature of dowry and the potential shortcomings of dictionary definitions:

Dowry is defined by the Merriam-Webster dictionary as money or property that a wife or wife's family gives to her husband when the wife and husband marry in some cultures. Based on the research with [the] Victorian Indian population...ACHRH has refined the definition to include dowry as 'substantial gifts' in the context of a marriage, where the value of gifts is out of proportion to the income of either family and causes financial distress to the giver.<sup>3</sup>

1.7 A number of submissions posited that dowry is a legitimate cultural practice in some communities, and not necessarily a negative practice that disadvantages women. It was highlighted in some evidence that dowry upon marriage could be a way that family wealth could be transferred to women between generations, particularly in cultures where sons traditionally inherit the bulk of parental property.<sup>4</sup>

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2 Good Shepherd Australia New Zealand & inTouch Multicultural Centre Against Family Violence (Good Shepherd & InTouch), *Submission 6*, p. 7.

3 Australian Centre for Human Rights and Health, *Submission 2*, p. 3.

4 For example, see Good Shepherd & inTouch, *Submission 6*, p. 7.

1.8 Additionally, evidence received by the committee noted that there were dowry-like practices that took on differing forms in different communities. For example, Good Shepherd & inTouch noted:

*Mahr*: is a mandatory payment in the form of money or possessions paid by the male or the male's family in an Islamic marriage.

*Stridhan*: a Hindu term translated to mean 'women's property', stridhan consists of valuable presents given to the bride by her parents and close family voluntarily on the occasion of her marriage . . . concepts of stridhan and dowry have become interchangeable since Stridhan is used as a means of getting around the current law (in India) on dowry.<sup>5</sup>

1.9 In its submission, the Monash Family Violence Prevention Centre (MFVPC), the Monash Migration and Inclusion Centre (MMIC) and Monash Gender, Peace and Security (GPS) identified six different forms of 'marriage payments' of which dowry was one form,<sup>6</sup> as follows:

**Table 1.1: Types of marriage payments**

<b>Marriage payment</b>	<b>Direction &amp; volume of valuables</b>
Brideprice (also termed Bridewealth)	Net assets move from groom's family to the bride's family
Dowry (also termed Marriage Portion)	Net assets move from bride's parents to the groom/ or groom's family. Sometimes this is considered the bride's property, but it most often passes into the practical control of the groom or the groom's family
Dower (also termed Bride Gift)	Net assets move from the groom and his kin to the bride. The payment is to insure her against divorce, or the death or incapacity of her husband. When dower payments are made to, or are controlled by, the bride's family, they are brideprice
Brideservice	A groom labours for a given period for the bride's family in exchange for his wife
Bride Token	Marriage payments are relatively small, but still move from the

5 Good Shepherd & inTouch, *Submission 6*, p. 7.

6 Monash Family Violence Prevention Centre (MFVPC), the Monash Migration and Inclusion Centre (MMIC) and Monash Gender, Peace and Security (GPS), *Submission 15*, pp. 7–8.

	groom's family to the bride's family
Gift Exchange/ Sister Exchange	Marriage payments are reciprocal or involve the exchange of sisters and valuables

Source: Monash Family Violence Prevention Centre (MFVPC), the Monash Migration and Inclusion Centre (MMIC) and Monash Gender, Peace and Security (GPS), *Submission 15*, pp. 7–8.

### ***Dowry abuse***

1.10 The United Nations Division for the Advancement of Women has defined dowry-related violence as 'any act of violence or harassment associated with the giving or receiving of dowry at any time before, during or after the marriage'.<sup>7</sup>

1.11 Dowry abuse is perceived as a growing problem in some communities in Australia. The Victorian Royal Commission into Family Violence recently found that it was a particular concern in Indian, Pakistani, Sri Lankan, and increasingly in Middle Eastern Communities,<sup>8</sup> although as it is not confined to any one ethnic, cultural or religious group care is needed in public discourse so as not to stereotype or vilify one particular group.

1.12 Good Shepherd & inTouch argued that the experience in Britain was similar to that in Australia:

The practice of dowry and the presence of dowry abuse in the United Kingdom is similar to that of Australia. Migrant diaspora communities continue to engage in the practice of dowry as a central marriage custom. Migration status is also used a lever to demand higher dowries which when not fulfilled result in abuse and violence.<sup>9</sup>

1.13 Dowry abuse can include coercive demands for larger gifts or increased cash payments from a woman and her family, demands that are often particularly 'excessive' when compared to the income and assets of the family giving them.<sup>10</sup> These demands can be accompanied by acts of violence on the woman and her family, or of other acts of abuse including emotional and economic abuse, harassment or stalking to exact compliance with demands or to punish the victim for non-payment.<sup>11</sup> In this, dowry abuse differs from other acts of family violence in that a number of individuals can be involved in perpetrating acts of violence, including in-laws, former spouses and fiancés, and other family members and friends.<sup>12</sup>

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7 United Nations Division for the Advancement of Women, *Good Practices in Legislation on 'Harmful Practices' against Women*, UN DAW (2009).

8 Victorian Royal Commission into Family Violence, *Report*, Volume 1, March 2016, p. 133.

9 Good Shepherd & inTouch, *Submission 6*, p. 43.

10 Uthra Ramachandran, *Submission 28*, p. 4.

11 Anti-Slavery Australia (ASA), *Submission 47*, p. 8.

12 ASA, *Submission 47*, p. 8.

1.14 Good Shepherd & inTouch suggested that violent acts associated with dowry abuse could include 'battering, mutilation, rape, acid throwing, wife burning, murder and suicide'.<sup>13</sup> A number of other behaviours could also stem from demands for dowry not being fulfilled, including:

- threats of cancellation of visa sponsorship and deportation;
- threats to annul the marriage with the consequence of bringing shame on the family;
- abandonment; and
- demands to terminate a pregnancy.<sup>14</sup>

1.15 Some submitters have noted that these behaviours are similar to those engaged in by domestic and family violence perpetrators. However, it was also noted that women facing dowry abuse-related violence found it difficult to recognise abuse and seek help. For example, the Royal Australian and New Zealand College of Psychiatrists submitted that culturally and linguistically diverse women:

...may face a number of barriers to recognising the abuse, understanding its impact and accessing help from Australian systems of support, whether it be for dowry abuse, other forms of domestic abuse, or mental health issues. These barriers may include feelings of shame and failure, fear of retribution, cultural and social isolation, language barriers (as translators may not be used or available in all situations), as well as a lack of awareness of where to go for help, what services are available and what their rights are in Australian society. In addition, overt and sometimes insidious pressure from within community and other social networks to maintain the family unit may encourage women to remain within abusive situations.<sup>15</sup>

1.16 It was also widely noted that some dowry-related violence and abuse was often intensified by the immigration status of some victims. For example, safe steps Family Violence Response Centre told the committee that their staff had observed that:

...dowry-related family violence was often exacerbated by the temporary visa status of clients, as it created an additional layer of vulnerability and uncertainty. These issues are present for women without permanent residency experiencing domestic and family violence whether the violence is specifically related to dowry or not. Staff believed that the following intersecting factors made women less likely to report abuse until they were at crisis point:

- The precarious nature of their living situation
- Work restrictions and ineligibility for government support payments

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13 Good Shepherd & InTouch, *Submission 6*, p. 8.

14 Good Shepherd & InTouch, *Submission 6*, p. 8.

15 Royal Australian and New Zealand College of Psychiatrists, *Submission 9*, p. 4.



- The isolation of living in a new country
- The fear of deportation to their home country (including removal of children) and the shame that this might bring upon their family.<sup>16</sup>

1.17 It was also noted that dowry abuse is not commonly understood in law enforcement and legal communities. Ms Uthra Ramachandran outlined this to the committee:

It appears that there is very limited understanding amongst the police, social workers and the legal profession as to what dowry is, how it is practiced, and how it may be linked to family violence. For example, in the case of one Indian woman who was ultimately killed by her husband, her complaints to police about dowry appear to have been misunderstood and the seriousness of the issue may have been downplayed due to lack of cultural awareness.<sup>17</sup>

1.18 However, the committee also received evidence that some claims of dowry abuse were actually a means of extortion; a practice which Turbans4Australia alleges commonly takes place in India. Turbans4Australia stated that some men in the Indian community were victims of "'reverse dowry' abuse' and that the institution of dowry 'is damaging to society as a whole'.<sup>18</sup> Reverse dowry abuse is discussed further in chapter 3.

### ***Dowry abuse as a form of economic abuse***

1.19 Economic abuse is not explicitly recognised in the *Family Law Act 1975* (Family Law Act) as a form of domestic and family violence, although as set out in chapter 2, financial-related abuse is recognised as an example of family violence in the Act.

1.20 The Attorney-General's Department informed the committee that the Family Law Act would capture dowry-related family violence through its existing 'broad' definition of family violence:

Section 4AB of the Family Law Act defines family violence as including violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the family member), or causes the family member to be fearful. The National Domestic and Family Violence Bench Book identifies dowry-related abuse as an example of cultural and spiritual abuse which comes within the meaning of family violence.

We understand that existing definitions in state and territory family violence legislation are similarly broad.<sup>19</sup>

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16 safe steps Family Violence Response Centre, *Submission 14*, p. 8.

17 Ms Uthra Ramachandran, *Submission 28*, p. 6 (citations omitted).

18 Turbans4Australia, *Submission 81*, p. 1.

19 Attorney-General's Department, *Submission 13*, p. 2.

1.21 However, a number of submitters who identified dowry abuse as an example of economic (or financial) abuse recommended legislative amendments to better reflect this.

1.22 For example, Dr Indrani Ganguly recommended that '[d]owry-related violence should be included as a statutory example of economic abuse in all Australian legislation on preventing domestic and family violence'.<sup>20</sup>

1.23 The recognition of dowry abuse as an example of economic abuse, itself a form of family violence, will be discussed further in chapter 4.

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1.24 The following chapter sets the extent to which dowry abuse is recognised in federal, state and territory and select international legislative frameworks.

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20 Dr Indrani Ganguly, *Submission 36*, p. 3.

# Chapter 2

## The legislative framework

1.1 There are no laws in Australia that specifically criminalise the practice of dowry or dowry abuse. However, in an Australian first and as a result of the Victorian Royal Commission into Family Violence (Royal Commission), the Victorian Government recently legislated to refer to dowry abuse as an example of family violence.

1.2 Other jurisdictions in Australia and internationally arguably capture dowry abuse in their prohibition of economic (or financial) abuse, itself often recognised as a form of family violence.

1.3 This chapter sets out the legislative frameworks in federal, state and comparative international jurisdictions in respect of dowry abuse as a form of economic abuse.

### Federal law

2.1 There are three areas of federal criminal law that are relevant to the occurrence of dowry abuse: criminal law, family law and migration law.

2.2 This section will outline the relevant provisions of the *Criminal Code Act 1995* (Criminal Code), the *Family Law Act 1975* (Family Law Act) and the *Migration Act 1958* (Migration Act) and Migration Regulations 1994 (Regulations).

### *Criminal law*

2.3 While economic abuse and financial abuse are not specifically criminalised in the Criminal Code, forced marriage is an offence under the Criminal Code.

2.4 The committee received evidence that there may be a connection between forced marriage and dowry abuse.<sup>1</sup>

2.5 Forced marriage is defined at section 270.7A of the Criminal Code:

(1) A marriage is a ***forced marriage*** if one party to the marriage (the ***victim***) entered into the marriage without freely and fully consenting:

(a) because of the use of coercion, threat or deception; or

(b) because the party was incapable of understanding the nature and effect of the marriage ceremony.

2.6 It is an offence to cause a person to enter into a forced marriage, and to be a party to a forced marriage where the party is not a victim.<sup>2</sup>

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1 Anti-Slavery Australia (ASA), *Submission 47*, p. 12, citing: Sundari Anitha, Anupama Roy, and Harshita Yalamarty, 'Gender, Migration, and Exclusionary Citizenship Regimes: Conceptualizing Transnational Abandonment of Wives as a Form of Violence Against Women' 24(7) *Violence Against Women* p. 747.

2 *Criminal Code Act 1995*, s. 270.7B.

2.7 Forced marriage is classified in the Criminal Code as a 'slavery-like practice'. The Criminal Code also makes it an offence to engage in slavery<sup>3</sup> and other slavery-like practices, such as servitude<sup>4</sup> and forced labour.<sup>5</sup>

2.8 The nexus between these offences and dowry abuse will be examined further in chapter 3.

### ***Family law***

2.9 The Family Law Act defines 'family violence' as 'violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the *family member*), or causes the family member to be fearful'.<sup>6</sup>

2.10 The Act includes the following examples of behaviour that may constitute family violence:

(g) unreasonably denying the family member the financial autonomy that he or she would otherwise have had; or

(h) unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or his or her child, at a time when the family member is entirely or predominantly dependent on the person for financial support...<sup>7</sup>

2.11 Although 'economic abuse' does not appear in the Act, the Act provides that this list of examples are not exhaustive.<sup>8</sup> The term 'abuse' is defined in the Act.<sup>9</sup>

2.12 The National Domestic and Family Violence Bench Book explains what happens when allegations of child abuse or family violence are raised:

...each party has an obligation to file and serve a Notice of Risk (Federal Circuit Court of Australia) or Notice of Child Abuse, Family Violence or Risk of Family Violence...

...

When an allegation of family violence or abuse is raised, a Family Court is required to take prompt action [which] includes considering what interim or procedural orders (if any) should be made to enable appropriate evidence

3 Slavery is defined as '...the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including where such a condition results from a debt or contract made by the person' – see *Criminal Code Act 1995*, s. 270.1. Slavery offences are outlined at section 270.3 of the Criminal Code.

4 'Servitude' is defined at section 270.4, and servitude offences are set out at 270.5 of the *Criminal Code Act 1995*.

5 'Forced labour' is defined at section 270.6, and forced labour offences are set out at section 270.6A of the *Criminal Code Act 1995*.

6 *Family Law Act 1975*, ss. 4AB(1).

7 *Family Law Act 1975*, ss. 4AB(2).

8 *Family Law Act 1975*, ss. 4AB(2).

9 *Family Law Act 1975*, s. 4.

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about the allegation to be obtained as expeditiously as possible and so as to protect the child or any of the parties to the proceedings. Prompt action also includes making such orders as the court considers appropriate (such as orders or injunctions for personal protection of the child or any other person) and dealing with the issues raised by the allegations as expeditiously as possible.<sup>10</sup>

2.13 The following exchange between the Chair and Ms Ashleigh Saint of the Attorney-General's Department (AGD)—which administers the Family Law Act—at the committee's public hearing in Canberra on 3 December 2018, sets out the intersection between federal, state and territory laws with respect to family violence:

Ms Saint:...In terms of the criminalisation of that behaviour, that is predominantly dealt with under state and territory law in relation to abuse.

CHAIR: Why is it primarily within state and territory law and not within family violence law?

Ms Saint: The Family Law Act deals with family violence in the context of proceedings in family law. General assault and family violence offences against the person and other offences like that fall within state and territory law.

CHAIR: That's right. I just have to go back to understanding this. So, even though family violence, assaults et cetera are relevant within family law, the offences themselves are defined within state law. That's what you're saying?

Ms Saint: That's correct. But those offences having occurred would be relevant in family law proceedings.<sup>11</sup>

### ***Migration law***

2.14 The Migration Act provides that the Minister may grant a non-citizen a visa to travel to and enter Australia, and/or remain in Australia.<sup>12</sup>

2.15 The Migration Amendment (Family Violence and Other Measures) Bill 2018 recently amended the Migration Act to:

- protect vulnerable Australian sponsors who are targeted by non-genuine visa applicants who simply want a permanent visa outcome; and
- address the current situation where Australian sponsors who have a violent history are able to sponsor non-citizens without having to disclose details of

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10 *National Domestic and Family Violence Bench Book*, June 2018, section 10.1.3, <http://dfvbenchbook.aija.org.au/foundational-information/intersection-of-legal-systems/> (accessed 7 January 2019).

11 Ms Ashleigh Saint, Assistant Secretary Family Law Branch, Attorney-General's Department (AGD), *Committee Hansard*, 3 December 2018, p. 8.

12 *Migration Act 1958*, s. 29.

their past to either the Department of Home Affairs or other parties to the visa application.<sup>13</sup>

2.16 The amendments to the Migration Act refer specifically to family violence:

The purposes of this Division, to the extent it applies in relation to the sponsored family visa program, are:

- (a) to strengthen the integrity of the program; and
- (b) to place greater emphasis on the assessment of persons as family sponsors; and
- (c) to improve the management of family violence in the delivery of the program.<sup>14</sup>

2.17 The bill received Royal Assent on 10 December 2018.

2.18 The Regulations stipulate the types of visas that may be granted by the Minister, how the visas are to be granted, and the conditions of those visas.

2.19 While the Migration Act does not define family violence, the Regulations define 'relevant family violence' as:

...conduct, whether actual or threatened, towards:

- (a) the alleged victim; or
- (b) a member of the family unit of the alleged victim; or
- (c) a member of the family unit of the alleged perpetrator; or
- (d) the property of the alleged victim; or
- (e) the property of a member of the family unit of the alleged victim; or
- (f) the property of a member of the family unit of the alleged perpetrator;

that causes the alleged victim to reasonably fear for, or to be reasonably apprehensive about, his or her own wellbeing or safety.<sup>15</sup>

2.20 The Regulations refer to 'family violence committed by the sponsor' in respect to sponsorship for spouse, partner, prospective marriage and interdependency visas, and provide that the Minister may approve the application of a spouse, de facto partner or prospective spouse of the sponsor where the applicant 'suffered family violence committed by the sponsor'.<sup>16</sup>

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13 Elibritt Karlsen and Moira Coombs, Migration Amendment (Family Violence and Other Measures) Bill 2016, *Bills Digest No. 21*, 2016–17, Parliamentary Library, Canberra, 2016, p. 3.

14 *Migration Amendment (Family Violence and Other Measures) Act 2018*, Item 10, inserts new ss. 104AA(2). Section 104AA(3) provides for the establishment of a framework to achieve this end.

15 Migration Regulations 1994, reg. 1.21.

16 Migration Regulations 1994, sub-para. 1.20J(1)(a)(ii).

2.21 On 1 September 2016, the same day that the Migration Amendment (Family Violence and Other Measures) Bill 2016 was introduced into Parliament, the Governor-General made the Migration Legislation Amendment (2016 Measures No. 3) Regulation 2016 to strengthen integrity and improve support for vulnerable applicants.<sup>17</sup>

2.22 Schedule 6 of this regulation commenced on 18 November 2016 and amended Division 1.4B of Part 1 of the Regulations relating to family violence. This schedule implements action item 11 of the *National Plan to Reduce Violence against Women and their Children 2010–2022* (the National Plan), which requires an additional information disclosure by the Australian husband or fiancé.<sup>18</sup>

2.23 The National Plan will be discussed further in chapter 5.

### **State and Territory family/domestic violence laws**

2.24 All states and territories with the exception of New South Wales have definitions of 'economic abuse' in their family/domestic violence laws.

2.25 The AGD referred to the state and territory criminal laws in its submission, describing these laws as providing for a wide range of offences that cover violent and non-violent behaviour, and which, to the department's knowledge, 'would capture a range of dowry-related abuse'.<sup>19</sup>

2.26 However, as varying levels of protection are offered to potential victims of domestic and family violence under state and territory-based schemes, 'victims and potential victims of dowry abuse, human trafficking, slavery and forced marriage have varying levels of protection available to them'.<sup>20</sup>

2.27 This section examines the relevant definitions of 'economic abuse' in each jurisdiction.

#### ***Australian Capital Territory***

2.28 The *Family Violence Act 2016* (ACT) includes 'economic abuse' as a form of family violence,<sup>21</sup> defined as follows:

"economic abuse", of a family member, means behaviour by a person that is coercive, deceptive or that unreasonably controls the family member without the family member's consent including by the person's exploitation of power imbalances between the person and the family member—

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17 Elibritt Karlsen and Moira Coombs, Migration Amendment (Family Violence and Other Measures) Bill 2016, *Bills Digest No. 21*, 2016–17, Parliamentary Library, Canberra, 2016, p. 7.

18 Elibritt Karlsen and Moira Coombs, Migration Amendment (Family Violence and Other Measures) Bill 2016, *Bills Digest No. 21*, 2016–17, Parliamentary Library, Canberra, 2016, p. 7.

19 AGD, *Submission 13*, p. 3.

20 ASA, *Submission 47*, p. 20.

21 *Family Violence Act 2106* (ACT), sub-para. 8(1)(a)(iv).

(a) in a way that takes away the financial independence or control the family member would have but for the behaviour; or

(b) if the family member is wholly or predominantly dependent on the person for financial support to meet the living expenses of the family member or the family member's child—by withholding the financial support.<sup>22</sup>

2.29 This Act also provides examples of family violence by a person in relation to a family member of the person, such as 'sexually coercive behaviour', but does not include dowry abuse as an example of family violence.<sup>23</sup>

### ***New South Wales***

2.30 Domestic violence legislation in New South Wales does not specifically identify economic or financial abuse as a form of domestic and family violence.

2.31 However, such abuse could be caught by the definition of a 'domestic violence offence' in the *Crimes (Domestic and Personal Violence) Act 2007* (NSW), which is:

...an offence (other than a personal violence offence) the commission of which is intended to coerce or control the person against whom it is committed or to cause that person to be intimidated or fearful (or both).<sup>24</sup>

2.32 A 'personal violence offence' includes an offence under section 44 of the *Crimes Act 1900* (NSW)<sup>25</sup> where a person fails 'to provide the necessities of life':

A person:

(a) who is under a legal duty to provide another person with the necessities of life, and

(b) who, without reasonable excuse, intentionally or recklessly fails to provide that person with the necessities of life,

is guilty of an offence if the failure causes a danger of death or causes serious injury, or the likelihood of serious injury, to that person.<sup>26</sup>

### ***Northern Territory***

2.33 In the Northern Territory, the *Domestic and Family Violence Act 2007* (NT) recognises 'economic abuse' as a form of family violence,<sup>27</sup> where economic abuse is defined as follows:

"Economic abuse", of a person, includes any of the following conduct (or any combination of them):

(a) coercing the person to relinquish control over assets or income;

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22 *Family Violence Act 2106* (ACT), ss. 8(3).

23 *Family Violence Act 2106* (ACT), ss. 8(2).

24 *Crimes (Domestic and Personal Violence) Act 2007* (NSW), para. 11(1)(c).

25 *Crimes (Domestic and Personal Violence) Act 2007*, para. 4(a).

26 *Crimes Act 1900* (NSW), ss. 44(1).

27 *Domestic and Family Violence Act 2007* (NT), s. 5.



*Example of coercion for paragraph (a)*

*Using stand-over tactics to obtain the person's credit card.*

- (b) unreasonably disposing of property (whether owned by the person or owned jointly with the person or someone else) without consent;
- (c) unreasonably preventing the person from taking part in decisions over household expenditure or the disposition of joint property;
- (d) withholding money reasonably necessary for the maintenance of the person or a child of the person.<sup>28</sup>

***Queensland***

2.34 The *Domestic and Family Violence Protection Act 2012* (Qld) includes economic abuse as a form of domestic violence,<sup>29</sup> and defines economic abuse as:

...behaviour by a person (the "first person") that is coercive, deceptive or unreasonably controls another person (the "second person"), without the second person's consent—

- (a) in a way that denies the second person the economic or financial autonomy the second person would have had but for that behaviour; or
- (b) by withholding or threatening to withhold the financial support necessary for meeting the reasonable living expenses of the second person or a child, if the second person or the child is entirely or predominantly dependent on the first person for financial support to meet those living expenses.<sup>30</sup>

***South Australia***

2.35 The *Intervention Orders (Prevention of Abuse) Act 2009* (SA) provides that "Abuse" may take many forms including physical, sexual, emotional, psychological or economic abuse', where an 'act of abuse' includes an act that results or is intended to result in 'an unreasonable and non-consensual denial of financial, social or personal autonomy'.<sup>31</sup>

2.36 Further, the Criminal Law Consolidation (Domestic Abuse) Amendment Bill 2018, introduced into the Legislative Council on 17 October 2018, proposes a new criminal offence of 'controlling or coercive behaviour in a relationship' which carries a maximum penalty of seven years:

- (1) A person commits an offence if—
  - (a) the person repeatedly or continuously engages in behaviour towards another person (the victim) that is controlling or coercive; and

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28 *Domestic and Family Violence Act 2007* (NT), s. 8.

29 *Domestic and Family Violence Protection Act 2012* (Qld), para. 8(1)(c).

30 *Domestic and Family Violence Protection Act 2012* (Qld), s. 12.

31 *Intervention Orders (Prevention of Abuse) Act 2009* (SA), s. 8.

- (b) at the time of the behaviour, the person and the victim are in a relationship; and
- (c) the behaviour has a serious effect on the victim; and
- (d) the person knows or ought to know that the behaviour will have a serious effect on the victim.<sup>32</sup>

### ***Tasmania***

2.37 In Tasmania, 'economic abuse' is included in the definition of 'family violence' in the *Family Violence Act 2004* (Tas).<sup>33</sup>

2.38 The offence of economic abuse appears in the Act as follows:

A person must not, with intent to unreasonably control or intimidate his or her spouse or partner or cause his or her spouse or partner mental harm, apprehension or fear, pursue a course of conduct made up of one or more of the following actions:

- (a) coercing his or her spouse or partner to relinquish control over assets or income;
- (b) disposing of property owned –
  - (i) jointly by the person and his or her spouse or partner; or
  - (ii) by his or her spouse or partner; or
  - (iii) by an affected child –  
without the consent of the spouse or partner or affected child;
- (c) preventing his or her spouse or partner from participating in decisions over household expenditure or the disposition of joint property;
- (d) preventing his or her spouse or partner from accessing joint financial assets for the purposes of meeting normal household expenses;
- (e) withholding, or threatening to withhold, the financial support reasonably necessary for the maintenance of his or her spouse or partner or an affected child.<sup>34</sup>

2.39 Tasmanian law does not allow for the possibility that this abuse might be committed by someone other than a spouse or partner.

### ***Victoria***

2.40 The meaning of family violence appears in the *Family Violence Protection Act 2008* (Vic) as follows:

- (a) behaviour by a person towards a family member of that person if that behaviour—

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32 Criminal Law Consolidation (Domestic Abuse) Amendment Bill 2018, proposed new section 20A.

33 *Family Violence Act 2004* (Tas), s. 7.

34 *Family Violence Act 2004* (Tas), s. 8.

- (i) is physically or sexually abusive; or
  - (ii) is emotionally or psychologically abusive; or
  - (iii) is economically abusive; or
  - (iv) is threatening; or
  - (v) is coercive; or
  - (vi) in any other way controls or dominates the family member and causes that family member to feel fear for the safety or wellbeing of that family member or another person; or
- (b) behaviour by a person that causes a child to hear or witness, or otherwise be exposed to the effects of, behaviour referred to in paragraph (a).

2.41 In 2016, the Royal Commission recommended that, within 12 months:

The Victorian Government amend section 6 of the *Family Violence Protection Act 2008* (Vic) to expand the statutory examples of family violence to include forced marriage and dowry related abuse.<sup>35</sup>

2.42 The Victorian Parliament legislated on this recommendation through the *Justice Legislation Amendment (Family Violence Protection and Other Matters) Act 2018* (Vic). Victoria is therefore the only jurisdiction that specifically includes dowry abuse as an example of family violence.<sup>36</sup>

1.4 The Act does not change the meaning of 'family violence' in the *Family Violence Protection Act 2008* (Vic), but inserts the following relevant behaviours as examples of family violence:

- using coercion, threats, physical abuse or emotional or psychological abuse to cause or attempt to cause a person to enter into a marriage; [and]
- using coercion, threats, physical abuse or emotional or psychological abuse to demand or receive dowry, either before or after a marriage.<sup>37</sup>

2.43 The term 'economic abuse' is defined in section 6 of the *Family Violence Protection Act 2008* (Vic) as:

...behaviour by a person (the first person) that is coercive, deceptive or unreasonably controls another person (the second person), without the second person's consent—

- (a) in a way that denies the second person the economic or financial autonomy the second person would have had but for that behaviour; or

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35 Victorian Royal Commission into Family Violence, *Royal Commission into Family Violence: Report and recommendations*, March 2016, p. 122. See, Recommendation 156.

36 Mosiqi Acharya, 'Victorian parliament passes legislation banning dowry abuse', *SBS News* 9 August 2018, <https://www.sbs.com.au/yourlanguage/hindi/en/article/2018/08/09/victorian-parliament-passes-legislation-banning-dowry-abuse> (accessed 18 December 2018).

37 *Justice Legislation Amendment (Family Violence Protection and Other Matters) Act 2018* (Vic), para. 15(a), amending s. 5 of the *Family Violence Protection Act 2008* (Vic).

(b) by withholding or threatening to withhold the financial support necessary for meeting the reasonable living expenses of the second person or the second person's child, if the second person is entirely or predominantly dependent on the first person for financial support to meet those living expenses.<sup>38</sup>

2.44 Although examples of economic abuse are listed within section 6 of the Act, dowry abuse is not included as an example of this form of abuse.

### ***Western Australia***

2.45 The *Restraining Orders Act 1997* (WA) includes the following examples of behaviour that may constitute family violence:

(g) unreasonably denying the family member the financial autonomy that the member would otherwise have had;

(h) unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or a child of the member, at a time when the member is entirely or predominantly dependent on the person for financial support;<sup>39</sup>

### **International approaches to dowry abuse**

2.46 This section sets out the approaches to dowry abuse as a form of economic abuse in the like jurisdictions of Canada, New Zealand and the United Kingdom (UK). This is important because dowry abuse often involves the family of perpetrators and victims, both in Australia and offshore; and because of evidence that the practice of dowry and dowry abuse have been 'globalised' in recent years, fuelled by migration patterns and the attraction of marriage and visa pathways to advanced developed countries.

2.47 Addressing dowry abuse and the issue of abandoned brides will require international cooperation and action in many countries, and Australia has the opportunity to show leadership and advance the debate and policy thinking.

2.48 This section also examines the criminalisation of the practice of dowry in India, a subject raised by many inquiry participants.

2.49 The committee received limited evidence about dowry abuse in other countries.

### ***Canada***

2.50 While there is no specific offence of family violence in the *Criminal Code 1985* (CAN) (Canadian Criminal Code), most acts of family violence are crimes in Canada. Many offences concerning financial abuse within the family—such as theft, misappropriation of money held under direction, and extortion—are related to dowry.

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38 *Family Violence Protection Act 2008* (Vic), s. 6.

39 *Restraining Orders Act 1997* (WA), ss. 5A(2).

2.51 In 2014, Bill S-7, 'An Act to amend the *Immigration and Refugee Protection Act*, the *Civil Marriage Act* and the *Criminal Code* and to make consequential amendments to other Acts', was announced by Canada's Citizenship and Immigration Minister. The *Zero Tolerance for Barbaric Cultural Practices Act 2015*, which introduced forced marriage offences into the Canadian Criminal Code, received Royal Assent on 18 June 2015.

2.52 There is no specific reference to dowry or dowry-related violence in the Canadian Criminal Code.

2.53 In Canada, provincial and territorial governments make laws in areas of their own jurisdiction.<sup>40</sup>

### ***New Zealand***

2.54 The recently passed *Family Violence Act 2018* (NZ), which comes into force on 1 July 2019, includes 'dowry-related violence' in its definition of violence:

Violence against a person may be dowry-related violence (that is, violence that arises solely or in part from concerns about whether, how, or how much any gifts, goods, money, other property, or other benefits are—

(a) given to or for a party to a marriage or proposed marriage; and

(b) received by or for the other party to the marriage or proposed marriage.<sup>41</sup>

2.55 The Act also provides that financial or economic abuse—such as 'unreasonably denying or limiting access to financial resources, or preventing or restricting employment opportunities or access to education'—are forms of psychological abuse.<sup>42</sup>

2.56 Further, as in Australia, forced marriage is an offence in New Zealand.<sup>43</sup>

### ***The United Kingdom***

2.57 The draft Domestic Violence and Abuse Bill 2018 (UK) proposes a new statutory definition of domestic abuse which is expanded to include economic abuse. The consultation paper on the draft Bill states:

...while the current non-statutory government definition of domestic abuse already recognises financial abuse, we are aware that this can be restrictive in circumstances where victims may be denied access to basic resources such as food, clothing and transportation. In addition, victims may be forced into taking out loans or entering into other financial contracts by the

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40 Department of Justice (Canada), *Family violence laws*, 8 March 2017, <https://www.justice.gc.ca/eng/cj-jp/fv-vf/laws-lois.html> (accessed 18 December 2018).

41 *Family Violence Act 2018* (NZ), ss. 9(4).

42 *Family Violence Act 2018* (NZ), para. 11(1)(e).

43 *Crimes Act 1961* (NZ), s. 98 and s. 208.

perpetrator. We therefore want to take a more expansive approach to account for all these forms of abuse.<sup>44</sup>

2.58 The proposed statutory definition would also define controlling behaviour and coercive behaviour:

Controlling behaviour

Controlling behaviour is a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.

Coercive behaviour

Coercive behaviour is an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim.<sup>45</sup>

2.59 The consultation paper does not, however, discuss dowry or dowry abuse. The submission to the consultation by Liberty (The National Council for Civil Liberties) discussed the legal definition of domestic abuse and observed the omission of dowry abuse from the proposed definition.

We welcome the move to consolidate the legal definition of domestic abuse and we particularly support the proposals to include: (1) abuse by family members and extended family members, (2) to include both single incidents and patterns of behaviour, and (3) to use the wider term of 'economic abuse' as opposed to 'financial abuse'. However, the codification of domestic abuse into UK legislation must be consistent with current legal guidance. The legislative definition of domestic abuse should accord with the family law practice direction – Practice Direction 12J – which deals specifically with this issue. The practice direction was recently updated by the President of the Family Division – Sir James Munby -- who recognised that specific forms of violence against women and girls (VAWG) which particularly impact black and ethnic minority (BAME) communities are less likely to be recognised as forms of abuse without a clear definition. As a result, the practice direction expressly refers to forms of abuse such as forced marriage, so-called 'honour-based' violence, abandonment and **dowry abuse**, which have cultural specificity. For the avoidance of doubt, and to ensure cultural forms of abuse are properly recognised, the new definition of domestic abuse in the Bill should mirror those in the practice direction, in addition to the other proposals supported above.<sup>46</sup>

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44 Ministry of Justice, *Transforming the Response to Domestic Abuse: Government Consultation (full version)*, June 2018, p. 13.

45 Ministry of Justice, *Transforming the Response to Domestic Abuse: Government Consultation (full version)*, June 2018, p. 13.

46 Liberty (The National Council for Civil Liberties), *Liberty's response to the Government's consultation on the Domestic Violence and Abuse Bill 2018*, May 2018, p. 4 (emphasis added).

2.60 The consultation period on the draft Bill closed at the end of May 2018.<sup>47</sup> The bill is not yet before the UK Parliament.

2.61 The House of Commons Home Affairs Committee published its report on domestic abuse on 22 October 2018. The report examines the Government's proposed strategy for tackling domestic abuse and identifies issues which the government must address in the draft bill and in its future policies. The report identified that '[e]conomic abuse is associated with an increased risk of homicide because victims tend to stay with abusive partners for longer when they do not have the financial means to leave'.<sup>48</sup>

2.62 There is no specific piece of legislation under English law to settle dowry disputes.<sup>49</sup>

### **India**

2.63 Since 1961, India has prohibited both the giving and receiving of dowry. The *Dowry Prohibition Act 1961*, which prohibits this practice, defines dowry as:

...any property or valuable security given or agreed to be given either directly or indirectly:

a) by one party to a marriage to the other party to the marriage; or

b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person; at or before or any time after the marriage in connection with the marriage of said parties but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.<sup>50</sup>

2.64 Pursuant to the Act, where a person has engaged in the giving or receiving of dowry, the person is punishable for up to five years imprisonment and a fine 'which shall not be less than fifteen thousand rupees or the amount of the value of such dowry'.<sup>51</sup>

2.65 The Act also provides that it is an offence to demand dowry.<sup>52</sup>

2.66 In addition to these legislative provisions, section 498A of the *Indian Penal Code 1860* provides that, where a husband or the relative of the husband of a woman subjects this woman to cruelty, the perpetrator shall be punished with imprisonment

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47 Ministry of Justice, *Transforming the response to domestic abuse*, <https://consult.justice.gov.uk/homeoffice-moj/domestic-abuse-consultation/> (accessed 18 December 2018).

48 House of Commons, Home Affairs Committee, *Domestic abuse*, HC 1015, 22 October 2018, p. 3.

49 Nazia Rashid, AnthonyGold, *Dowry claims and English Law*, 29 August 2017, <https://s3.amazonaws.com/documents.lexology.com/ef164d59-3fd2-4083-8ef4-ebf523b8dba5.pdf> (accessed 18 December 2018).

50 *Dowry Prohibition Act 1961*, s. 2.

51 *Dowry Prohibition Act 1961*, ss. 3(1).

52 *Dowry Prohibition Act 1961*, s. 4.

for up to three years and may also be subject to a fine—this provision 'protects the wife from harassment by the husband or the husband's family in cases where an illegal dowry is sought'.<sup>53</sup>

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2.67 The following chapters examine the nexus between criminal law and dowry abuse, family law and dowry abuse, and migration law and dowry abuse.

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53 The Indian (Sub-Continent) Crisis & Support Agency, *Submission 50*, p. 5. This provision was inserted in 1983.



# Chapter 3

## The criminal law

3.1 This chapter examines the arguments for and against criminalising the practice of dowry in Australia, as distinct from dowry abuse, which as the previous chapter established, is already captured in existing law. This chapter also examines the adequacy of existing federal criminal law provisions, and the existing extradition arrangements between Australia and the Republic of India.

### Criminalising dowry

3.2 The committee heard arguments both in favour of<sup>1</sup> and against<sup>2</sup> the criminalisation of the practice of dowry in Australia. Those in favour of criminalisation tended to argue that the practice of dowry has no place in Australia. Those against criminalising the practice generally supported the cultural significance of dowry and suggested that existing criminal law is adequate to respond to dowry abuse.

3.3 The United Indian Association (UIA) was one of the organisations advocating for the criminalisation of dowry, stating that the practice of dowry in modern Australia 'is totally unacceptable and inappropriate'.<sup>3</sup> Mrs Sumati Advani of the UIA elaborated on why the practice of dowry in Australia is problematic:

In Australia, first of all we don't seem to recognise that dowry is practiced. Secondly, because it is not criminalised, what happens is that the perpetrators actually get away with it. There is no action taken, because very often the domestic violence is mental abuse, emotional abuse and blackmailing. Very often it is not even picked up by people. Most of the problems that we have seen, as mentioned before, are with temporary spouse visas. These are people who are coming here on tourist visas, making false temporary spouse visas. What is happening is that, from the time that they get married and come here, the parents are made to pay for the ticket, the visa, education, house deposits, car purchases—it goes on and on and on.<sup>4</sup>

3.4 Dr Manjula O'Connor also advocated for the criminalisation of dowry in Australia, stating that women subject to dowry abuse in Australia suffer 'multiple

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- 1 See, for example, Soroptimist International of Australia, *Submission 26*, p. 4; The Indian (Sub-Continent) Crisis & Support Agency (ICSA), *Submission 50*, p. 14; Dr Kym Jenkins, President, Royal Australian and New Zealand College of Psychiatrists, *Committee Hansard*, 21 September 2018, p. 8.
  - 2 See, for example, Ms Uthra Ramachandran, *Submission 28*, p. 5; Good Shepherd Australia New Zealand and inTouch Multicultural Centre against Family Violence (GSANZ and inTouch), *Submission 6*, p. 26.
  - 3 United Indian Association (UIA), *Submission 8*, p. 2.
  - 4 Mrs Sumati Advani, Chair, Women's Steering Committee, and Founder, United Indian Associations Inc, *Committee Hansard*, 30 November 2018, p. 9.

layers of disadvantage'.<sup>5</sup> Dr O'Connor also commented on what she considered to be the inappropriateness of this cultural practice:

The young women and their parents have been hoodwinked by society into continuing the practice of dowry believing that it is their duty to give and the grooms have been groomed to believe that they are entitled to receive the bride's family wealth.

Any brides parents not willing to give dowry are judged as too mean, too poor and not respect worthy by the socially conscious/greedy grooms .The brides have internalised this societal construct. The process of criticism of not enough dowry gifts by husband and his mother should anger the bride, instead it makes her feel ashamed, embarrassed and she questions as to why her parents did not give more, as that would have spared her the humiliation of her family being judged as lower class than the groom and she not good enough for him.<sup>6</sup>

3.5 White Ribbon Australia expressed its support for Dr O'Connor's campaign for the criminalisation of dowry, and the outlawing dowry abuse.<sup>7</sup>

3.6 Many submitters and witnesses who opposed the criminalisation of dowry referred to the apparent inefficacy of the prohibition of dowry in India. India's legislative response to the practice of dowry was criticised for several reasons, including that:

- the law is poorly implemented and has not had any impact on or addressed dowry abuse, including acts of domestic or other violence arising from such demands;<sup>8</sup>
- it criminalises both the givers and receivers of dowry, which makes it difficult for the families of wronged brides to bring a claim, or that it can be used to penalise women's families where they are pressured into accepting demands;<sup>9</sup>
- some women in India want the practice of dowry to continue, as it represents a 'rightful inheritance' that they often rely on financially;<sup>10</sup>
- the criminalisation of dowry gave rise to the practice of 'Stridhan', the Hindu term for women's property for gifts around marriage that remain in the

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5 Dr Manjula O'Connor, *Submission 16*, p. 6.

6 Dr O'Connor, *Submission 16*, p. 6 (emphasis omitted).

7 White Ribbon Australia, *Submission 24*, p. 1.

8 See, for example, Professor Supriya Singh, *Submission 3*, pp. 1–2; GSANZ and inTouch, *Submission 6*, p. 42; and Monash Family Violence Prevention Centre (MFVPC), the Monash Migration and Inclusion Centre (MMIC) and Monash Gender, Peace and Security (GPS) (Monash University), *Submission 15*, p. 14.

9 See, for example, Ms Ramachandran, *Submission 28*, pp. 4–5; and Ms Muktesh Chibber, *Submission 28*, p. 2.

10 See, for example, Professor Singh, *Submission 3*, pp. 1–2; and Ms Ramachandran, *Submission 28*, p. 4.

woman's control following her marriage, which can be used to circumvent prohibitions on dowry;<sup>11</sup> and

- section 498A of the *Indian Penal Code 1860* (Penal Code) has been abused to accuse givers and receivers of dowry unfairly, which has given rise to men being penalised with only allegations of dowry abuse.<sup>12</sup>

3.7 It was with reference to criticisms such as these that many submitters and witnesses advocated against the criminalisation of dowry in Australia.

3.8 For example, Good Shepherd Australia New Zealand and inTouch Multicultural Centre against Family Violence (GSANZ and inTouch) informed the committee of research findings which demonstrate that the focus on prevention of dowry-related violence, as in India, has 'proved to be inadequate for the task of dealing with wider domestic violence'.<sup>13</sup>

3.9 Instead of criminalising dowry, GSANZ and InTouch advocated for 'embedding dowry abuse into a broader framework of abuse and violence', and eliminating barriers to women from culturally and linguistically diverse (CALD) backgrounds accessing appropriate services.<sup>14</sup>

3.10 In her submission, Professor Supriya Singh argued that '[c]riminalising particular practices in one culture ignores the complexity of family violence in that culture as well as in other cultures', and advocated instead for the criminalisation of 'coercive control'.<sup>15</sup> Professor Singh argued that dowry abuse would be caught by the criminalisation of coercive control, 'as well as all dimensions of family violence, particularly emotional, financial and sexual abuse'.<sup>16</sup>

3.11 Similarly, Harmony Alliance argued against criminalising the practice of dowry, stating that:

...such a ban would risk moving the practice underground and could deter victims of dowry abuse from seeking help for fear that they or their family would be punished for paying dowry.<sup>17</sup>

3.12 This was also reflected in evidence from Associate Professor Marie Segrave of Monash University, who considered that the actual or symbolic criminalisation of cultural practices 'may have the effect of creating an additional barrier of fear for

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11 See, for example, GSANZ and inTouch, *Submission 6*, p. 42.

12 See, for example, Ms Chibber, *Submission 28*, p. 2. This inquiry has also received a number of submissions from men, some of who are Australian citizens or residents, who claim that they have been unfairly accused of dowry abuse, which has led to them being unable to leave India following accusations, or that they have not been able to see their children.

13 GSANZ and inTouch, *Submission 6*, pp. 26–27.

14 GSANZ and inTouch, *Submission 6*, p. 27.

15 Professor Singh, *Submission 3*, p. 1.

16 Professor Singh, *Submission 3*, p. 1.

17 Harmony Alliance, *Submission 18*, p. 2.

women seeking to report family violence'.<sup>18</sup> Rather than the introduction of further legislation, Associate Professor Segrave stated that '[t]he key priority should be the norm and expectation of gendered violence being an unacceptable part of Australian life'.<sup>19</sup>

3.13 In her submission, Ms Uthra Ramachandran referred to her research findings that 'existing criminal laws were an adequate form of redress for the worst forms of offending':

Violence and mental abuse is covered by assault and causing injury provisions, and coercion is largely covered by extortion and blackmail offences. Stalking provisions may possibly be relevant with respect to causing suicidal ideation. The recent changes to the *Family Violence Protection Act 2008* (Vic) (FVPA) to include 'dowry coercion' as an illustration of 'economic abuse' is a useful educative inclusion to the Act. Indian commentators have similarly suggested that special anti-dowry laws be abandoned in favour of criminal laws such as extortion as an *FVPA* equivalent has now been enacted in India giving women some protection from domestic violence.<sup>20</sup>

### ***Reverse dowry abuse***

3.14 The committee received evidence that '[n]umerous men within the Indian community have...been falsely accused of dowry abuse by their former wives, or are themselves victims of "reverse dowry" abuse'.<sup>21</sup>

3.15 Turbans4Australia defined 'reverse dowry' abuse as follows:

Reverse dowry occurs when men rather than women are expected to pay their spouse's family upon marriage. Demands for reverse dowry are increasing partly because of the endemic practice of female infanticide. Although sex-selective abortion is illegal in India, it is still commonly practiced due to the preference for sons. This had created a skewed sex ratio in the Indian population, where there is a surplus of men and a deficit of women in the 'marriage market'. As a result, women and their families are sometimes in a position to demand money from their husbands upon marriage.<sup>22</sup>

3.16 Turbans4Australia explained to the committee how false dowry accusations may manifest:

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18 Associate Professor Marie Segrave, Associate Professor, Criminology; Researcher, Monash Gender and Family Violence Prevention Centre; Deputy Director and Lead of Trafficking and Slavery Impact, Monash Migration and Inclusion Centre, Monash University, *Committee Hansard*, 21 September 2018, p. 12.

19 Associate Professor Segrave, Monash University, *Committee Hansard*, 21 September 2018, p. 12

20 Ms Ramachandran, *Submission 28*, p. 5 (citations omitted).

21 Turbans4Australia, *Submission 81*, p. 1.

22 Turbans4Australia, *Submission 81*, p. 1.

In India, women do not need to provide proof supporting their claims of dowry abuse; they simply need to provide a statement to police, which prompts an investigation. In some cases, women accuse not only their husbands but also their husband's relatives, including minors. In perhaps the most extreme case, a two-month-old baby was arrested. As dowry abuse is a non-bailable [sic] offence, the accused can be held in custody for months until their court hearing takes place. Due to the backlog of court cases in India, legal proceedings can last for years. Since anti-dowry laws have become active in Victoria, some men have been tried in both India and Australia for the same crime. Paying for two court proceedings simultaneously is a massive financial burden.<sup>23</sup>

3.17 A submitter who wished to remain anonymous criticised the criminalisation of dowry in India, which 'has let to harassment of millions of innocent husbands and their families', such that section 498A of the Penal Code is recognised 'as a "legal tool for extortion"'.<sup>24</sup>

3.18 Indeed, another submitter whose name was withheld opposed the criminalisation of dowry in Australia and opined that this section of the Penal Code is 'the most misused and reviled law that has caused alarmingly high rates of false complaints, extortion, abuse of innocent families and male suicides in India'.<sup>25</sup>

### **Slavery and slavery-like practices**

3.19 A number of submitters and witnesses commented on the relationship between dowry abuse, slavery and slavery-like practices.

3.20 For example, Professor Jennifer Burn of Anti-Slavery Australia (ASA) referred the committee to the case *R v Tang*,<sup>26</sup> where former Chief Justice Gleeson made comments in respect to slavery which Professor Burn submitted 'can be extrapolated into the context of family violence and dowry abuse'.<sup>27</sup>

3.21 In his judgment, the former Chief Justice referred to the case of *Prosecutor v Kunarac*,<sup>28</sup> before the International Criminal Tribunal for the Former Yugoslavia, which concerned 'enslavement'. In that case, the Trial Chamber identified the following factors to be taken into account in respect of this offence:

...control of movement, control of physical environment, psychological control, measures taken to prevent or deter escape, force, threat of force or

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23 Turbans4Australia, *Submission 81*, p. 2.

24 Name Withheld, *Submission 17*, p. 1.

25 Name Withheld, *Submission 30*, p. 1.

26 *R v Tang* (2008) 237 CLR 1.

27 Professor Jennifer Burn, Director, Anti-Slavery Australia (ASA), *Committee Hansard*, 30 November 2018, p. 28.

28 Case No IT-96-23-T & IT-96-23/1-T, 22 February 2001.

coercion, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality and forced labour.<sup>29</sup>

3.22 Professor Burn opined that:

[The Chief Justice] said, importantly for us, in reviewing dowry abuse that the capacity of a person to treat a complainant as a commodity, as an object of sale and purchase, may be a powerful indicator that there is a case of slavery rather than exploitation of labour.<sup>30</sup>

3.23 In its submission, ASA provided a case study example of the relationship between dowry abuse and exploitation:

Meera, a woman in her 20s from an Asian nation came to Australia following an arranged marriage, in her country of origin, to an Australian citizen. When in Australia, Meera faced physical, sexual and verbal abuse. Meera found a job in Australia but her husband kept all her wages. Meera's husband said that nothing could happen to him as he was a citizen and came from a rich family with connections, whilst she was from a poor family. Meera's husband said that he had asked her family for additional dowry but they had not provided it. Meera's family did not want her to return home because they had already paid a large dowry and returning would bring shame upon her family.<sup>31</sup>

3.24 ASA also referred to a small-scale study of abandoned brides in India's northern states which 'found that domestic violence, financial and psychological abuse were intrinsically linked to dowry-related issues'.<sup>32</sup> ASA suggested that this research 'highlights the link between dowry abuse, family violence, forced marriage and exploitation'.<sup>33</sup>

3.25 ASA ultimately recommended that the Australian government commission research in order to:

...identify and document dowry abuse in the Australian context and the connection between dowry abuse, other forms of family violence and the more extreme forms of exploitation as set out in divisions 270 and 271 of the *Criminal Code Act 1995* (Cth).<sup>34</sup>

3.26 GSANZ and inTouch also discussed the intersection between dowry abuse, slavery and slavery-like practices, informing the committee that, in their experience,

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29 *R v Tang* (2008) 237 CLR 1 [28], citing: *Prosecutor v Kunarac* Case No IT-96-23-T & IT-96-23/1-T, 22 February 2001 at 194 [543].

30 Professor Bun, ASA, *Committee Hansard*, 30 November 2018, p. 28.

31 ASA, *Submission 47*, p. 13.

32 ASA, *Submission 47*, p. 15, citing: Sundari Anitha, Anupama Roy, and Harshita Yalamarty, 'Gender, Migration, and Exclusionary Citizenship Regimes: Conceptualizing Transnational Abandonment of Wives as a Form of Violence Against Women' 24(7) *Violence Against Women* p. 747.

33 ASA, *Submission 47*, p. 16.

34 ASA, *Submission 47*, p. 16.

...there are women from CALD backgrounds experiencing both sexual servitude and domestic servitude within their marital relationships. Domestic and family violence services regularly hear accounts from women who are in marriages where they are not free to cease providing labour either in the home or commercial businesses. They are also frequently engaging in non-consensual sexual acts with their spouse and experiencing regular threats and physical violence which maintains a pattern of control.<sup>35</sup>

3.27 GSANZ and inTouch also observed the vulnerability of women who migrate for and through marriage—these women 'are dependent on their spouses to meet basic needs, lack the language skills to engage in Australian society, and have either limited or no information about their rights'.<sup>36</sup>

3.28 GSANZ and InTouch suggested that:

...reform regarding dowry abuse in Australia must consider the extent to which other offences such as human trafficking, forced labour and domestic servitude interface with situations that occur within a domestic/familial context.<sup>37</sup>

3.29 The intersection between dowry abuse and slavery-like practices was also examined by Slavery Links Australia (Slavery Links), which recommended that a provision be made in the *Criminal Code Act 1995* (Criminal Code) for 'servile marriage' as distinct from the 'event' of forced marriage. It explained that servile marriage:

...is an ongoing situation where power relations in a marriage degrade to the extent that the day to day experiences of one partner amounts to servitude which that partner for cultural reasons cannot escape.<sup>38</sup>

3.30 Slavery Links also recommended that consideration be given to how the Australian construct of 'exploitation' at section 271.1A of the Criminal Code 'can be applied with regard to servile marriage'.<sup>39</sup>

3.31 The Attorney-General's Department (AGD) also identified the intersection between dowry, slavery and slavery-like practices:

Australia has comprehensively criminalised serious forms of exploitation, including human trafficking, slavery, and slavery-like practices. If a person were to be inherited, sold, or transferred into marriage for payment, this may constitute chattel slavery, which is a criminal offence under the Commonwealth Criminal Code and is punishable by up to 25 years imprisonment.

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35 GSANZ and inTouch, *Submission 6*, p. 21.

36 GSANZ and inTouch, *Submission 6*, p. 21.

37 GSANZ and inTouch, *Submission 6*, p. 22.

38 Slavery Links Australia (Slavery Links), *Submission 74*, p. 4.

39 Slavery Links, *Submission 74*, p. 7.

In addition, if a dowry was used as a means to coerce a person into marriage without their full and free consent, this may constitute a forced marriage, which is also a criminal offence under the Commonwealth Criminal Code and is punishable by up to nine years imprisonment.<sup>40</sup>

### *Forced marriage*

3.32 The committee was presented with evidence examining the confirmed and potential links between dowry, dowry abuse and forced and/or arranged marriages.

3.33 As noted by the AGD, the legal requirements for a valid marriage are set out in the *Marriage Act 1961*.<sup>41</sup> Although this Act does not specifically refer to the practice of dowry, or other such cultural practices, the Act 'does stipulate that a marriage will be considered void if the consent of either party was obtained by duress or fraud'.<sup>42</sup>

3.34 GSANZ and inTouch provided an explanation of the legal difference between a forced and an arranged marriage—the primary distinguishing feature is consent:

A forced marriage is considered to be a marriage that is entered into without giving free and full consent. An arranged marriage is a practice whereby parties to the marriage may be introduced by others (e.g. their parents), but ultimately consent to the marriage takes place. In practice, there can often be a blurred line between an arranged and a forced marriage. Many individuals from diverse communities are raised with the understanding that their marriage would be arranged. Many experience subtle and covert pressure to comply with the arrangement.<sup>43</sup>

3.35 GSANZ and InTouch noted that, in their experience, 'forced marriages are often characterised by abuse and violence...and dowry expectations, abuse or demands form part of this experience of violence'.<sup>44</sup>

3.36 However, safe steps Family Violence Response Centre also observed that, through their experience with clients, dowry abuse occurs in love marriages, arranged marriages and forced marriages.<sup>45</sup> It was also observed that '[m]ost forced marriages have some kind of monetary exchange, whether it is a dowry or not. It is often arranged overseas before they come to Australia'.<sup>46</sup>

3.37 ASA discussed the pressure on women in forced marriages, suggesting that women may feel that they cannot leave an abusive relationship or forced marriage because of the excessive amount that the woman's family has spent on dowry:

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40 Attorney-General's Department (AGD), *Submission 13*, p. 2.

41 AGD, *Submission 13*, p. 2.

42 AGD, *Submission 13*, p. 2.

43 GSANZ and inTouch, *Submission 6*, p. 35 (citations omitted).

44 GSANZ and inTouch, *Submission 6*, p. 36.

45 safe steps Family Violence Response Centre (safe steps), *Submission 14*, p. 6.

46 safe steps, *Submission 14*, p. 6.



This widely held perception is centered on the deeply entrenched cultural belief which has been socially practiced for decades that women from poor backgrounds are required to fulfil their family's financial constraints through marrying a wealthier suitor.<sup>47</sup>

3.38 ASA submitted that this perception has been affirmed by research conducted on child, early and forced marriage in the Democratic Republic of Congo. The report by Free the Slaves highlighted that 'marriage by sale' is one of the types of forced marriages observed in this context, 'where the promise of dowry motivates parents to force a marriage' such that it becomes 'the key coercive mechanism that links a dowry to forced marriage'.<sup>48</sup>

3.39 The Indian (Sub-Continent) Crisis & Support Agency (ICSA) submitted that detecting dowry in forced marriages is difficult due to the elements of consent and social norms.<sup>49</sup> The ICSA identified two issues arising from their case management:

a) forced marriages are to acquire a visa to Australia, a victim can be forced into several marriages over a number of years, with dowry used as a form of payment.

b) forced marriages are the means of laundering money through the dowry practice. This can include very elaborate weddings in families with ostensibly no other real wealth.<sup>50</sup>

### **Extradition laws**

3.40 The issue of extradition, specifically the relationship between Australia and India, was raised as an issue of concern by a number of submitters and witnesses and a means by which to respond to transnational dowry abuse.

3.41 The Extradition (India) Regulations 2010 incorporates into law the Extradition Treaty between Australia and the Republic of India (2008). The treaty provides that Australia and India have agreed:

...to extradite to the other, in accordance with the provisions of this Treaty, any persons who are wanted for trial, or the imposition or enforcement of a sentence, in the Requesting State for an extraditable offence.<sup>51</sup>

3.42 An 'extraditable offence' is described as:

...offences, however described, which are punishable under the laws of both Contracting States by imprisonment for a maximum period of at least one year or by a more severe penalty. Where the request for extradition

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47 ASA, *Submission 47*, p. 14.

48 ASA, *Submission 47*, p. 14 (citations omitted), citing: Free the Slaves Submission to the Women Human Rights and Gender Section, Office of the United Nations High Commissioner for Human Rights, *Call for submission on child, early and forced marriage*, 13 December 2013, p. 2.

49 ISCA, *Submission 50*, p. 7.

50 ICSA, *Submission 50*, p. 7.

51 Extradition (India) Regulations 2010, art. 1.

relates to a person convicted of such an offence who is wanted for the enforcement of a sentence of imprisonment, extradition shall be granted only if a period of at least six months of such penalty remains to be served.<sup>52</sup>

3.43 It is possible to extradite an offender to a *Requesting* State even when the offence has been committed outside the territory of this requesting state, provided that:

...the law of the *Requested* State provides for the punishment of an offence committed outside its territory in similar circumstances. Where the law of the *Requested* State does not so provide the *Requested* State may, in its discretion, grant extradition.<sup>53</sup>

3.44 The treaty also covers issues such as composite offences, grounds of refusal, and extradition of nationals.<sup>54</sup>

3.45 The Indian Ministry of External Affairs includes the following information about extradition for the offence of dowry on a government website:

Some of the countries with which India has extradition treaties in force, have declined extradition requests for fugitive criminals charged with offences under Section 498-A on the plea that conduct categorized as offence under Section 498-A (which involves meting out harassment to a woman, where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand), on the plea that such offence has no equivalent in their jurisprudence, thereby failing the dual criminality requirement, an essential ingredient in bilateral extradition treaties.

If, however, the specific underlying activities of the offence in question constitute activities that are criminal offences under the law of the foreign country concerned, it is possible that the qualifications of dual criminality would be met. Therefore, among potential offences that could be considered extraditable are assault, murder, and fraud showing criminal intent. Charges relating to such offences should be specifically brought against the accused by the concerned law enforcement agencies and charged under the appropriate provisions of the Indian Penal Code. The request should not seek extradition based primarily on violation of Section 498-A. The request would also have to fully describe evidence showing the commission of specific activities perpetrated by the offender that led to charges under the Indian Penal Code.<sup>55</sup>

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52 Extradition (India) Regulations 2010, art. 2.1.

53 Extradition (India) Regulations 2010, art. 2.4 (emphasis added).

54 Extradition (India) Regulations 2010, arts 3–5.

55 Ministry of External Affairs, *Guidelines for indian law enforcement agencies - For extradition of fugitives from abroad*, January 2016, <https://www.mea.gov.in/extraditionguidelinesabroad.htm> (accessed 7 January 2019).

3.46 Despite the existence of this treaty since 2010, it appears that offenders are not being extradited back to India for dowry-related offences. Evidence received by the committee suggested that this could be due to the lack of enforcement of the extradition treaty by India.<sup>56</sup>

3.47 In its submission, the UIA stated that '[m]ost of the offenders often do not return to India and are often out of the reach of the Indian courts where the cases are lodged', and suggested that '[e]xtradition treaties must be entered into to enable the offenders to face the courts in India'.<sup>57</sup>

3.48 The committee was informed that India's Ministry of External Affairs has taken steps to introduce the offence of dowry harassment in its extradition treaties such that alleged offenders can be extradited to India from countries where the practice of dowry is not considered an offence.<sup>58</sup>

### **Committee view**

3.49 The committee considers that the practice of dowry is generally undesirable in modern Australia. This is because it risks perpetuating a culture of ownership or control of women and runs against the cause of equality, and as dowry extortion has been identified as a direct cause of family violence, murders and suicides in Australia.

3.50 The committee accepts, however, the reasoning presented that a narrow approach of simply criminalising particular practices, such as dowry, may be counter-productive as it ignores the complexity of family violence in certain cultures. The committee is also concerned that criminalisation of the practice of dowry may have the unintended result of driving this pernicious cultural practice underground, further isolating CALD women and causing greater harm. Criminalising or seeking to ban the practice of dowry would also complicate the task of making beneficial changes to reduce the impact of dowry abuse in areas such as family law property settlements and the migration system. In addition, there may be legitimate versions of property transfer that operate in different cultural contexts. A common example might be parents making gifts to children upon marriage, noting that these gifts belong to the couple and not to 'in-laws' or broader family interests.

3.51 The committee is also mindful that the criminalisation of dowry in India does not appear to have been particularly effective in preventing dowry abuse, and that the Indian law has been the subject of misuse and extensive criticism. The committee acknowledges the overwhelming evidence that women are the major victims of dowry abuse. In doing so, the committee considers that there is no benefit for society in creating a system that fosters false and vexatious complaints—often against men—when marriages break down as appears to be the case under the current Indian law.

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56 Dr O'Connor, Executive Director, Australasian Centre for Human Rights and Health, *Committee Hansard*, 21 September 2018, p. 4.

57 UIA, *Submission 8*, p. 4.

58 Dr O'Connor, *Submission 16*, Attachment 1. See also, Mrs Sunila Kotwal, Manager, Diversity and Inclusion, White Ribbon Australia, *Committee Hansard*, 30 November 2019, p. 33.

3.52 As the following chapters will examine, the committee considers that there are more effective ways of preventing dowry abuse than merely criminalising the practice of dowry.

3.53 For example, the committee is persuaded by arguments that there exists a nexus between dowry abuse and existing offences against the person under the Criminal Code. Therefore, the committee considers that it necessary to identify and document dowry abuse in the Australian context as well as the connection between dowry abuse, other forms of family violence and those more extreme forms of exploitation as set out in the Criminal Code. Recommendations relevant to data collection and the Criminal Code appear in chapter 6.

3.54 The committee also acknowledges the concerns with respect to extradition of alleged perpetrators of dowry abuse from India to Australia, or vice versa. The committee considers the existing treaty between Australia and India to be adequate to extradite people for federal, state or territory offences. Such offences would include crimes relating to slavery and slavery-like offences in the Criminal Code, and family and domestic violence offences in each state and territory.

# Chapter 4

## Family law

4.1 As discussed in chapter 2, at present there is no reference to dowry abuse in the *Family Law Act 1975* (Family Law Act). Further, Victoria is the only jurisdiction that specifically includes dowry abuse in legislation as an example of family violence.

4.2 This chapter examines the adequacy of the family law framework in protecting victims of dowry abuse, including in respect of property settlement.

### **Should dowry be explicitly referenced in the Family Law Act?**

4.3 This section discusses the effectiveness of the existing domestic and family violence provisions of Family Law Act in responding to dowry abuse.

### ***Is dowry abuse currently considered a form of family violence?***

4.4 The Attorney-General's Department (the AGD), which 'is responsible for matters relating to human rights, marriage and family law',<sup>1</sup> considers the existing framework adequate to protect victims of dowry abuse:

The definition of family violence in the Family Law Act is broad and would include family violence that is dowry-related...Section 4AB of the Family Law Act defines family violence as including violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the family member), or causes the family member to be fearful.<sup>2</sup>

4.5 The AGD also referred to the National Domestic and Family Violence Bench Book (Bench Book), which 'is available to all judicial officers across Australia'.<sup>3</sup> Indeed, all Family Court and Family Circuit Court judges have 'been trained in the contents of that bench book through judicial training which has been sponsored by the department'.<sup>4</sup>

4.6 Part 3.1.5 of the Bench Book refers expressly to dowry abuse as an example of cultural and spiritual abuse which comes within the meaning of family violence. Dowry abuse will be taken to have occurred where the perpetrator has asserted 'his entitlement to a dowry from the victim's family, or punishing the victim or her family for what he claims to be an insufficient dowry'.<sup>5</sup>

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1 Attorney-General's Department (AGD), *Submission 13*, p. 1.

2 AGD, *Submission 13*, p. 2.

3 Ms Ashleigh Saint, Assistant Secretary Family Law Branch, AGD, *Committee Hansard*, 3 December 2018, p. 8.

4 Ms Saint, AGD, *Committee Hansard*, 3 December 2018, p. 8.

5 *National Domestic and Family Violence Bench Book*, June 2018, section 3.1.5, <http://dfvbenchbook.aija.org.au/foundational-information/intersection-of-legal-systems/> (accessed 7 January 2019).

4.7 Despite the AGD's stated position and the education of the judiciary on the existence of dowry abuse, many submitters considered that the law as it currently stands is inadequate. For example, Ms Stella Avramopoulos of Good Shepherd Australia New Zealand (Good Shepherd) asserted that this broad definition 'often results in situations of dowry related violence not being appropriately identified and addressed'.<sup>6</sup>

4.8 Such submitters argued that dowry abuse should therefore be explicitly included in the Family Law Act as an example of family violence.

#### ***Dowry abuse as an example of family violence***

4.9 As noted in chapter 2, recent changes to the *Family Violence Protection Act 2008* (Vic), expand the list of relevant behaviours that appear in that Act as examples of family violence, where family violence includes being economically abusive.<sup>7</sup>

4.10 A number of submitters expressed concern with this change, referring to the misuse of similar laws in India.<sup>8</sup> It is noted that there appears to be a misunderstanding amongst some submitters that the inquiry was established to consider a specific proposal to introduce India's laws in Australia; and that Victoria's laws seek to ban or criminalise dowry, neither of which are correct.

4.11 However, other submitters expressed support for this legislative reform, arguing that dowry-related violence continues to be insufficiently understood and acknowledged within the family law system as a form of family violence.<sup>9</sup> For example, White Ribbon Australia submitted that:

...the Commonwealth of Australia should review the consistency and relationship of these laws to existing Commonwealth legislation, as well as the potential benefits to supporting the pursuit of these offences at the Commonwealth level.<sup>10</sup>

4.12 Anti-Slavery Australia (ASA) drew the committee's attention to the comments made by the Victorian Royal Commission into Family Violence (Royal Commission):

In addition to forms of family violence experienced in all communities, there are some specific forms of family violence experienced by women in some [culturally and linguistically diverse (CALD)] communities—for example, forced marriage, female genital mutilation, and dowry-related violence. These forms of abuse are not readily recognised as constituting family violence.

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6 Ms Stella Avramopoulos, Chief Executive Officer, Good Shepherd Australia New Zealand, *Committee Hansard*, 21 September 2018, p. 24

7 *Family Violence Protection Act 2008* (Vic), sub-para. 5(1)(a)(iii).

8 See, for example, Name Withheld, *Submission 30*, p. 4; Name Withheld, *Submission 35*, p. 1; Ms Muktesh Chibber, *Submission 48*, p. 1.

9 See, for example, Ms Naomi Selvaratnam, *Submission 1*, p. 2; Name Withheld, *Submission 46*, p. 1; Anti-Slavery Australia (ASA), *Submission 47*, p. 22.

10 White Ribbon Australia, *Submission 24*, p. 2.

...

The Commission makes recommendations to strengthen the capacity of mainstream and specialist services to identify and respond to the needs of family violence victims from CALD communities, to improve practices and policies relating to the use of interpreters in family violence-related cases, and to include forced marriage and dowry-related abuse as statutory examples of family violence in the Family Violence Protection Act.<sup>11</sup>

4.13 Many other submitters expressed support for the inclusion of dowry abuse in the Family Law Act as an example of family violence.<sup>12</sup> For example, Harmony Alliance recommended expanding the definition of family violence in the Family Law Act to include dowry abuse, on the basis that:

Dowry abuse is a complex form of gender-based violence, and should be recognised as such in laws that criminalise family and domestic violence in relevant state, territory and federal legislation. This abuse does not need to manifest itself in physical or sexual violence – it may play out in other ways such as economic, isolating and emotional abuse. Including dowry abuse as an example of family violence in Section 4(1) of the Family Law Act would help to set norms and expectations.<sup>13</sup>

4.14 The Legal Services Commission of South Australia (Legal Services Commission) submitted 'that the current legal frameworks established to tackle domestic violence do not adequately address issues relating to coercive dowry abuse', and suggested that:

...the definition of 'family violence' in legislation such as the *Migration Act (Cth) 1958* and the *Family Law Act (Cth) 1975* needs to factor in dowry-related abuse and similarly harmful cultural practices.<sup>14</sup>

4.15 Professor JaneMaree Maher of Monash University spoke in favour of including dowry abuse as an example of family violence rather than a stand-alone offence:

...I think giving examples to flesh it out is an option that creates a space for this to be talked about, whereas specific offences that name particular types of practices or specific legislation may have the opposite effect, which is making people feel more fearful. We already know, from our research, that women are extremely reluctant to come forward and that very often their

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11 ASA, *Submission 47*, pp. 21–22, citing: Victorian Royal Commission into Family Violence, *Summary and Recommendations*, March 2016, p. 34.

12 See, for example, Catholic Women's League, *Submission 34*, p. 9; Ms Avramopoulos, Good Shepherd Australia New Zealand, *Committee Hansard*, 21 September 2018, p. 25.

13 Harmony Alliance, *Submission 18*, pp. 1–2 (citations omitted).

14 Legal Services Commission of South Australia (Legal Services Commission), *Submission 12*, p. 8.

partners directly misadvise them about practices in Australia and about their own visa conditions in order to maintain control.<sup>15</sup>

*Dowry abuse as an example of economic abuse*

4.16 In its submission, the Monash Family Violence Prevention Centre (MFVPC), the Monash Migration and Inclusion Centre (MMIC) and Monash Gender, Peace and Security (GPS) (Monash University) noted that economic abuse had been recognised as a key form of family violence for more than a decade, including in Victoria, and urged:

...that dowry abuse be recognised more broadly within the suite of economic abuses...including those who may face more intense or greater risks in terms of economic abuse such as women with disability or women from immigrant and refugee communities.<sup>16</sup>

4.17 However, as noted in chapter 2, and contrary to the position of many submitters to the inquiry, 'economic abuse' does not appear as an example of behaviour that constitutes family violence in the Family Law Act.

4.18 Some submitters therefore recommended that dowry abuse be included as a specific example of economic abuse within the broader definition of family violence. For example, Good Shepherd informed the committee that it considers dowry abuse 'through the lens of domestic and family violence, specifically economic abuse', and recommended:

...the inclusion of an explicit reference to dowry abuse in the definition of domestic and family violence nationwide, with a clear acknowledgement that domestic and family violence can include multiple perpetrators, such as family members, not just intimate partners.<sup>17</sup>

4.19 In contrast to submitters who advocated for the explicit reference to dowry abuse in legislation, Professor Supriya Singh warned against highlighting dowry and dowry abuse as a specific form of family violence on the basis that it ignores other forms of economic abuse including that which may occur in Anglo-Celtic culture.<sup>18</sup> Professor Singh did not object to giving examples of economic abuse in legislation, but ultimately favoured raising awareness of economic abuse and increasing cross-cultural understanding 'about the non-physical aspects of family violence'.<sup>19</sup>

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15 Professor JaneMaree Maher, Professor, Sociology; Lead Researcher, Monash Gender and Family Violence Prevention Centre, Monash University, *Committee Hansard*, 21 September 2018, p. 16.

16 Monash Family Violence Prevention Centre (MFVPC), the Monash Migration and Inclusion Centre (MMIC) and Monash Gender, Peace and Security (GPS) (Monash University), *Submission 15*, p. 5 (citations omitted).

17 Ms Avramopoulos, Good Shepherd Australia New Zealand, *Committee Hansard*, 21 September 2018, p. 24.

18 Professor Supriya Singh, *Committee Hansard*, 21 September 2018, p. 29.

19 Professor Singh, *Committee Hansard*, 21 September 2018, p. 29.



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### ***Harmonising domestic and family violence legislation***

4.20 As noted in chapter 3, and as the following example provided by ASA illustrates, there are varying levels of protection available to victims of dowry abuse, human trafficking, slavery and forced marriage under state and territory frameworks:

...in New South Wales, adult victims or potential victims of human trafficking and forced marriage, who may be experiencing family violence, can seek an apprehended domestic violence order (ADVO)...for an ADVO to be made, the court must be satisfied that on the balance of probabilities, the victim has reasonable grounds to fear, and does in fact fear, the commission of a personal violence crime by the other person, or the engagement of the other person in conduct where the victim will be intimidated or stalked. The *Crimes (Domestic and Personal Violence) Act 2007* defines 'personal violence offence' as specific offences under the *Crimes Act 1900* (NSW) (Crimes Act). Dowry abuse and the Federal crimes of human trafficking, slavery and forced marriage are not included in this definition. While some cases of extreme exploitation may involve personal violence offences, such as sexual assault pursuant to the *Crimes Act*, these elements are certainly not present in all circumstances of dowry abuse, human trafficking, slavery and forced marriage.<sup>20</sup>

4.21 Owing to this inconsistency between jurisdictions, ASA therefore recommended that:

...the Commonwealth Government establish dialogue with the Australian States and Territories to harmonise existing legislation providing for intervention/violence orders to recognise dowry abuse as an act of family violence or economic abuse.<sup>21</sup>

4.22 This recommendation to harmonise the legislation in respect of dowry abuse, and more broadly economic abuse as a form of family violence, was also made by a number of other submitters.<sup>22</sup>

4.23 For example, in their submission, Good Shepherd Australia New Zealand and inTouch Multicultural Centre against Family Violence (GSANZ and inTouch) suggested to the committee that the lack of a nationally consistent approach to defining and addressing domestic and family violence across Australia 'renders ineffective and inefficient responses to women at risk of abuse and violence and also creates inequality across the country'.<sup>23</sup>

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20 ASA, *Submission 47*, p. 20.

21 ASA, *Submission 47*, p. 23.

22 See, for example, safe steps Family Violence Response Centre, *Submission 14*, p. 4; Mrs Sandra Morris, Manager, Health Promotion Team, Women's Health in the North, *Committee Hansard*, 21 September 2018, p. 21.

23 Good Shepherd Australia New Zealand and inTouch Multicultural Centre against Family Violence (GSANZ and inTouch), *Submission 6*, p. 24.

4.24 GSANZ and inTouch therefore recommended the adoption of 'a nationally consistent and holistic definition of economic abuse', which, at a minimum, should include the following examples:

- Withholding financial support that is considered reasonably necessary to maintain a partner
- Unreasonably preventing a person from taking part in decisions over household expenditure or the disposition of joint property
- Controlling behaviour that denies personal financial autonomy
- Force, fraud or coercion in obtaining social security payments
- Force, fraud or coercion in obtaining bank loans, credit cards or other forms of financial debt
- Force, fraud or coercion in relinquishing control over assets
- Preventing a person from seeking, gaining or maintaining employment.<sup>24</sup>

### **Committee view**

4.25 The committee shares the concerns of submitters and witnesses that the law as it currently stands is not sufficiently clear to identify dowry abuse as a form of economic abuse within the definition of family violence.

4.26 The committee acknowledges that Victoria has led the way in Australia with new laws to implement the recommendations of the Royal Commission that specifically recognise dowry abuse as a form of economic family violence. The committee considers that the Victorian approach should be adopted nationally and agrees that dowry abuse should be explicitly included in the definition of family violence in the Family Law Act. This change would help to set norms and expectations about what constitutes family violence, and acknowledge this type of family violence which is experienced by women in CALD communities in particular. The committee considers there would be significant educative value for both service providers and the wider community as a result of this change.

4.27 The committee is mindful that its recommendations are made in the context of the current Australian Law Reform Commission (ALRC) review of family law. The committee considers that the detail and timing of the implementation of its recommendations will occur in the context of the outcomes of the ALRC review.

### **Recommendation 1**

**4.28 The committee recommends that the term 'economic abuse' is included as a form of family violence in subsection 4AB(2) of the *Family Law Act 1975*, and the subsection provide a non-exhaustive list of examples of economic abuse, including dowry abuse.**

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24 GSANZ and inTouch, *Submission 6*, p. 30.

## Property settlement

4.29 This section discusses the difficulties faced by parties to divorce proceedings in recovering dowry payments, including those payments exchanged in other jurisdictions.

### *Property settlement and the law*

4.30 The AGD provided an overview of the law pertaining to divorce and property settlement.

4.31 The AGD informed the committee that section 79(4) of the Family Law Act sets out the factors the courts must take into account in property settlement proceedings. The factors that the courts consider include:

...the financial and non-financial contributions made directly or indirectly by or on behalf of a party to the marriage to the acquisition, conservation or improvement of any of the property of the parties to the marriage.<sup>25</sup>

4.32 The Family Law Act requires a 'just and equitable' split of property between the parties to the dispute.<sup>26</sup>

4.33 The courts will consider instances of family violence, including dowry-related abuse, when assessing the contributions made by parties to the marriage.<sup>27</sup> Further, under the common law, courts may consider the effect of family violence in certain circumstances, namely:

...where there is a course of violent conduct by one party towards another during the marriage which is demonstrated to have had a significant adverse impact on that party's contribution to the marriage, or to have made the party's contributions significantly more arduous than they ought to have been.<sup>28</sup>

4.34 In its submission, ASA noted that as dowry may be considered to be a 'gift'<sup>29</sup>—rather than the property that makes up the matrimonial pool of assets, less the liabilities—this payment may not be captured by these provisions of the Family Law Act 'because a dowry could be paid indirectly, not from wife to husband, but from the wife's family to the husband's family'.<sup>30</sup>

4.35 The ASA informed the committee that 'whether the dowry is repayable or returnable to the wife's family upon marriage breakdown' is contingent on whether this payment is 'regarded at law' as either:

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25 AGD, *Submission 13*, pp. 2–3. See paras. 79(4)(a) and (b) of the *Family Law Act 1975*.

26 *Family Law Act 1975*, ss. 79(2).

27 Pursuant to s. 79 of the *Family Law Act 1975*.

28 Pursuant to the common law authority, *Marriage of Kennon* [1997] FamCA 27. Such adjustments are limited to exceptional circumstances – see, AGD, *Submission 13*, p. 3.

29 A number of submitters informed the committee that 'dowry' is treated as a gift – see, for example, The Indian (Sub-Continent) Crisis & Support Agency (ICSA), *Submission 50*, p. 6.

30 ASA, *Submission 47*, p. 23.

- (1) an absolute gift, with the result that the groom and/or the groom's family has no obligation to repay the dowry; or
- (2) a conditional gift, whereby the dowry has been provided by the wife's family at the request of the groom's family with the intention that the payment be a precondition of the marriage.<sup>31</sup>

### ***The adequacy of the existing legal framework***

4.36 A number of witnesses expressed concern that the Australian legal system does not recognise the marriage payments by victims party to divorce proceedings, including those payments made overseas.<sup>32</sup>

4.37 For example, the Australian Women Against Violence Alliance (AWAVA) argued that '[w]omen are currently disadvantaged in three key ways in obtaining a fair property settlement', namely because:

- 'the family law system is lengthy and legalistic for women with low income or assets';
- 'the impacts of family violence are not adequately taken into account in property settlements'; and
- 'abusive men are frequently reported as engaging in protracted litigation and in some cases vexatious or abusive behaviour'.<sup>33</sup>

4.38 The Australian Centre for Human Rights and Health (ACHRH) provided the following illustration of the financial difficulty faced by women in particular as a result of divorce proceedings:

Where the groom gives dowry as in the case of some African communities the woman is unable to leave the marriage as she has been 'paid for'. The Commonwealth Family Law provision when dividing the property needs to take into account the powerless position of the women where bride-price has been paid by the groom.<sup>34</sup>

4.39 GSANZ and InTouch also discussed the lack of support for women who leave a dowry marriage, informing the committee that a woman who leaves a marriage:

...is often blamed for the breakdown of the marriage. Women who leave their marriages or who are abandoned... "are left with no choice but to try and return to their own families, although not all are accepted back because they are perceived to be a financial drain on their families' wealth".

...

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31 ASA, *Submission 47*, pp. 23–24.

32 See, for example, United Indian Association, *Submission 8*, p. 3; Legal Services Commission, *Submission 12*, p. 5; Federation of Ethnic Communities Councils of Australia, *Submission 20*, p. 4; ICSA, *Submission 50*, p. 8.

33 Australian Women Against Violence Alliance, *Submission 10*, p. 6.

34 Australasian Centre for Human Rights and Health (ACHRH), *Submission 2*, p. 26.

Without being able to access their dowry, if a marriage dissolves, women are likely to find themselves without access to their dowry and to find themselves in poverty. Their status as a 'divorced woman' means that they cannot access the same types of social or community supports typically available to other women. They also experience barriers to employment due [to an] absence of skill or language development.<sup>35</sup>

4.40 GSANZ and InTouch observed that, at present, there are no mechanisms under Australian law 'for dowry to be a) recognised as property (typically belonging to the woman) and b) that it is factored into property settlements during separation and divorce'.<sup>36</sup>

4.41 Many submitters who criticised the current system therefore considered that gifts should be included as contributions to the marriage,<sup>37</sup> such that 'dowry should be treated as a woman's property and not as part of the pool of assets'.<sup>38</sup>

4.42 For example, ACHRH suggested that '[i]t would be helpful to include dowry as a financial contribution made by the woman' to be considered in the division of the marital property, such that the woman recovers this contribution.<sup>39</sup>

4.43 In order to realise this outcome, GSANZ and inTouch suggested that section 90B of the Family Law Act be amended to include a list of gifts that have been exchanged between both parties to a marriage, so as to:

...ensure that in the case of a marriage dissolution, this would form evidentiary grounds for the return of property, including dowry. In the absence of compliance with creating a register of gifts exchanged, flexible evidentiary provisions to prove the exchange of dowry should also be introduced. Including, but not limited to, photos, videos, and statements from family members, receipts from gifts purchased, written negotiations over text message, email or social media.<sup>40</sup>

4.44 However, Monash University referred the committee to the case of *Singh v Dala*,<sup>41</sup> which suggests that 'the existing legislative framework is capable of adequately dealing with dowry'.<sup>42</sup> Monash University considered the case noteworthy for the following reasons:

...(1) a substantial dowry (AUD\$100,000.00 equivalent) was paid by the wife's parents to the husband and his parents; (2) it was an arranged

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35 GSANZ and inTouch, *Submission 6*, pp. 31–32.

36 GSANZ and inTouch, *Submission 6*, p. 32.

37 See, for example, ACHRH, *Submission 2*, p. 26; Soroptimist International Moreton North Inc, *Submission 51*, p. 5.

38 Ms Uthra Ramachandran, *Committee Hansard*, 21 September 2-18, p. 30.

39 ACHRH, *Submission 2*, p. 26.

40 GSANZ and inTouch, *Submission 6*, p. 13.

41 [2017] FCCA 2945.

42 Monash University, *Submission 15*, p. 10.

marriage whereby both parties were unknown to each other prior to marriage; (3) it was a relatively short marriage characterised by violence from the outset; and (4) both parties were unrepresented by legal counsel, even at trial. While there was no suggestion of dowry abuse in this case, the wife alleged very serious family violence, including: coercive control, emotional, verbal and psychological abuse, and physical and sexual violence.<sup>43</sup>

4.45 In that case, the Judge stated that the wife's dowry was 'a very significant direct financial contribution to the marriage'<sup>44</sup> and that the wife's contributions '[o]verwhelmingly...exceeded those of the husband's prior to marriage'.<sup>45</sup> The payment was not treated by the presiding Judge as a gift, 'but rather a joint asset of the property pool, resulting in a more equitable settlement in which financial justice was achieved'.<sup>46</sup>

#### *Property located overseas*

4.46 The committee was also informed that victims of dowry abuse face difficulty in recovering property exchanged overseas, as the following example from the Legal Services Commission illustrates:

The Commission's client was 23 year old dentist from India. The woman's mother provided AUD\$60,000.00 as a dowry [exchanged in India] to ensure that her daughter would be well looked after...After two years of marriage the husband served the woman with divorce papers. Our client sought the return of the dowry...when she sought the return of her dowry we advised that given the transaction occurred in India it would not form part of the property settlement and it was a separate matter from the divorce application.<sup>47</sup>

4.47 As Monash University noted, pursuant to the principles of private international law—which have been unchallenged for over a century—the Federal Circuit Court of Australia does not have jurisdiction to make enforceable orders in relation to real property under the jurisdiction of a foreign sovereign'.<sup>48</sup>

4.48 However, the AGD informed the committee that the courts have discretion with respect to assets located overseas:

Where there is a family law property matter on foot before a court in Australia, the court has a range of powers which enables it to consider assets located overseas, and it has discretion to deal with those assets and enforce orders in relation to those assets as part of a split of the property. The definition of 'property' in section 4 of the Family Law Act includes

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43 Monash University, *Submission 15*, p. 11.

44 *Singh v Dala* [2017] FCCA 2945 [57], per Judge Wilson.

45 *Singh v Dala* [2017] FCCA 2945 [59], per Judge Wilson.

46 Monash University, *Submission 15*, p. 11.

47 Legal Services Commission, *Submission 12*, p. 5.

48 Monash University, *Submission 15*, p. 11.

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property which is held overseas to which either or both of the parties to the relationship are entitled. The Family Law Act also requires parties to provide full and frank disclosure of all financial circumstances, which includes and extends to assets located overseas.<sup>49</sup>

### **Committee view**

4.49 The committee shares the concerns of submitters and witnesses about the inconsistency between jurisdictions with respect to identifying economic abuse, such as dowry abuse, as a form of family violence.

4.50 The committee sees merit in harmonising existing domestic and family violence legislation, so as to ensure all victims of domestic and family violence are afforded the same protection, regardless of where that violence has taken place.

### **Recommendation 2**

**4.51 The committee recommends that the Australian government work with the states and territories to harmonise existing legislation providing for intervention/violence orders to explicitly recognise dowry abuse as an example of family violence or economic abuse.**

4.52 The committee also shares the concern of submitters and witnesses that the Family Law Act does not adequately or consistently enable victims of dowry abuse to recover dowry provided by the victim or their family in the event of divorce proceedings, including those gifts exchanged in other jurisdictions.

4.53 The committee acknowledges the breadth of the Family Law Act and the developments within common law that can work in favour of those people who seek to recover dowry, but considers further reflection on decision making frameworks, as well as work with advocates and decision makers, is needed to ensure that victims of dowry abuse are not disadvantaged in the context of making orders about property.

### **Recommendation 3**

**4.54 The committee recommends that the Australian government give further consideration to legal and decision making frameworks to ensure that victims of dowry abuse are not disadvantaged in family law property settlements, given the community concerns about inconsistent approaches under the current family law framework.**

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49 Ms Saint, AGD, *Committee Hansard*, 3 December 2018, p. 7.





# Chapter 5

## Migration law

5.1 A number of submitters have informed the committee about the link between visa status and dowry abuse—the citizenship status of a spouse may require that a higher dowry price, or other marriage payment, is paid by the bride's family. The citizenship status of a spouse may also be used as a form of control, and could lead to dowry-related abuse.

5.2 This chapter examines the adequacy of the migration framework in protecting victims of dowry abuse.

### **The National Plan to Reduce Violence against Women and their Children**

5.3 The Third Action Plan of the *National Plan to Reduce Violence against Women and their Children 2010–2022* (the National Plan),<sup>1</sup> recognises the nexus between migration and domestic and family violence, and has identified the need to ensure migration law does not disempower victims of domestic and family violence.

5.4 The Third Action Plan, which was launched on 28 October 2016, 'sets out an ambitious agenda that, with the support of key stakeholders and the community, will substantially reduce domestic, family and sexual violence in Australia'.<sup>2</sup>

5.5 The Third Action Plan proposes certain key actions, including those in respect of the migration framework:

3.8: Ensure migration rules and eligibility requirements for support services do not disempower victims of violence or discourage them from leaving violent relationships.

3.8(a) Develop appropriate visa arrangements for temporary residents who are experiencing violence.

3.8(b) Revise eligibility requirements to enable more victims of violence to access support.

3.8(c) Work with service providers to improve access of temporary residents to available support services.<sup>3</sup>

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1 The National Plan 'is the first plan to coordinate action across jurisdictions' to harmonise 'the efforts of governments across the nation to make a real and sustained reduction in the levels of violence against women', and is to be implemented in four three-year plans—see, Commonwealth of Australia, *National Plan to Reduce Violence against Women and their Children 2010-2022*, 2011, Foreword.

2 Department of Social Services, *The National Plan to Reduce Violence against Women and their Children 2010 – 2022*, 24 August 2018, <https://www.dss.gov.au/women/programs-services/reducing-violence/the-national-plan-to-reduce-violence-against-women-and-their-children-2010-2022> (accessed 9 January 2019).

3 *National Plan to Reduce Violence against Women and their Children, Third Action Plan 2016–2019 of the National Plan to Reduce Violence against Women and their Children 2010–2022*, 2016, p. 20.

## Dowry abuse and the Migration Regulations

5.6 Participants in the inquiry informed the committee about the relationship between migration and dowry abuse.

5.7 For example, Good Shepherd Australia New Zealand and inTouch Multicultural Centre against Family Violence (GSANZ and inTouch) referred to 'evidence that women who migrate for marriage may attract a higher "bride price" because the citizenship of their spouse is a valuable asset'.<sup>4</sup> Indeed, the Oorja Foundation informed the committee that the 'groom and his family decides the value of dowry on the basis of boy's status in Australia', such that:

If the boy is citizen /[permanent resident], families demand for an expensive wedding of upto [sic] \$80,000 or more in India, which was normally accepted as a cultural norm and turned into a horrifying act of abuse at later stage.<sup>5</sup>

5.8 Anti-Slavery Australia (ASA) cited a 2012 report where a dowry of \$500 000 was offered 'in exchange for permanent residency in Australia'.<sup>6</sup>

5.9

5.10 ASA referred to anecdotal evidence which 'suggests that dowry abuse can be linked to migration status, particularly within the partner visa context':

This prospective entitlement to a visa can be used as a form of control, enabling escalating demands for dowry payments, which may escalate to physical, sexual, emotional, psychological abuse, social isolation, sometimes leading to death.<sup>7</sup>

5.11 This section examines the definition of family violence in migration law, and the adequacy of the Migration Regulations 1994 (Regulations) in protecting victims of economic abuse—itself a form of family violence—including victims of dowry abuse.

### *The definition of 'relevant family violence'*

5.12 As noted in chapter 2, the Regulations define 'relevant family violence' as:

...conduct, whether actual or threatened, towards:

- (a) the alleged victim; or
- (b) a member of the family unit of the alleged victim; or
- (c) a member of the family unit of the alleged perpetrator; or
- (d) the property of the alleged victim; or
- (e) the property of a member of the family unit of the alleged victim; or

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4 Good Shepherd Australia New Zealand and inTouch Multicultural Centre against Family Violence (GSANZ and inTouch), *Submission 6*, p. 36.

5 Oorja Foundation, *Submission 49*, p. 1.

6 Anti-Slavery Australia (ASA), *Submission 47*, p. 10.

7 ASA, *Submission 47*, p. 16.

(f) the property of a member of the family unit of the alleged perpetrator; that causes the alleged victim to reasonably fear for, or to be reasonably apprehensive about, his or her own wellbeing or safety.<sup>8</sup>

5.13 This is not consistent with the definition of 'family violence' in the *Family Law Act 1975* (Family Law Act).<sup>9</sup> As set out in chapter 2, the Family Law Act defines 'family violence' as 'violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the *family member*), or causes the family member to be fearful',<sup>10</sup> and includes examples of financial-related abuse that may constitute family violence.<sup>11</sup>

5.14 A number of reviews into this definition in the Regulations have called for the broadening of this definition and/or the alignment of the definition with the definition of family violence in the Family Law Act.

5.15 For example, in 2012 the Australian Law Reform Commission (ALRC) recommended a consistent definition of family violence across Commonwealth acts and legislative instruments, including the Regulations.<sup>12</sup>

5.16 Further, the Victorian Royal Commission into Family Violence (Royal Commission) recommended that the Victorian Government, through the Council of Australian Governments, encourage the Australian government to broaden the definition of family violence in the Regulations to be consistent with the definition in the *Family Violence Protection Act 2008* (Vic).<sup>13</sup> Some submitters discussed and expressed support for this recommendation.<sup>14</sup>

5.17 In evidence to this inquiry, the Department of Home Affairs (DHA) asserted that the current definition of 'relevant family violence' in the Regulations is 'broadly framed to retain flexibility' and that '[p]olicy advice provides further detail, which ensures the definition of family violence remains current'.<sup>15</sup>

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8 Migration Regulations 1994, reg. 1.21.

9 See chapter 2.

10 *Family Law Act 1975*, ss. 4AB(1).

11 *Family Law Act 1975*, ss. 4AB(2).

12 Australian Law Reform Commission (ALRC), *Family Violence and Commonwealth Laws—Improving Legal Framework* (ALRC Report 117), 2012, at Recommendation 3–1.

13 Victorian Royal Commission into Family Violence, *Royal Commission into Family Violence: Report and recommendations*, March 2016, p. 89, Recommendation 162.

14 See, for example, Monash Family Violence Prevention Centre (MFVPC), the Monash Migration and Inclusion Centre (MMIC) and Monash Gender, Peace and Security (GPS) (Monash University), *Submission 15*, p. 21; Federation of Ethnic Communities Councils of Australia, *Submission 20*, p. 5.

15 DHA, answers to questions taken on notice, 18 October 2018, (received 30 November 2018), p. 19.

5.18 A number of submitters to the inquiry criticised this definition of 'relevant family violence'.<sup>16</sup> For example, the Australian Women Against Violence Alliance (AWAVA) noted that this definition is not aligned with the definition in the Family Law Act or the National Domestic and Family Violence Bench Book, and that the definition 'creates risks of non-consistent application and identification of family violence'.<sup>17</sup>

5.19 The Immigration Advice & Rights Centre (IARC) opined that 'it is likely that dowry-related abuse would satisfy the definition (depending on the nature and severity)' but did recommend 'that "financial abuse" and "controlling behaviour" be inserted into the definition as examples of what may constitute "relevant family violence"'.<sup>18</sup> Mr Ali Mojtahedi of IARC suggested to the committee that the list of examples need not be exhaustive, but that the definition 'certainly could give examples just as a symbolic gesture'.<sup>19</sup>

5.20 The Legal Services Commission of South Australia also recommended the expansion of the definition of 'relevant family violence', specifically to cover coercion and control, based on their experience with clients. It submitted that:

...almost all of our clients who report domestic violence in the migration context experience threats of visa cancellation and deportation and these can occur with or without the added pressure of dowry payments. Currently the sponsor suffers no adverse consequences as a result of this behaviour which raises the question of whether there should be penalties for the sponsor in these types of cases and what those penalties should be.<sup>20</sup>

*Family violence perpetrated by a sponsor's or applicant's family*

5.21 The committee heard that dowry abuse is not just perpetrated by a victim's partner, but may be perpetrated by the spouse's family, or even the victims own family. Participants in the inquiry advocated that the Regulations should better reflect this possibility.

5.22 For example, ASA noted that, in its experience, 'dowry abuse may be committed against a wife by not only the husband, but the husband's family and the wife's family', a situation which is not captured by the Regulations.<sup>21</sup> This aspect of dowry abuse was raised with the committee by a number of other submitters.<sup>22</sup>

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16 See, for example, Ms Michael O'Connell, *Submission 84*, p. 5;

17 Australian Women Against Violence Alliance (AWAVA), *Submission 10*, p. 8.

18 Immigration Advice & Rights Centre (IARC), *Submission 22*, p. 4.

19 Mr Ali Mojtahedi, Principal Solicitor, IARC, *Committee Hansard*, 30 November 2018, p. 22.

20 Legal Services Commission of South Australia (Legal Services Commission), *Submission 12*, p. 7.

21 ASA, *Submission 47*, p. 18.

22 See, for example, Legal Services Commission, *Submission 12*, p. 7; AWAVA, *Submission 10*, p. 8.

5.23 Indeed, DHA informed the committee that the violence perpetrated against a victim of family violence must be at the hands of the sponsor of the visa applicant to be captured by the family violence provisions of the Regulations.<sup>23</sup> Further, where:

...a third party is the claimed perpetrator of the family violence, the delegate would need to be satisfied that the violence was orchestrated at the behest of the sponsor. Where this direct link cannot be established, the claimed family violence cannot meet the requirements under the Migration Regulations.<sup>24</sup>

5.24 ASA therefore suggested that the current definition of family violence in the Regulations be expanded:

...to recognise that complex forms of family violence such as dowry abuse, forced marriage and other slavery or slavery-like practices can be exacted on victims in Australia by parties other than the victim's sponsor.<sup>25</sup>

### **Committee view**

5.25 The committee is concerned by the evidence received that the citizenship status of a spouse commands higher dowries such that, in effect, Australian citizenship is being sold in some instances for tens or hundreds of thousands of dollars, and that this lucrative market is a key driver of dowry abuse and other forms of family violence.

5.26 The committee recognises the concerns raised by a number of submitters that the definition of family violence in the Regulations is not consistent with more comprehensive definitions, such as in the Family Law Act, or state legislation. The committee considers that the Commonwealth should give further consideration to the recommendation of the Royal Commission to broaden the definition.

5.27 The committee further recognises the concerns raised that dowry abuse does not appear to be suitably recognised as a form of economic abuse in the Regulations. The committee also recognises the concerns that the Regulations do not appear to adequately capture family members who may be party to or perpetrators of dowry abuse.

5.28 The committee acknowledges the position put forward by the DHA, however has carefully considered the evidence of many submitters that the Regulations, as they currently stand, are not clear or comprehensive enough to protect victims of dowry abuse. On balance the weight of submissions that argue change is needed are persuasive and the committee does not accept the view of agencies that the status quo is sufficient.

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23 DHA, answers to questions taken on notice, 18 October 2018, (received 30 November 2018), p. 17.

24 DHA, answers to questions taken on notice, 18 October 2018, (received 30 November 2018), p. 17.

25 ASA, *Submission 47*, p. 19.

5.29 The committee therefore considers that the Australian government could draw upon the existing frameworks within the *National Plan to Reduce Violence against Women and their Children 2010–2022* to explicitly recognise that dowry abuse is a form of family violence to which the government must respond.

5.30 Further, the committee considers that the Australian government should ensure that those who are forced to marry their partner or experience family violence from their partner and/or their partner's family members are protected through the Regulations.

#### **Recommendation 4**

**5.31 The committee recommends that the Australian government:**

- **give further consideration to the recommendation of the Victorian Royal Commission into Family Violence to broaden the definition of family violence in the Migration Regulations 1994; and**
- **ensure that those who are forced to marry their partner or experience family violence from their partner and/or their partner's family members are protected through the family violence provisions in the Migration Regulations 1994, such that the regulatory framework is consistent with the policy intention to protect victims of domestic or family violence within the migration context.**

#### **Protection from family violence for visa holders**

5.32 The family violence provisions in the Regulations 'are available to temporary Partner visa holders, Prospective Marriage visa holders who have married their sponsor and dependent applicants for a Distinguished Talent visa', but are 'not available to skilled or other temporary visa holders'.<sup>26</sup>

5.33 ASA has raised concerns that if a temporary migrant who is subject to family violence does not hold one of the relevant visas, this visa holder will be left with 'no permanent rights in Australia and little to no ability to access financial and/or housing support'.<sup>27</sup>

5.34 In its 2012 report, the ALRC also considered the protections available to visa holders who are victims of domestic and family violence, and made the following recommendations:

Recommendation 20—2 The Australian Government should amend the Migration Regulations 1994 (Cth) to provide secondary applicants for onshore permanent visas with access to the family violence exception.

Recommendation 20—3 The Australian Government should create a new temporary visa to allow victims of family violence who are secondary holders of a temporary visa to:

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26 DHA, answers to questions taken on notice, 18 October 2018, (received 30 November 2018), pp. 10–11.

27 ASA, *Submission 47*, p. 18.

- a. make arrangements to leave Australia; or
- b. apply for another visa.<sup>28</sup>

5.35 The Royal Commission also recommended that the Australian government ensure that all people seeking to escape violence are entitled to crisis payments, regardless of visa status.<sup>29</sup>

5.36 In discussing the current protections for visa holders, DHA informed the committee that there were no plans in place to institute 'a new temporary visa to allow victims of family violence who are secondary holders of a temporary visa to make arrangements to leave Australia or apply for another visa'.<sup>30</sup>

5.37 However, DHA did note that it can provide support to victims of family violence who are not covered by the family violence provisions in the Regulations, 'by regularising a person's visa status while they remain in Australia'.<sup>31</sup> The Department further noted that it could consider 'any visa application lodged by a victim of family violence on its own merits according to the requirements prescribed in Australian law'.<sup>32</sup>

5.38 Despite these assurances, many submitters and witnesses questioned why the family violence provisions did not extend to all visa holders, and recommended such an extension.<sup>33</sup>

5.39 For example, IARC recommended 'that consideration be given to extending the family violence provisions to other family visa subclasses', arguing that:

Under existing laws, applicants for other family visas such as a parent visa, carer visa, child visa or holders of the prospective marriage visa (where the applicant has not married the sponsor) cannot rely on the family violence provisions and may feel compelled to remain in an abusive relationship in order to avoid having their application for a visa refused.<sup>34</sup>

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28 ALRC, *Family Violence and Commonwealth Laws—Improving Legal Frameworks (ALRC Report 117)*, 2012. Recommendation 20–1, which was to amend the Migration Regulations 1994 to allow Prospective Marriage (Subclass 300) visa holders to have access to the family violence exception, has since been implemented – see, DHA, answers to questions taken on notice, 18 October 2018, (received 30 November 2018), pp. 10–11.

29 Victorian Royal Commission into Family Violence, *Royal Commission into Family Violence: Report and recommendations*, March 2016, p. 89, Recommendation 162.

30 DHA, answers to questions taken on notice, 18 October 2018, (received 30 November 2018), pp. 10–11.

31 DHA, answers to questions taken on notice, 18 October 2018, (received 30 November 2018), p. 11.

32 DHA, answers to questions taken on notice, 18 October 2018, (received 30 November 2018), p. 11.

33 See, for example, AWAVA, *Submission 10*, p. 2; Harmony Alliance, *Submission 10* p. 2; Mrs Sunila Kotwal, Manager, Diversity and Inclusion, White Ribbon Australia, *Committee Hansard*, 30 November 2018, p. 32.

34 IARC, *Submission 22*, p. 4.

### A 'genuine relationship'

5.40 ASA has set out the steps that must be taken by temporary migrant women in order to access the family violence provisions in the Regulations—a woman must:

- (1) demonstrate that their relationship was genuine until it ceased and that family violence took place during the relationship;
- (2) hold an eligible class of temporary visa as prescribed under the Act and the Regulations; and
- (3) satisfy certain evidentiary requirements, by providing acceptable evidence that she or her dependents have been the victim of family violence committed by their partner.<sup>35</sup>

5.41 A delegate of the Minister for Immigration, Citizenship and Multicultural Affairs will assess this application, and if there is reasonable doubt concerning the evidentiary basis of the claim of family violence, DHA 'can refer the evidence to an independent expert for assessment and the determination of that expert must be accepted by the Department'.<sup>36</sup>

5.42 DHA has informed the committee about how it undertakes an assessment of a relationship in order to determine whether that relationship is genuine:

Migration law requires an assessment of a spouse relationship between a sponsor and applicant as part of the visa application process, with the following factors taken into account when assessing a claimed spouse relationship:

- The financial aspects of the relationship;
- The nature of the household;
- The social aspects of the relationship; and
- The nature of the persons' commitment to each other.

It is acknowledged that family violence may occur in a genuine relationship and the family violence provisions allow eligible visa applicants to leave a violent relationship without the risk of losing their right of residence in Australia.<sup>37</sup>

5.43 A number of submitters and witnesses expressed their concern 'that the assessment of the genuineness of relationships precedes assessment of family violence claims'.<sup>38</sup>

5.44 For example, AWAVA has informed the committee of some decisions by DHA 'refusing the access to family violence provisions where the manifestations of

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35 ASA, *Submission 47*, p. 17 (citations omitted).

36 ASA, *Submission 47*, p. 17.

37 DHA, answers to questions taken on notice, 18 October 2018, (received 30 November 2018), p. 16.

38 AWAVA, *Submission 10*, p. 8. See also, safe steps Family Violence Response Centre, *Submission 14*, p. 4; Harmony Alliance, *Submission 18*, p. 3.



family violence such as the absence of joint finances have been mistaken for a sign of non-genuine relationships'.<sup>39</sup> AWAVA cited research which illustrated that the process undertaken by DHA may further traumatise victims of family violence:

...indicators used by the Department of Home Affairs to determine the existence of a 'genuine relationship' conflict with many of the experiences of victims/survivors of family violence, and that the application process risks causing further trauma.<sup>40</sup>

5.45 Ms Jatinder Kaur expressed her opinion that this process 'is very traumatic' for victims of domestic and family violence, and also 'requires [a] high level of English and capacity to navigate the complex paperwork required'. Ms Kaur further noted that:

...the [domestic violence] victim has to pay for: Migration Agent, Social Work report, Psychologist report and find all the necessary 'evidence' (this maybe [sic] difficult when husband have intentionally tried to destroy documents, emails, photographs and have maintained coercive behaviour over the wife/partner).<sup>41</sup>

5.46 In its submission, IARC commented on the inevitability of a visa applicant who has experienced financial abuse and/or controlling behaviour in experiencing 'great difficulty producing the necessary evidence to satisfy this requirement' which may cause their visa application to be refused without the victim's claims of family violence being considered.<sup>42</sup> IARC therefore recommended:

...that decision makers should receive appropriate and regular training on family violence and be required to take into account the nature of the claimed family violence when making an assessment on whether the relationship was 'genuine and continuing' prior to it ending. The existence of family violence (such as financial abuse or controlling behaviour) should not be the reason, or part of the reason, for refusing the visa application.<sup>43</sup>

5.47 The Indian (Sub-Continent) Crisis & Support Agency (ICSA) acknowledged the effectiveness of the requirement to prove a genuine relationship in circumstances where 'the relationship passes the test of being genuine'. However, it also noted that in abusive relationships, this requirement 'can seriously compromise the victim's ability to demonstrate any of the current criteria'.<sup>44</sup>

5.48 Further, some submitters expressed concern that 'dowry is now being considered a "bribe" or transaction only for a visa, therefore a reason to discount any genuine relationship'.<sup>45</sup>

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39 AWAVA, *Submission 10*, p. 8.

40 AWAVA, *Submission 10*, p. 8.

41 Ms Jatinder Kaur, *Submission 27*, pp. 8–9.

42 IARC, *Submission 22*, p. 4.

43 IARC, *Submission 22*, p. 4.

44 The Indian (Sub-Continent) Crisis & Support Agency (ICSA), *Submission 50*, p. 10.

45 ICSA, *Submission 50*, p. 9.

5.49 It was also suggested to the committee that the criteria for determining a 'genuine relationship' are considered in the context of a Western relationship. Referring to two women who anonymously gave evidence to the committee, Ms Kittu Randhawa of ICSA highlighted the issues faced by women in arranged marriages:

As the women who you've just heard have spoken, their relationship is genuine from the moment it is arranged; it is not disingenuous. It's insult on injury to say: 'My relationship isn't genuine. I've just been through beatings and I have no money, and my parents have been scammed.' On top of that, you to have to try to prove a genuine relationship where you have no control in that relationship, no determination in that relationship and your partner has possibly worked things to his favour and has been in control all along.<sup>46</sup>

#### *Economic abuse and joint bank accounts*

5.50 The committee received evidence that victims of dowry abuse had also experienced financial abuse at the hands of their partners with respect to their joint bank accounts. Joint bank accounts are one way that DHA can assess the genuineness of a relationship, but can also be an indicator that a victim's partner is engaging in 'relevant family violence' under the Regulations.

5.51 The Australasian Centre for Human Rights and Health provided the following examples:

Ms A was referred by her GP for treatment of stress and depression...Her husband...was annoyed about not getting dowry. He would say "you are living a life of luxury here in Australia, all because of me. What has your father given". He subjected her to continuous emotional abuse, violence, frequently threw her out and locked her out of the home. He had access to her bank account and withdrew \$40,000 out of her hard earned income without permission. One time he became violent because she needed to send money to her mother in India.

Another woman named Sita said she was studying to be a Journalist in India before arranged marriage and she wanted to pursue her studies in Australia after marriage. She was told by the perpetrator /husband she had to work as old age carer as this would bring better money and quickly. The money he said will go into a joint bank account, she will get just enough for her bus fares, he will have the control of that account. When she complained he told her he will withdraw his sponsorship of partner visa if she did not comply. She said she started attending the TAFE College, cooked cleaned, washed his clothes. He hardly spoke to her during the day. He would remind her repeatedly that she was dependent on him for PR visa. His abuse and violence became severe and she had to call the police.<sup>47</sup>

5.52 In response to a question from the committee about the link between joint bank accounts and domestic and family violence, DHA informed the committee that it

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46 Ms Kittu Randhawa, Project Lead, ICSA, *Committee Hansard*, 30 November 2018, p. 14.

47 Australasian Centre for Human Rights and Health, *Submission 2*, p. 13.

'does not consider whether there is a link between joint bank accounts and incidents of family violence'.<sup>48</sup> Further, as to its knowledge, DHA 'is not aware of misuse of joint bank accounts in regard to claimed dowry abuse, however the Department does recognise financial abuse as a form of violence'.<sup>49</sup>

### ***Sponsorship***

5.53 The committee heard evidence that the current sponsorship regime unintentionally facilitates dowry abuse in a number of important ways.

5.54 The visa assessment system requires extensive information about the applicant being sponsored such as criminal history, medical history, income and background, yet requires little to be disclosed to the applicant regarding their sponsor. Evidence was received that perpetrators of dowry abuse often mislead their victim(s) regarding their employment or income status and do not disclose previous offences or marriages.<sup>50</sup> Some submitters suggested that the sponsorship system could be beneficially used to require greater mutual disclosures, promoting informed decision making by both parties, and undertakings about future conduct<sup>51</sup>—for example not to request, receive or solicit dowry or gifts.

5.55 Some perpetrators of dowry abuse have sponsored new spouses following the end of a previous relationship.

5.56 For example, Ms Kaur informed the committee that, at present, DHA does not undertake risk assessments of potential sponsors which may indicate to a potential applicant that the sponsor could engage in domestic or family violence:

...I would want the immigration department to undertake a bit of a risk assessment, or some police criminal history check or domestic violence history check. Even if the women have not pursued charges, if there has been any inference or evidence of domestic violence that should be flagged, and at this point it's not.<sup>52</sup>

5.57 Ms Michal Morris of inTouch Multicultural Centre Against Family Violence also raised this as an issue of concern, and advocated to amend the *Migration Act*

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48 DHA, answers to questions taken on notice, 18 October 2018, (received 30 November 2018), p. 16.

49 DHA, answers to questions taken on notice, 18 October 2018, (received 30 November 2018), p. 16.

50 See, for example, Ms Manasi Wagh-Nikam, Health Promotion Worker, Women's Health in the North, *Committee Hansard*, 21 September 2019, p. 22; Women's Legal Service QLD, *Submission 19*, p. 3.

51 See, for example, Ms Kaur, Social Worker, JK Diversity Consultants, *Committee Hansard*, 30 November 2018, p. 4

52 Ms Kaur, Social Worker, JK Diversity Consultants, *Committee Hansard*, 30 November 2018, p. 4.

1958 'to prohibit offenders of family violence, including dowry abusers, from sponsoring new spouses to come to the country'.<sup>53</sup>

5.58 However, the DHA informed the committee that '[s]ponsors are required to provide information about their previous relationships in the sponsorship application'—although this is not passed on to the applicant being sponsored—and that the Departmental visa processing systems also record previous refusal of sponsorship and visa applications.<sup>54</sup>

5.59 Further, there are limitations in the Regulations on the number of times a person can sponsor a Partner category (Partner and Prospective marriage visa) applicant:

The provisions allow a person to sponsor a maximum of two visa applicants in total, provided the two sponsorships are at least five years apart. Similarly, a person who themselves were sponsored for a Partner category visa cannot sponsor a Partner category visa applicant until at least five years have passed since they applied for their Partner/Prospective Marriage visa.

There are provisions to approve a sponsorship, notwithstanding these limitations, if compelling circumstances affecting the sponsor exist.<sup>55</sup>

5.60 The recent Migration Amendment (Family Violence and Other Measures) Bill 2016, which received Royal Assent on 10 December 2018, introduced a sponsorship framework for the sponsored family visa program. This means that sponsors of visas will have to be 'approved' in a similar fashion to how work sponsors are approved, with the approval criteria to be set out in Regulations.

5.61 The DHA has advised the committee that the new measures will:

- strengthen the integrity and primary purpose of the family sponsored visa program;
- place greater emphasis on the assessment of family sponsors;
- improve the management of family violence in the delivery of the program; and
- introduce provisions to allow additional information disclosure by an Australian applying to sponsor an overseas partner.<sup>56</sup>

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53 Ms Michal Morris, Chief Executive Officer, inTouch Multicultural Centre Against Family Violence, *Committee Hansard*, 21 September 2018, p. 25.

54 DHA, answers to questions taken on notice, 3 December 2018, (received 25 January 2019), p. 10.

55 DHA, answers to questions taken on notice, 3 December 2018, (received 25 January 2019), p. 10.

56 DHA, answers to questions taken on notice, 3 December 2018, (received 25 January 2019), p. 13.

## Committee view

5.62 The committee acknowledges the concerns raised by submitters and witnesses that some temporary visa holders who are victims of domestic and family violence, such as dowry abuse, are unable to access the family violence provisions of the Regulations as a result of the particular visa that they hold.

5.63 The committee considers that this is unjust, and is concerned that people who have experienced domestic or family violence at the hands of their partner who is a resident or citizen of Australia may not be able to access protection in Australia, and may therefore continue to suffer domestic or family violence.

5.64 The committee believes this is contrary to the intent of the *National Plan to Reduce Violence against Women and their Children 2010–2022*, and therefore encourages the Australian government to extend the family violence provisions in the Regulations to apply to other family visa subclasses.

5.65 The committee also acknowledges evidence that many women who suffer serious family violence including dowry abuse do not yet hold temporary family visas, instead being legally in Australia on other visas such as student or sponsored visitor visas. The committee is concerned that there is no protection at all available for such women and considers that there should be temporary protection for women on non-family visa sub-classes who suffer serious, proven abuse. A new class of temporary visa for a limited period (say 1 or 2 years), would allow a victim to make necessary arrangements for their own and their family's protection and security, as well as arrangements to return to their home country or to apply for any further visa for which they were eligible.

5.66 The committee notes that Australia already has a 'Woman at Risk' permanent visa subclass 204 for women who are living outside their home country and not yet living in Australia, and considers that it is also reasonable to provide temporary protection for women who have suffered serious family violence while in Australia. A temporary visa reserved for serious cases offers no incentive to falsify claims and would leverage the existing, thorough, assessment mechanisms.

## Recommendation 5

**5.67 The committee recommends that the Australian government act to address the injustice whereby family violence protection is not available to victims on many temporary visas and consider:**

- **extending the family violence provisions in the Migration Regulations 1994 beyond temporary Partner visa holders, Prospective Marriage visa holders who have married their sponsor and dependent applicants for a Distinguished Talent visa, to apply to other family visa subclasses; and**
- **the creation of a temporary visa—for example a 'Woman at Risk in Australia' visa—to be available for non-family temporary visa holders who have suffered serious and proven family violence including dowry abuse.**

5.68 The committee is persuaded by the evidence it has received that a visa applicant who has been subject to domestic or family violence, such as dowry abuse, may experience difficulty in producing the requisite evidence of a genuine relationship in order to satisfy the requirement of DHA, such that a visa application may be refused without the victim's claims for family violence being considered.

5.69 The committee is concerned that this could result in victims being subject to further abuse, and considers that changes to the visa application assessment process could be made to avoid such situations in future.

5.70 The committee therefore believes that the Australian government should ensure decision makers take into account the nature of alleged family violence when making an assessment on whether the relationship was genuine prior to it ending. The committee agrees that the existence of family violence, including economic abuse, should not be the reason, or part of the reason, for refusing the visa application.

## **Recommendation 6**

**5.71 The committee recommends that the Australian government ensure decision makers consider the nature of alleged family violence when making an assessment on whether the relationship was genuine prior to it ending.**

5.72 The committee acknowledges concerns raised by the evidence of many submitters that the sponsorship regime facilitates dowry abuse including by multiple perpetrators, and that changes to the migration framework should be considered to promote more informed decision making between sponsors and applicants.

5.73 The committee believes that the new sponsorship framework for the sponsored family visa program could be utilised to help prevent dowry abuse by preventing previous perpetrators from sponsoring multiple spouses, and by requiring sponsors to provide disclosures and give undertakings in relation to their circumstances and to dowry.

5.74 The committee further proposes that innovative uses of the sponsorship framework should be considered, trialled initially in certain countries identified as higher risk. Sponsors could be required to provide applicants with similar information as is required of applicants, in relation to criminal, marital, employment and income history. This need not be reviewed or verified by the department so there is no extra administrative burden, but sponsors would be legally obliged to provide accurate information to avoid future consequences.

5.75 The committee also suggests that consideration should be given to requiring undertakings from both sponsors and applicants that no dowry or gifts over a certain amount—for example \$5,000—would be exchanged, received or solicited including between their families, and that all gifts over that amount received, sought or promised since the commencement of the relationship must be listed and declared. Although giving or receiving dowry is not proposed by the committee to be a criminal offence or regulated *per se*, such undertakings would have an educative role, and also would provide a basis for action against a sponsor if they are breached. Action against a sponsor could include prosecution for providing false or misleading information in serious cases, or a clear basis to not approve future sponsorship applications.

Disclosure of dowry would assist in property disputes that arise should a marriage be dissolved in the future.

### **Recommendation 7**

**5.76** The committee recommends that the Australian government consider innovative use of the sponsorship mechanism and the new family sponsorship framework to prevent previous perpetrators from sponsoring multiple spouses, and by requiring sponsors to provide disclosures and give undertakings in relation to their circumstances and to dowry.

**5.77** The committee also recommends that the Australian government look explicitly at ensuring that the work of the Department of Home Affairs is included in National Family Violence Prevention Strategies, not just from the point of view of access to visas, but also visa processing and assessment.





# Chapter 6

## Policy reform

6.1 This chapter addresses two broad issues for policy reform—data collection and raising awareness of dowry abuse—which have been raised by inquiry participants. Advocates for reform told the committee that action in these areas could lead to a significant reduction in the incidence of dowry abuse in Australia.

### Data collection

6.2 The committee was informed that although there is 'strong evidence on the nature of dowry abuse and the impact on women'—and isolated data was provided to the committee by some submitters<sup>1</sup> which suggests serious and growing problems in certain communities as a result of changes in migration patterns—in aggregate terms only limited data exists 'on the prevalence of dowry and dowry abuse in Australia'.<sup>2</sup> Further, no comprehensive study into dowry abuse in Australia has been undertaken to date, and the available evidence on dowry abuse 'is largely anecdotal'.<sup>3</sup>

6.3 Ms Maria Dimopoulos of Harmony Alliance explained to the committee why it was important to collect data on dowry abuse. This data collection, Ms Dimopoulos argued, may lead to an understanding that many of the deaths 'taking place within migrant and refugee communities could be prevented through a culturally appropriate understanding of some of those forms of violence and the response to them'.<sup>4</sup>

6.4 In its submission, the Australasian Centre for Human Rights and Health (ACHRH) noted that '[c]urrently we have no idea of the numbers of women who are or have experienced abuse and coercive control behaviour from a partner that is in part linked to issues with their dowry'. It recommended:

Accurate reporting and collection of data at National and State levels giving an official figure of Dowry related violence and deaths, and domestic slavery and servitude should be done in a coordinated manner between the Police, Justice, [family violence] delivery services and the [non-government organisations].<sup>5</sup>

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1 Dr Manjula O'Connor, *Submission 16*, p. 1.

2 Mrs Sunila Kotwal, Manager, Diversity and Inclusion, White Ribbon Australia, *Committee Hansard*, 30 November 2018, p. 33.

3 Anti-Slavery Australia (ASA), *Submission 47*, p. 9.

4 Ms Maria Dimopoulos, Chair, Harmony Alliance: Migrant and Refugee Women for Change, *Committee Hansard*, 30 November 2018, p. 40.

5 Australasian Centre for Human Rights and Health (ACHRH), *Submission 2*, p. 6.

6.5 A number of other submitters and witnesses also observed the lack of data on dowry abuse, and suggested the committee make recommendations aimed at improving the availability of such data.<sup>6</sup>

6.6 For example, Ms Jatinder Kaur discussed what she described as the 'critical gap in data and prevalence rates of understanding domestic/family violence, dowry abuse within migrant and refugee communities in Australia'.<sup>7</sup> Ms Kaur provided some insight as to why there is such a small amount of reporting on dowry abuse in the Indian community:

Anecdotal and community advocates believe that prevalence of family violence maybe [sic] higher rates amongst newly arrived Indian migrants settling in Australia. The reports of dowry abuse would be far less as it is commonly connected with overall domestic/family violence context.<sup>8</sup>

6.7 Ms Kaur suggested to the committee that:

Without clear data from Police, Courts, hospitals, Domestic violence services, Prison, Domestic violence refuge's, it is very difficult to gauge the prevalence rates of domestic and family violence issues amongst Indian communities.<sup>9</sup>

6.8 Ms Kaur therefore recommended that the Australian government, through the Council of Australian Governments, 'improve the data collection of domestic violence victims and perpetrators and include separate [a] category for dowry abuse-financial abuse to identify ethnic group, language spoken, visa status'.<sup>10</sup>

6.9 Dr Indrani Ganguly made a similar observation about the lack of data on domestic and family violence in culturally and linguistically diverse (CALD) communities. Dr Ganguly reflected that '[t]he invisibility of CALD populations in domestic violence statistics is attributed to the small numbers of specific communities which makes it difficult to conduct large-scale data collections'.<sup>11</sup>

6.10 Soroptimist International Moreton North Inc observed that although the data collection of domestic violence cases in Australia had improved, 'there is still no specific data that indicates the proportions of perpetrators and victims (survivors) from particular ethnic backgrounds'.<sup>12</sup>

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6 See, for example, safe steps Family Violence Response Centre, *Submission 14*, p. 3; Harmony Alliance, *Submission 18*, p. 1; Federation of Ethnic Communities Councils of Australia (FECCA), *Submission 20*, p. 2.

7 Ms Jatinder Kaur, *Submission 27*, p. 6.

8 Ms Jatinder Kaur, *Submission 27*, p. 6.

9 Ms Kaur, *Submission 27*, p. 6.

10 Ms Kaur, *Submission 27*, p. 10.

11 Dr Indrani Ganguly, *Submission 36*, p. 7.

12 Soroptimist International Moreton North Inc, *Submission 51*, p. 2.

6.11 Indeed, Good Shepherd Australia New Zealand and inTouch Multicultural Centre against Family Violence (GSANZ and inTouch) submitted that the extent to which dowry abuse is a causal factor in domestic and family violence is unknown because of 'the lack of disaggregated data that is collected about domestic and family violence in Australia' and 'the lack of specific markers relevant to CALD communities being included in the broad analysis on domestic and family violence'.<sup>13</sup> GSANZ and inTouch also reflected that these markers are 'often missing from risk assessment tools'.<sup>14</sup>

6.12 In its submission, Anti-Slavery Australia (ASA) discussed a study by the ACHRH which compared family violence in South Asian families to that experienced in Middle-Eastern families. The study found that 50 per cent of the South Asian cases 'demonstrated dowry-related violence and associated financial extortion', compared with none of the Middle-Eastern victims of family violence in the study being subjected to dowry abuse.<sup>15</sup>

6.13 Another study by a South East Melbourne organisation, Shakti, found that 40 per cent of family violence service providers participating in the study had identified instances of forced marriage and dowry abuse.<sup>16</sup> Shakti attributed this number to either of the following explanations:

(a) women affected by these two types of abuse were not reaching out to agencies or services, or

(b) even if women were reaching out, these culturally-specific forms of abuse were not being assessed or discovered by the agencies or services.<sup>17</sup>

6.14 ASA also referred to several media reports which 'highlight research gaps, and the complexity and seriousness of dowry abuse in Australia and its impact predominantly on women from CALD communities'.<sup>18</sup>

6.15 ASA therefore suggested that 'broader research must be undertaken in order to develop a deep and nuanced understanding of this complex form of family violence and its prevalence in Australia'.<sup>19</sup> ASA proffered that consultation through community groups or forums 'will provide a firm evidence base from which to develop further protections, education, awareness raising campaigns and training for frontline workers'.<sup>20</sup>

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13 Good Shepherd Australia New Zealand and inTouch Multicultural Centre against Family Violence (GSANZ and inTouch), *Submission 6*, p.19. See also p. 26.

14 GSANZ and inTouch, *Submission 6*, p.19.

15 ASA, *Submission 47*, p. 9.

16 ASA, *Submission 47*, p. 9.

17 ASA, *Submission 47*, pp. 9–10.

18 ASA, *Submission 47*, p. 11.

19 ASA, *Submission 47*, p. 11.

20 ASA, *Submission 47*, p. 11.

6.16 Specifically ASA recommended that the Australian government:

...enters into a consultation process with government agencies and community organisations on the practice of dowry and dowry abuse in order to:

(a) establish a clear evidence base on the availability of existing legal protections, and

(b) make recommendations about any necessary amendments to ensure that those who are at risk of, or experiencing, dowry abuse have access to protection.<sup>21</sup>

6.17 In its submission, the Royal Australian and New Zealand College of Psychiatrists (RANZCP) advocated for '[a] central repository of data on dowry abuse' which 'could be informed by data from support services', such as NGOs and government services, and the law and justice system.<sup>22</sup>

6.18 The RANZCP stated that '[t]his measure would require a whole-of-government approach', which 'should align with the Australian Bureau of Statistics Standards for Statistics for Cultural and Language Diversity' that 'identify, define and classify particular attributes that relate to those from a [diverse] cultural and linguistic background'.<sup>23</sup>

6.19 The RANZCP also referred to the recently-established Victorian Family Violence Data Portal, which was developed as a result of the Victorian Royal Commission into Family Violence (Royal Commission).<sup>24</sup> Recommendation 205 of the Royal Commission required:

The Crime Statistics Agency maintain and develop the Victorian Family Violence Database and consider what additional data sets should be incorporated in the database, how links between all relevant data sets can be created, and how the database can otherwise be developed [within 18 months].<sup>25</sup>

6.20 The Family Violence Data Portal provides access to:

...an updated set of Family Violence Database dashboards containing interactive visualisations of key measures of family violence, detailed Excel data tables with these key measures available to download and explanatory materials and definitions for the information in these pages.<sup>26</sup>

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21 ASA, *Submission 47*, p. 11.

22 Royal Australian and New Zealand College of Psychiatrists (RANZCP), *Submission 9*, p. 5.

23 RANZCP, *Submission 9*, p. 5.

24 RANZCP, *Submission 9*, p. 5.

25 Victorian Royal Commission into Family Violence, *Royal Commission into Family Violence: Report and recommendations*, March 2016, p. 101.

26 Crime Statistics Agency, *Family Violence Data Portal*, 17 May 2018, <https://www.crimestatistics.vic.gov.au/family-violence-data-portal> (accessed 14 January 2019).

6.21 ASA also discussed the establishment of a new framework for data collection, and recommended that the Australian government:

...strengthen governance of data collection practices and standards by implementing a system to capture and measure the extent and incidence of all forms of family violence including dowry abuse in Australia. For this system, we suggest that relevant statistics and data be collected from legal, health, community, migration and justice systems on the following:

- (a) reporting rates for instances of dowry abuse and the nature of that abuse;
- (b) demographics, including the migration status of victims of dowry abuse and their dependents;
- (c) details of the perpetrators of dowry abuse, including the migration status of perpetrators and their relationship to the victims of dowry abuse; and
- (d) the number of affected women and dependents presenting to health services as a result of violence arising from dowry abuse.<sup>27</sup>

### **Committee view**

6.22 The committee acknowledges that there is a lack of understanding about the prevalence of dowry abuse in Australia, which in turn has prevented governments and NGOs from adequately responding to this issue so as to reduce the incidence and protect victims of dowry abuse. The committee considers that a continued failure to understand and address dowry abuse in Australia is unacceptable, as this will result in further preventable deaths and incidents of family violence in migrant communities.

6.23 The committee considers that, in addition to the proposed legislative changes recommended in preceding chapters, it is important for organisations that engage with victims of domestic and family violence from CALD communities—especially those that are the first point of contact—to understand culturally-specific forms of domestic and family violence.

6.24 These organisations should also be able to protect these victims in a culturally-sensitive way, or where they cannot do so, direct the victim to organisations that can provide such services.

6.25 The committee therefore considers that the Australian government should, together with state and territory governments, work with CALD communities in order to determine ways in which to establish a firm evidence base on the incidence of dowry abuse.

6.26 This will allow governments to develop further protection, education, awareness raising campaigns and training for frontline workers and community organisations with respect to the issue of dowry abuse. Further, it will assist government in determining whether legislative amendments—additional to those recommended in preceding chapters—are necessary to help prevent dowry abuse and ensure victims are provided with appropriate legal protection.

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27 ASA, *Submission 47*, p. 11.

## **Recommendation 8**

**6.27** The committee recommends that the Australian government, together with state and territory governments, work with culturally and linguistically diverse communities and service providers in order to determine ways in which to establish a firm evidence base on the incidence of dowry abuse.

6.28 The committee also considers that the Australian government must strengthen the governance of data collection practices and standards by implementing a system to capture and measure the extent and incidence of all forms of family violence in Australia, including dowry abuse as a form of economic abuse.

6.29 The committee agrees with ASA that relevant statistics and data must be collected from legal, health, community, migration and justice systems on:

- reporting rates for instances of dowry abuse and the nature of that abuse;
- demographics, including the migration status of victims of dowry abuse and their dependents;
- details of the perpetrators of dowry abuse, including the migration status of perpetrators and their relationship to the victims of dowry abuse; and
- the number of affected women and dependents presenting to health services as a result of violence arising from dowry abuse.

## **Recommendation 9**

**6.30** The committee recommends that the Australian government work with the States and Territories to improve and strengthen the governance of data collection practices and standards by implementing a system to capture and measure the extent and incidence of all forms of family violence in Australia, including dowry abuse as a form of economic abuse.

### **Raising awareness of dowry abuse**

6.31 Many submitters and witnesses advocated for further education and training with respect to dowry abuse. The push for awareness of dowry abuse covered three broad areas: education on Australian law; education on dowry abuse; and training for frontline workers.

#### ***Education on Australian law***

6.32 In its submission, the Department of Social Services (DSS) informed the committee that humanitarian entrants are 'provided with information on Australian Law in relation to marriage in orientation training both before and after their arrival in Australia'.<sup>28</sup>

6.33 Refugee and Special Humanitarian Program entrants over the age of five years old are provided with the Australian Cultural Orientation (AUSCO) Program prior to departure for Australia:

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28 Department of Social Services (DSS), *Submission 70*, p. 2.

AUSCO gives practical advice about Australian Law, including that:

- forcing anybody to get married is a serious crime in Australia;
- a person must agree to the marriage without being forced or tricked;
- an arranged marriage, where both people freely consent to get married, is different to a forced marriage. Arranged marriages are legal in Australia;
- it is illegal to take or send someone to another country for forced marriage or get someone else to organise this;
- giving dowries is not a customary practice in Australia; and
- there are culturally sensitive services in Australia that can help.

Where relevant, AUSCO trainers also create group discussions on dowries and discuss the topic through a session on 'Unacceptable vs acceptable practices in Australia'.<sup>29</sup>

6.34 Further orientation on Australian law is provided upon arrival to Australia, including that:

- participants are aware all people are equal under the law in Australia;
- participants are aware of the basic freedoms that underpin Australian law;
- participants know what constitutes domestic violence and child abuse under Australian Law;
- participants know the rights of women and children in Australia;
- participants know the role of police and legal services; and
- participants can contact police and legal services if needed.<sup>30</sup>

6.35 People coming to Australia may also access a Family Safety Pack, which 'includes information about Australia's laws regarding domestic and family violence, sexual assault and forced marriage, including messaging that women have the same rights as men'.<sup>31</sup> This pack, containing 'factsheets about domestic and family violence, sexual assault, forced and early marriage', has been translated into 46 languages, and is also available on the DSS website.<sup>32</sup> The pack 'is a key initiative of the Second Action Plan of the National Plan to Reduce Violence against Women and their Children 2010–2022'.<sup>33</sup>

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29 DSS, *Submission 70*, p. 2.

30 DSS, *Submission 70*, p. 2. DSS noted that 'Australian Law with regard to cultural practices (such as forced marriage) is listed as indicative content under the Australian Law topic'.

31 DSS, *Submission 70*, p. 2.

32 DSS, *Submission 70*, p. 2.

33 DSS, *Family Safety Pack*, 5 April 2016, <https://www.dss.gov.au/family-safety-pack> (accessed 14 January 2019).

6.36 DSS also informed the committee that other resources are available in a number of languages which 'include information about Australia's laws, way of life and values'.<sup>34</sup>

6.37 In its submission, White Ribbon Australia suggested that more attention could be paid to primary prevention of dowry abuse by '[e]nsuring that the Pre-departure Safety Packs are given to all women and men applying for [a] visa and these...include information on dowry abuse being against the law'.<sup>35</sup>

6.38 Mrs Sunila Kotwal of White Ribbon Australia elaborated on this in her evidence to the committee, suggesting that the packs could 'include information on dowry abuse being against the law and information about the support available for visa categories'.<sup>36</sup> Mrs Kotwal considered that this information could be provided to 'new migrants, including international students'.<sup>37</sup>

6.39 The ACHRH informed the committee that their findings have indicated that 'ethnic women do not know their rights, ways and means of accessing legal help', and therefore recommended community-based education and awareness-raising post-arrival and on an ongoing basis, which would be '[i]mplemented by local community organizations [sic], supported and funded by the Government'.<sup>38</sup>

6.40 This, and similar recommendations were reflected in a number of other submissions.<sup>39</sup>

6.41 For example, the Federation of Ethnic Communities' Councils of Australia recommended that the Australian government:

...allocate resources and funding towards free, culturally appropriate community education regarding the protections available under the Australian family law system and the Australian migration system for women on temporary and permanent visas.<sup>40</sup>

6.42 As the following exchange from the committee's hearing in Sydney on 30 November 2018 illustrates, one suggestion from Ms Kaur was for women to be provided information on Australian law at their health check prior to travelling to Australia:

Senator IAN MACDONALD: With your organisation or other people we're going to see, do you have in your mind that there's a booklet, a pamphlet or several pamphlets that you could give to everyone? The

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34 DSS, *Submission 70*, p. 2.

35 White Ribbon Australia, *Supplementary Submission 24.1*, p. 5.

36 Mrs Kotwal, White Ribbon Australia, *Committee Hansard*, 30 November 2018, p.32.

37 Mrs Kotwal, White Ribbon Australia, *Committee Hansard*, 30 November 2018, p.32.

38 ACHRH, *Submission 2*, p. 4.

39 See, for example, Daaman Welfare Society, *Submission 58*, p. 4; Federation of Indian Associations of ACT Inc, *Submission 70*, p. 4; Catholic Women's League, *Submission 34*, p. 9.

40 FECCA, *Submission 20*, p. 1.



woman's would-be husband wouldn't be annoyed at her getting this if it was just done as a matter of course and as a very ordinary thing where, when you are coming to Australia, you get a booklet that tells you.

Ms Kaur: Ideally, one of the recommendations was that, when the spouse visa holders are undertaking their medical and all of their paperwork with the Australian Embassy, information that has already been translated by the federal government is actually given to the woman. That information is not withheld or given to the husband. The husband always has all of the immigration information from the department around the spouse visa status. There's a lot of that control that happens at the beginning where the women don't know.

Senator IAN MACDONALD: How do you make sure that it goes to the woman?

Ms Kaur: She has to do the medical. She has to do that. That's what I'm thinking. That's an opportunity just to give information.<sup>41</sup>

### ***Education on dowry abuse***

6.43 As discussed in chapters 3–5, 'dowry abuse' is not referred to as a form of domestic or family violence in Commonwealth criminal, family and migration laws. As set out in those chapters, the committee received evidence that a reference to dowry abuse as an example of economic abuse, itself a form of family violence, would help create an understanding in the community that dowry abuse is a form of family violence and is therefore prohibited.

6.44 In her submission, Ms Naomi Selvaratnam 'strongly' recommended community education on dowry abuse, as, '[w]ithout open acknowledgement of the issue, it will continue to spread throughout migrant communities in Australia'.<sup>42</sup> Ms Selvaratnam proffered that 'a central part of this is dealing directly with leaders and the broader community to ensure that they aren't simply sweeping this issue under the rug'.<sup>43</sup>

6.45 A number of other submitters and witnesses also recommended that the community is educated on the issue of dowry abuse, in order to prevent its occurrence in Australia.<sup>44</sup>

6.46 Indeed, as Ms Michal Morris of inTouch Multicultural Centre Against Family Violence stated, '[t]he most powerful way to stop really bad forms of violence is to get in as early as possible and to educate', noting that:

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41 Ms Kaur, Social Worker, JK Diversity Consultants, *Committee Hansard*, 30 November 2018, pp. 2–3.

42 Ms Naomi Selvaratnam, *Submission 1*, p. 1.

43 Ms Selvaratnam, *Submission 1*, p. 1.

44 See, for example, Women's Health in the North, *Submission 21*, p. 5; White Ribbon Australia, *Supplementary Submission 24.1*, p. 5; Ms Jaspreet Chopra, Director, Indian Support Center Inc., *Committee Hansard*, 30 November 2018, p. 10.

...prevention, education and explanation of the connection with economic abuse as a form of family violence are the levers we can use that can empower and engage these women who are experiencing this to recognise the behaviour, as is providing an opportunity for lots of the services on the ground—from formal service providers like Good Shepherd Australia and us, who can help these women, to local community organisations—to provide education, prevention and support.<sup>45</sup>

### ***Training of frontline workers***

6.47 A number of submitters and witnesses also recommended training frontline officials on the occurrence of dowry abuse as a form of family violence.<sup>46</sup>

6.48 In their submission, DSS noted that '[m]any frontline workers may not recognise dowry abuse as the reason for presentation at a service' in circumstances where the person seeking assistance fails to 'articulate this directly or where the focus is on immediate needs such as safety and wellbeing'.<sup>47</sup>

6.49 Ms Selvaratnam described the experience of women who raised the issue of dowry abuse with police in her submission:

Most of the women I spoke to while researching this issue noted that when they experienced abuse and approached the police, many officers didn't know what a dowry was, and it led to further confusion. In some cases, the police would dismiss the woman's complaints as a 'property dispute' and failed to recognise that it was symptomatic of abuse.<sup>48</sup>

6.50 The safe steps Family Violence Response Centre advocated for mandatory training for 'family violence services, universal services and institutions (including police)' which should:

...promote a nuanced understanding of the different types of dowry practice among different cultures, alert services to the barriers for women in reporting dowry abuse (language, shame and honour, uncertain/temporary visa status) and be informed and ideally delivered by people from relevant communities.<sup>49</sup>

6.51 In its submission, the Indian (Sub-Continent) Crisis & Support Agency (ICSA) informed the committee that, since 2015, it has run 'training and awareness sessions with local Police, frontline services and workers'.<sup>50</sup> ICSA noted that the training arose as a result of evidence from case management that there 'was a lack of

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45 Ms Michal Morris, Chief Executive Officer, inTouch Multicultural Centre Against Family Violence, 21 September 2018, p. 25.

46 See, for example, ACHR, *Submission 6*, p. 5; United Indian Association, *Submission 8*, p. 4; FECCA, *Submission 20*, p. 1.

47 DSS, *Submission 70*, p. 3.

48 Ms Selvaratnam, *Submission 1*, pp. 1–2.

49 safe steps Family Violence Response Centre, *Submission 14*, p. 3.

50 The Indian (Sub-Continent) Crisis & Support Agency (ICSA), *Submission 50*, p. 11.

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knowledge and awareness of the subject in [domestic and family violence] matters and what impact it had on decisions made by perpetrators and victims'.<sup>51</sup> ICSA informed the committee that, aside from the references and materials it produces, it is 'unaware of any formal training' of these frontline services on dowry abuse.<sup>52</sup>

6.52 In addition to suggesting cultural competence training for police officers, who are often the first point of contact for victims of dowry abuse, the Legal Services Commission of South Australia also recommended that judicial officers 'be provided cultural competency training to appreciate the various cultures and their practices and to have a better understanding of the dynamics of this form of family violence'.<sup>53</sup>

6.53 As noted in chapter 4, the National Domestic and Family Violence Bench Book 'is available to all judicial officers across Australia', and all Family Court and Family Circuit Court judges have 'been trained in the contents of that bench book through judicial training', sponsored by the Attorney-General's Department.<sup>54</sup>

6.54 Some submitters also discussed educating frontline services on the intersection between dowry abuse, slavery and slavery-like offences, discussed in chapter 3. For example, ASA recommended that the Australian government:

...include dowry abuse as a possible indicator of exploitation for the purposes of divisions 270 and 271 of the *Criminal Code Act 1995* (Cth) and ensure that this is included in any training programs.<sup>55</sup>

6.55 In its submission, the ACHRH also referred to the requirement for education of 'relevant authorities' in order to 'enhance identification and referral of trafficking and slavery offences when they occur within a domestic setting/familial relationship'.<sup>56</sup> The ACHRH suggested such education 'include recognition that situations akin to human trafficking, forced labour, domestic servitude and other offences under the Commonwealth legislation occur within the context of partner migration'.<sup>57</sup>

6.56 In its submission, the RANZCP identified the need for further training of health professionals, recommending the availability of further training and support in order to build the knowledge of these frontline workers in the following areas:

- Understanding and assessing family violence, acknowledging that rarely does one form of family violence occur in isolation of others, including dowry abuse, and that dowry abuse may be a marker of a

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51 ICSA, *Submission 50*, p. 11.

52 ICSA, *Submission 50*, p. 11.

53 Legal Services Commission of South Australia, *Submission 12*, p.7.

54 Ms Ashleigh Saint, Assistant Secretary Family Law Branch, Attorney-General's Department, *Committee Hansard*, 3 December 2018, p. 8.

55 ASA, *Submission 47*, p. 23.

56 ACHRH, *Submission 2*, p. 21.

57 ACHRH, *Submission 2*, p. 21.

complex negative family dynamic, or possibly intergenerational/cultural origins.

- Providing trauma-informed and culturally competent care when working with CALD women who may have experienced dowry abuse.
- The importance of referrals and adequate safety and support mechanisms in relation to assessing abuse or family violence.<sup>58</sup>

6.57 Indeed, Dr Kym Jenkins of the RANZCP informed the committee that '[t]he first point of contact [of abuse victims] may be with primary health professionals', and for this reason it is important to educate and work with general practitioners and community staff in order 'to help them recognise or even increase awareness' that dowry abuse may be happening.<sup>59</sup>

6.58 In its submission, DSS informed the committee about the development of new training for frontline workers:

In 2018–19, Lifeline Australia will research and develop new specialised DV-alert training to build the knowledge and capacity of frontline workers to effectively recognise, respond and appropriately refer people experiencing, or at risk of, complex forms of domestic and family violence. Specifically, this training will address forced marriage, female genital mutilation, dowry abuse and human trafficking/slavery (domestic servitude).

DV-alert provides training and awareness programs nationally to help health, allied health and community frontline workers recognise and respond to domestic and family violence and refer people to the most appropriate support services. DV-alert is a free, nationally accredited training package and has been delivered by Lifeline Australia since 2007.<sup>60</sup>

6.59 In relation to training of officials in the Department of Home Affairs (DHA), the Immigration Advice & Rights Centre recommended 'that decision makers should receive appropriate and regular training on family violence'.<sup>61</sup>

6.60 The committee was informed by DHA that an action plan exists to strengthen the department's ability to deliver information on domestic and family violence:

We have developed a domestic and family violence strategy under which sits the domestic family violence action plan. It focuses precisely on raising awareness of family violence and embedding the processes and policy changes and legislative changes that have been made in the information but also upskilling our staff so that they are also aware of where they need to be providing the information and making sure applicants are getting this information. An incredibly important aspect when people migrate to Australia is their awareness of the legal operating context and also what

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58 RANZCP, *Submission 9*, pp. 1–2.

59 Dr Kym Jenkins, President, RANZCP, *Committee Hansard*, 21 September 2018, p. 9.

60 DSS, *Submission 70*, p. 3.

61 Immigration Advice & Rights Centre, *Submission 22*, p. 4.

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their rights are and also the provisions that we have under the Migration Act which offer protections. So we are alive to the importance of information exchange and communication.<sup>62</sup>

### **Committee view**

6.61 The committee recognises that dowry abuse affects women on a wide range of visa categories and accepts that the Australian government needs to do more to ensure that people who come to Australia on temporary or permanent visas are better educated on Australian laws, including the prohibition of family violence, such as dowry abuse.

6.62 The committee considers that one way to engage individually with women, who are more likely to experience dowry abuse, is to inform women who apply for a visa to come to Australia about their rights under Australian law during their routine medical examination. It is important that these women are personally provided with this information, rather than through their families or partners, and that it is provided in their first language.

### **Recommendation 10**

**6.63 The committee recommends the Department of Social Services Family Safety Pack is provided individually to all visa applicants in their first language, such as during the health examination required as a condition of their visa application.**

6.64 While the committee acknowledges that there is training and resources available to frontline workers on family violence—including dowry abuse as a form of economic abuse—the committee accepts the evidence that more training is required for these frontline workers.

6.65 The committee considers that proposed changes to legislation must be accompanied by public discussion and community education if we are to prevent dowry abuse in Australia. The committee considers that the Australian government, together with state and territory governments, should engage with stakeholders in order to fund and develop ongoing education and awareness raising campaigns about family violence, including dowry abuse, in conjunction with the development of further training of frontline officers.

6.66 Training on dowry abuse (and other forms of economic abuse) should be delivered to all professionals who are likely to interact with victims of family violence, including social workers, police, doctors, judges and decision makers in DHA. This training should include the fact that dowry abuse may be a possible indicator of exploitation for the purposes of divisions 270 and 271 of the *Criminal Code Act 1995*.

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62 Mr Richard Johnson, First Assistant Secretary, Immigration, Citizenship & Multiculturalism Policy Division, Department of Home Affairs, *Committee Hansard*, 3 December 2018, p. 15.

**Recommendation 11**

**6.67** The committee recommends that the Australian, state and territory governments engage with stakeholders in order to develop ongoing education and awareness raising campaigns about family violence, including dowry abuse, in conjunction with the development of further training of frontline professionals including social workers, police, doctors, judges and decision makers in the Department of Home Affairs.

**Recommendation 12**

**6.68** The committee recommends that the Australian government include dowry abuse as a possible indicator of exploitation for the purposes of divisions 270 and 271 of the *Criminal Code Act 1995* and ensure that this is included in any training programs.

**Senator Louise Pratt**

**Australian Labor Party**

## **Additional Remarks from Government Senators**

1.1 Government members of the committee support the rights of individuals of any gender to be free from abuse or violence.

1.2 Dowry-related family violence is a complex issue that must be handled with sensitivity. Coalition Senators urge care in approaching the legal, cultural, social and economic implications of this phenomenon.

1.3 Government members of the committee are satisfied that the elements of the offences described in the Chair's report as dowry-abuse and dowry-related violence are already sufficiently addressed under state and territory criminal law and criminal codes, and are given adequate consideration in the operation of commonwealth family law.

1.4 Government members agree that more can be done to inform and empower individuals around family and dowry-related violence and acknowledge that this Inquiry has "shone a light" on the need for more grassroots assistance to be made available to victims of family violence, including those experiencing dowry abuse.

1.5 The disadvantages potentially experienced by victims of dowry-abuse – in terms of language, financial literacy, lack of support networks etc – are present in many situations of family violence more generally. Committee members were reassured by evidence from, for example, the Attorney-General's Department, that extensive programming exists at both the commonwealth and state levels to address such disadvantage in family violence matters. Committee members are however supportive of recommendations for additional resources and information to be made available to vulnerable demographics.

1.6 Senators believe it is important to be tolerant of the cultural traditions of others and to take care not to demonise all practices, which are often benign in effect, due to a small number of unfortunate and/or illegal outcomes. It is however worth noting that the practice of dowry is banned in some jurisdictions.

1.7 Governments members agree that consideration should be given to the inclusion of 'economic abuse' in the national Family Law regime however suggest caution in the development of the elements of such an offence to ensure that innocent conduct is not criminalised and that unsuspecting members of the community are not inadvertently exposed to prosecution.

1.8 The committee agrees that there will be value in the harmonisation of state and federal laws around family violence – including those offences that may be enlivened by cases of dowry-abuse or dowry-related violence. However, as with the proposed inclusion of 'economic abuse' in the family law regime, committee members urge caution in the harmonisation of the elements of these offence to ensure that innocent conduct is not criminalised and that unsuspecting members of the community are not inadvertently exposed to prosecution.

1.9 Additionally, committee members are reluctant to characterise dowry abuse, or family violence more generally, as gender violence that is only perpetrated against

women. Government members of the committee are of the view that family and domestic violence manifests in multiple ways and impacts men, women and children without discrimination. Evidence to that effect was given to the committee.

1.10 The committee notes that the Australian Law Reform Commission are currently conducting a review of Family Law and note that the inclusion of 'economic violence' and other family-violence related matters may be included in the ALRC's deliberations.

1.11 Government members of the committee are substantially persuaded that existing legal frameworks adequately capture offences that could be deemed 'dowry abuse' or 'dowry-related violence'. As the Chair's Report noted at paragraph 2.13:

The following exchange between the Chair and Ms Ashleigh Saint of the Attorney-General's Department (AGD)—which administers the Family Law Act—at the committee's public hearing in Canberra on 3 December 2018, sets out the intersection between federal, state and territory laws with respect to family violence:

Ms Saint:...In terms of the criminalisation of that behaviour, that is predominantly dealt with under state and territory law in relation to abuse.

CHAIR: Why is it primarily within state and territory law and not within family violence law?

Ms Saint: The Family Law Act deals with family violence in the context of proceedings in family law. General assault and family violence offences against the person and other offences like that fall within state and territory law.

CHAIR: That's right. I just have to go back to understanding this. So, even though family violence, assaults et cetera are relevant within family law, the offences themselves are defined within state law. That's what you're saying?

Ms Saint: That's correct. But those offences having occurred would be relevant in family law proceedings.<sup>1</sup>

1.12 The Chair's report also details the relevant legislative schemes that are already operating in the ACT, New South Wales, Northern Territory, Queensland, South Australia, Tasmania, Victoria, and Western Australia from paragraph 2.24 to paragraph 2.45. The Committee is persuaded by evidence from the Attorney-General's Department that these schemes, coupled with the relevant provisions of the Family Law Act, provide sufficient operable legal protection for victims of the offences that could be characterised as 'dowry abuse' or 'dowry-related violence'. This is particularly so should these schemes be nationally harmonised.

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1 Ms Ashleigh Saint, Assistant Secretary Family Law Branch, Attorney-General's Department (AGD), *Committee Hansard*, 3 December 2018, p. 8.



1.13 The Chair's report also identified a range of potential problems with criminalising practices within the scope of 'dowry-abuse'. At paragraph 3.50 the Chair's report remarks that:

The committee accepts, however, the reasoning presented that a narrow approach of simply criminalising particular practices, such as dowry, may be counter productive as it ignores the complexity of family violence in certain cultures. The committee is also concerned that criminalisation of the practice of dowry may have the unintended result of driving this pernicious cultural practice underground, further isolating CALD women and causing greater harm. Criminalising or seeking to ban the practice of dowry would also complicate the task of making beneficial changes to reduce the impact of dowry abuse in areas such as family law property settlements and the migration system. In addition, there may be legitimate versions of property transfer that operate in different cultural contexts. A common example might be parents making gifts to children upon marriage, noting that these gifts belong to the couple and not to 'in-laws' or broader family interests.<sup>2</sup>

1.14 Government members of the committee suggest that further advice be sought, consultation be undertaken and caution be applied to any reform process.

1.15 In terms of the adjudication of matters pertaining to allegations of dowry abuse, the Chair's Report noted reassuring evidence regarding the approach of the judiciary. Paragraph 4.5 of the Chair's Report noted:

The AGD also referred to the National Domestic and Family Violence Bench Book (Bench Book), which 'is available to all judicial officers across Australia'. Indeed, all Family Court and Family Circuit Court judges have 'been trained in the contents of that bench book through judicial training which has been sponsored by the department'.<sup>3</sup>

1.16 And further, at paragraph 4.6:

Part 3.1.5 of the Bench Book refers expressly to dowry abuse as an example of cultural and spiritual abuse which comes within the meaning of family violence. Dowry abuse will be taken to have occurred where the perpetrator has asserted 'his entitlement to a dowry from the victim's family, or punishing the victim or her family for what he claims to be an insufficient dowry'.<sup>4</sup>

1.17 Additionally, the Chair's Report quoted evidence from Monash University that related to the treatment of a dowry-related case in the Federal Court:

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2 Ms Ashleigh Saint, Assistant Secretary Family Law Branch, AGD, *Committee Hansard*, 3 December 2018, p. 8.

3 Ms Saint, AGD, *Committee Hansard*, 3 December 2018, p. 8.

4 *National Domestic and Family Violence Bench Book*, June 2018, section 3.1.5, <http://dfvbenchbook.aija.org.au/foundational-information/intersection-of-legal-systems/> (accessed 7 January 2019).

In that case, the Judge stated that the wife's dowry was 'a very significant direct financial contribution to the marriage'<sup>5</sup> and that the wife's contributions '[o]verwhelmingly...exceeded those of the husband's prior to marriage'.<sup>6</sup> The payment was not treated by the presiding Judge as a gift, 'but rather a joint asset of the property pool, resulting in a more equitable settlement in which financial justice was achieved'.<sup>7</sup>

## **Comment of Government Senators on the recommendations of the Majority Report**

### **1.18 Recommendation 1 of the Chair's report (at paragraph 4.28) recommends that:**

**The committee recommends that the term 'economic abuse' is included as a form of family violence in subsection 4AB(2) of the *Family Law Act 1975*, and the subsection provide a non-exhaustive list of examples of economic abuse, including dowry abuse.**

1.19 Government Senators do not agree with this recommendation and would instead seek further advice from the legal profession and stakeholders, and the report of the ALRC, before further complicating existing legislative and regulatory schemes around family violence.

### **1.20 Recommendation 2 of the Chair's report (at paragraph 4.51) recommends that:**

**The committee recommends that the Australian government work with the states and territories to harmonise existing legislation providing for intervention/violence orders to explicitly recognise dowry abuse as an example of family violence or economic abuse.**

1.21 Government Senators agree that the harmonisation of laws relating to family violence could provide greater certainty and offer better outcomes to victims and litigants. Government Senators are, however, not currently persuaded that the inclusion of the term 'dowry abuse' in state, territory and national legal frameworks will deliver any particular benefit at this time. As with recommendation 1 (see paragraph 1.18 of these Additional Remarks) Coalition Senators urge a cautious and consultative approach.

### **1.22 Recommendation 3 of the Chair's report (at paragraph 4.54) recommends that:**

**The committee recommends that the Australian government give further consideration to legal and decision making frameworks to ensure that victims of dowry abuse are not disadvantaged in family law property settlements, given the community concerns about inconsistent approaches under the current family law framework.**

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5 *Singh v Dala* [2017] FCCA 2945 [57], per Judge Wilson.

6 *Singh v Dala* [2017] FCCA 2945 [59], per Judge Wilson.

7 Monash University, *Submission 15*, p. 11.

1.23 Government Senators are of the view that the operation of state, territory and commonwealth legal frameworks, and the guidance provided by the relevant Bench Books, currently deliver just and equitable outcomes to litigants in this space, and that education and awareness are critical to the protection of potential victims of family violence. As the Chair's report provided at paragraph 4.19:

In contrast to submitters who advocated for the explicit reference to dowry abuse in legislation, Professor Supriya Singh warned against highlighting dowry and dowry abuse as a specific form of family violence on the basis that it ignores other forms of economic abuse including that which may occur in Anglo Celtic culture.<sup>8</sup> Professor Singh did not object to giving examples of economic abuse in legislation, but ultimately favoured raising awareness of economic abuse and increasing cross cultural understanding 'about the non-physical aspects of family violence'.<sup>9</sup>

1.24 Government Senators also look forward to any views that will be expressed on this issue in the report of the ALRC Review into family law.

1.25 **Recommendation 4 of the Chair's report (at paragraph 5.31) recommends that:**

**The committee recommends that the Australian government:**

- **give further consideration to the recommendation of the Victorian Royal Commission into Family Violence to broaden the definition of family violence in the Migration Regulations 1994; and**
- **ensure that those who are forced to marry their partner or experience family violence from their partner and/or their partner's family members are protected through the family violence provisions in the Migration Regulations 1994, such that the regulatory framework is consistent with the policy intention to protect victims of domestic or family violence within the migration context.**

1.26 Government Senators agree that there is a clear need for protections for victims of family violence under the Migration Regulations however are persuaded by evidence from the Department of Home Affairs that the current regulatory framework operates with sufficient vigour to provide these protections. The Chair's report notes evidence from the Department of Home Affairs provided at paragraph 5.17:

In evidence to this inquiry, the Department of Home Affairs (DHA) asserted that the current definition of 'relevant family violence' in the Regulations is 'broadly framed to retain flexibility' and that '[p]olicy advice provides further detail, which ensures the definition of family violence remains current'.<sup>10</sup>

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8 Professor Supriya Singh, *Committee Hansard*, 21 September 2018, p. 29.

9 Professor Singh, *Committee Hansard*, 21 September 2018, p. 29.

10 DHA, answers to questions taken on notice, 18 October 2018, (received 30 November 2018), p. 19

**1.27 Recommendation 5 of the Chair's report (at paragraph 5.67) recommends that:**

**The committee recommends that the Australian government act to address the injustice whereby family violence protection is not available to victims on many temporary visas and consider:**

- extending the family violence provisions in the Migration Regulations 1994 beyond temporary Partner visa holders, Prospective Marriage visa holders who have married their sponsor and dependent applicants for a Distinguished Talent visa, to apply to other family visa subclasses; and**
- the creation of a temporary visa—for example a 'Woman at Risk in Australia' visa—to be available for non-family temporary visa holders who have suffered serious and proven family violence including dowry abuse.**

1.28 Government members of the committee agree that protections against violence that may occur within Australia should be provided regardless of immigration status. Government Senators would, however, suggest that this is a broad and complex subject matter that requires further investigation and consultation to develop an operable model.

**1.29 Recommendation 6 of the Chair's report (at paragraph 5.71) recommends that:**

**The committee recommends that the Australian government ensure decision makers consider the nature of alleged family violence when making an assessment on whether the relationship was genuine prior to it ending.**

1.30 Government Senators are of the view that the relevant departmental processes and officials are both diligent and sensitive when dealing with any immigration matter and that all due care is taken to determine the true facts of any particular case.

**1.31 Recommendation 7 of the Chair's report (at paragraph 5.76) recommends that:**

**The committee recommends that the Australian government consider innovative use of the sponsorship mechanism and the new family sponsorship framework to prevent previous perpetrators from sponsoring multiple spouses, and by requiring sponsors to provide disclosures and give undertakings in relation to their circumstances and to dowry.**

**The committee also recommends that the Australian government look explicitly at ensuring that the work of the Department of Home Affairs is included in National Family Violence Prevention Strategies, not just from the point of view of access to visas, but also visa processing and assessment.**

1.32 Government Senators support any measure that increases transparency in the operation of the commonwealth's migration scheme and would welcome further

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consultation with the Department to determine a practicable way to scrutinise the sponsorship framework to ensure it is not being abused.

1.33 Government Senators also do not object in-principle to the suggestion that the Department of Home Affairs should be mindful of Family Violence Prevention Strategies. Senators do, however, expect that the Department is already very much alive to these issues in its day-to-day operations.

**1.34 Recommendation 8 of the Chair's report (at paragraph 6.27) recommends that:**

**The committee recommends that the Australian government, together with state and territory governments, work with culturally and linguistically diverse communities and service providers in order to determine ways in which to establish a firm evidence base on the incidence of dowry abuse.**

1.35 Government Senators agree with the provision of culturally and linguistically appropriate information and services around family violence. Coalition Senators would submit that many of these functions already exist at the state level and that the harmonisation imperative suggested in the Chair's Report recommendation 2 will provide new opportunities to share information regarding the prevalence of, and responses to, these phenomena.

**1.36 Recommendation 9 of the Chair's report (at paragraph 6.30) recommends that:**

**The committee recommends that the Australian government work with the States and Territories to improve and strengthen the governance of data collection practices and standards by implementing a system to capture and measure the extent and incidence of all forms of family violence in Australia, including dowry abuse as a form of economic abuse.**

1.37 Government Senators agree with suggestions for the improved collection of data regarding forms of family violence that can be characterised as 'dowry-abuse' and suggest that such data could assist in the harmonisation and further development of legal frameworks relating to family violence.

**1.38 Recommendation 10 of the Chair's report (at paragraph 6.63) recommends that:**

**The committee recommends the Department of Social Services Family Safety Pack is provided individually to all visa applicants in their first language, such as during the health examination required as a condition of their visa application.**

1.39 Government Senators agree with Recommendation 10.

**Senator the Hon Ian Macdonald**  
**Liberal Party of Australia**

**Senator Jim Molan AO, DSC**  
**Liberal Party of Australia**

## **Australian Greens additional comments**

1.1 This inquiry has highlighted the extent and impact of dowry abuse, as well as the complexity of family violence, and the continued inadequacy of the *Migration Act 1958* (Cth) to address circumstances where it may arise and affect the visa outcomes and safety of migrants holding temporary visas.

### **Additional comments regarding Recommendation 5**

1.2 The Australian Greens support the intent of recommendation 5. We strongly support extending the family violence provisions to all temporary visas in the family subclass, including visas such as: Prospective marriage - Subclass 300 Contributory Parent - Subclass 173; Contributory Aged Parent - Subclass 884 New Zealand Citizen Family Relationship - Subclass 461.

1.3 However, the Australian Greens have concerns about the restrictive wording in part two of the recommendation. The Australian Greens reject the recommendation that family violence must be 'serious and proven' because it puts an additional burden of proof onto the various legal definitions of family violence already present in migration law, as well as federal and state family law.

1.4 The Australian Greens acknowledge that in the overwhelming majority of cases, women are the victims of family violence, which includes dowry-related abuse. Yet the gender restrictive wording in the second part of this recommendation is inappropriate because sends a message that this visa will not be accessible to men who have been abused by a partner or their partner's family, including men abused in same-sex relationships.

1.5 We also note that use of the term "Women at Risk in Australia" risks linking this visa with an existing permanent humanitarian visa ( the Women at Risk, subclass 204 visa) which may be applied for where women are outside their 'home country' with no male relative, who meet specific protection criteria relating to persecution in their home country. The same title should not be used to refer to a proposed new temporary visa, as Recommendation 5 suggests the formation of, to be available to non-family temporary visa holders who have suffered family violence including dowry abuse. A different title for the proposed new subclass visa should be used, so as to avoid confusion.

1.6 The Australian Greens support the creation of a new temporary visa that would enable victims of family violence on temporary visas to remain in Australia, while they finalise family law matters. This includes child custody arrangements and property settlements. As children are not permitted to depart Australia while custody issues remain undecided, this new type of visa would protect the best interests of the child by preventing family separation. It is imperative that temporary visa holders for this new proposed category are entitled to receive social assistance, in view of

extensive evidence that financial hardship is the main reason why victims return to abusive family environments.<sup>1</sup>

1.7 Victims of dowry abuse are often forced to return home to face shame and rejection from their extended families. They have little recourse or ability to seek legal reparation for their financial or property losses. The Australian Greens support the creation of a temporary visitor visa (or the policy acknowledgment within the current visitor visa regime) that will allow victims of family violence and dowry abuse who have left Australia to return to arrange, attend and finalise legal or court proceedings related to property they are contesting.

### **Recommendation 1**

**1.8 That the words 'serious and proven' be removed from Recommendation 5 of the Committee's report.**

### **Culturally appropriate protection and support services**

1.9 Whereas the Australian Greens support the Committee's commitment to better understanding and preventing dowry abuse, and associated domestic and family violence (DFV), within Australia's CALD communities, we believe it doesn't go far enough in its recommendations regarding protection and support of individuals who have or are experiencing domestic violence.

1.10 Intervention/violence orders (Recommendation 2) and the creation of a temporary visa for women at risk (Recommendation 5) are measures that may stop known perpetrations of domestic violence from continuing, but does not address the cultural challenges and peculiarities regarding early identification of domestic violence in CALD communities, or the need for culturally sensitive support services for those CALD individuals who have or are experiencing it.

1.11 In their submission, Federation of Ethnic Communities' Council of Australia (FECCA) identified a need for police forces to be provided with cultural competence training, noting:

Victims/survivors from CALD backgrounds are often reluctant to disclose violence due to a range of factors including language barriers, social isolation, mistrust of police and the justice system, shame and stigma associated with seeking help.

1.12 FECCA also made a case for appropriate cultural competence training to be provided to CALD-specific support services, and DFV services, and for these services be 'adequately funded to provide support to victim/survivors of dowry abuse and related violence in culturally and linguistically appropriate ways'. FECCA submitted its:

...consultations indicate that mainstream DFV service providers are largely unequipped to deal appropriately with incidents of dowry abuse, or even to recognise it as DFV ... [and that] Victim/survivors of dowry abuse in

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1 Australian Institute of Health and Welfare. *Family, domestic and sexual violence in Australia 2018*.



CALD communities have repeatedly and consistently expressed a preference for small, culturally and linguistically specific, CALD community DFV specialist service providers ... [because] there is significant reluctance amongst victim/survivors from CALD backgrounds to engage with mainstream DFV services due to a perception (or prior experience) that their cultural and linguistic heritage will not be engaged with appropriately as part of the support process.

1.13 The Australian Greens agree with these arguments, recognising that professional support of victim/survivors of DFV is critical to recovery, particularly for already vulnerable cohorts of people who might already be experiencing isolation and estrangement due to other intrinsic demographic factors, such as language, culture, and community.

#### **Recommendation 2**

**1.14 That police forces be provided with cultural competence training so that they can recognise and appropriately respond to domestic and family violence in CALD Australian communities.**

#### **Recommendation 3**

**1.15 That CALD-specific support services and domestic and family violence services be provided adequate resources and training to ensure they can deliver culturally appropriate services that provide adequate protection and support.**

**Senator Larissa Waters**

**Australian Greens spokesperson for Women**

**Senator Nick McKim**

**Australian Greens spokesperson for Immigration & Citizenship**



# Appendix 1

## Submissions, additional information, answers to questions on notice and tabled documents

### Submissions

- 1 Ms Naomi Selvaratnam
- 2 Australasian Centre for Human Rights and Health
- 3 Professor Supriya Singh
- 4 Name Withheld
- 5 Women's Council for Domestic and Family Violence Services
- 6 Good Shepherd Australia New Zealand & inTouch Multicultural Centre Against Family Violence
- 7 Domestic Violence Victoria
- 8 United Indian Association
- 9 The Royal Australian and New Zealand College of Psychiatrists (RANZCP)
- 10 Australian Women Against Violence Alliance
- 11 Australia India Society of Victoria Inc.
- 12 Legal Services Commission of South Australia
- 13 Attorney-General's Department
- 14 safe steps Family Violence Response Centre
- 15 Monash Family Violence Prevention Centre (MFVPC), the Monash Migration and Inclusion Centre (MMIC) and Monash Gender, Peace and Security (GPS)
- 16 Dr Manjula O'Connor
- 17 Name Withheld
- 18 Harmony Alliance
- 19 Women's Legal Service QLD
- 20 Federation of Ethnic Communities Councils of Australia
- 21 Women's Health in the North (WHIN)
- 22 Immigration Advice & Rights Centre
- 23 Initiatives For Women In Need (IWIn)
- 24 White Ribbon Australia
- 25 Queensland Council for Civil Liberties
- 26 Soroptimist International of Australia
- 27 Ms Jatinder Kaur
- 28 Ms Uthra Ramachandran
- 29 Name Withheld
- 30 Name Withheld
- 31 Name Withheld
- 32 Name Withheld
- 33 Name Withheld
- 34 Catholic Women's League
- 35 Name Withheld
- 36 Dr Indrani Ganguly
- 37 Name Withheld
- 38 Mr Sunit Sharma
- 39 Name Withheld

- 40 Ms Deepika Narayan Bhardwaj
- 41 Mr Jaswinder Rai
- 42 Name Withheld
- 43 Name Withheld
- 44 Name Withheld
- 45 Name Withheld
- 46 Name Withheld
- 47 Anti-Slavery Australia
- 48 Ms Muktesh Chibber
- 49 Oorja Foundation
- 50 The Indian (Sub-Continent) Crisis & Support Agency
- 51 Soroptimist International Moreton North Inc (SIMNI)
- 52 Mr Anir Prasad
- 53 Name Withheld
- 54 Indian Support Center Inc
- 55 Confidential
- 56 Name Withheld
- 57 Hindu Council of Australia
- 58 Daaman Welfare Society
- 59 Dr Sanoj Joseph
- 60 Name Withheld
- 61 Save Family Foundation
- 62 Northern Territory Police Commissioner, Reece P Kershaw APM
- 63 Save Indian Family Australia
- 64 Name Withheld
- 65 Name Withheld
- 66 Name Withheld
- 67 Men Welfare Trust
- 68 Name Withheld
- 69 MyNation Hope Foundation
- 70 Federation of Indian Associations of ACT Inc (FINACT)
- 71 Department of Social Services
- 72 Mr Rajni Arora
- 73 Submission from representatives of the Save Indian Family Movement, the Gender Equality Organisation, Nagpur, India and the Vaastav Foundation, Mumbai, India
- 74 Slavery Links Australia Inc.
- 75 Confidential
- 76 Confidential
- 77 Confidential
- 78 Confidential
- 79 Name Withheld
- 80 Pink Umbrella (International)
- 81 Turbans 4 Australia
- 82 Confidential
- 83 Mr Ronak Patel
- 84 Mr Michael O'Connell
- 85 Blacktown City Council

**Additional Information**

- 1 Additional information provided by inTouch Multicultural Centre Against Family Violence at the Melbourne hearing of 21 September 2018.

**Answers to questions on notice**

- 1 Department of Home Affairs - answers to questions taken on notice (received 30 November 2018).
- 2 Attorney-General's Department - answers to questions taken on notice at the public hearing on 3 December 2018 (received on 25 January 2019).
- 3 Department of Home Affairs - answers to questions taken on notice at the public hearing on 3 December 2018 (received 25 January 2019).



# Appendix 2

## Public hearings

*Melbourne VIC, 21 September 2018*

**Members in attendance:** Senators Ian Macdonald, Pratt.

AVRAMOPOULOS, Ms Stella, Chief Executive Officer, Good Shepherd Australia  
New Zealand

CHIBBER, Mrs Muktesh, Counsellor and Mediator, Indian Family Relationship  
Services

JENKINS, Dr Kym, President, Royal Australian and New Zealand College of  
Psychiatrists

JOHNSTON, Dr Melissa, Post-Doctoral Researcher, Monash Gender, Peace and  
Security, Monash University

MAHER, Professor JaneMaree, Professor, Sociology; Lead Researcher, Monash  
Gender and Family Violence Prevention Centre, Monash University

MORRIS, Mrs Sandra, Manager, Health Promotion Team, Women's Health in the  
North

MORRIS, Ms Michal, Chief Executive Officer, inTouch Multicultural Centre Against  
Family Violence

O'CONNOR, Dr Manjula, Executive Director, Australasian Centre for Human Rights  
and Health

RAMACHANDRAN, Ms Uthra, Private capacity

RUCHITA, Dr Ruchita, Indian & Complex Case Support Manager, inTouch  
Multicultural Centre Against Family Violence

SEGRAVE, Associate Professor Marie, Associate Professor, Criminology;  
Researcher, Monash Gender and Family Violence Prevention Centre; Deputy Director  
and Lead of Trafficking and Slavery Impact, Monash Migration and Inclusion Centre,  
Monash University

SINGH, Professor Supriya, Private capacity

VIDAL, Ms Laura, Policy and Research Specialist, Safety and Resilience, Good Shepherd Australia New Zealand

WAGH-NIKAM, Ms Manasi, Health Promotion Worker, Women's Health in the North

***Sydney NSW, 30 November 2018***

**Members in attendance:** Senators Ian Macdonald, Pratt.

ADVANI, Mrs Sumati, Chair, Women's Steering Committee, and Founder, United Indian Associations Inc.

ANDREW, Dr Merrindahl, Program Manager, Australian Women Against Violence Alliance

BURN, Professor Jennifer, Director, Anti-Slavery Australia

CHOPRA, Ms Jaspreet, Director, Indian Support Center Inc.

DIMOPOULOS, Ms Maria, Chair, Harmony Alliance: Migrant and Refugee Women for Change

GALLACE, Ms Michelle, Private capacity

IYENGAR, Dr Madhumita, Chair, Initiatives for Women In Need

IYENGAR, Miss Manaswini, Public Officer, Initiatives for Women In Need

KAUR, Ms Jatinder, Social Worker, JK Diversity Consultants

KOTWAL, Mrs Sunila, Manager, Diversity and Inclusion, White Ribbon Australia

MOJTAHEDI, Mr Ali, Principal Solicitor, Immigration Advice and Rights Centre

RANDHAWA, Ms Kittu, Project Lead, Indian (Sub-Cont) Crisis & Support Agency

SAGGU, Mrs Paramjit, Committee Member, Initiatives for Women In Need

SINGH, Mr Amar, President, Turbans 4 Australia Inc

Witness A

Witness B

***Canberra ACT, 3 December 2018***

**Members in attendance:** Senators Ian Macdonald and Pratt.



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DHINDSA, Dr Sunita, Subcommittee Member, Federation of Indian Associations of ACT

HARDERS, Ms Jenny, Acting Assistant Secretary, Department of Home Affairs

JINNA, Mr Kanti, Subcommittee Member, Federation of Indian Associations of ACT

JOHNSON, Mr Richard, First Assistant Secretary, Immigration, Citizenship & Multiculturalism Policy Division, Department of Home Affairs

MILLS, Ms Rebecca, Director, Department of Home Affairs

NADIMPALLI, Dr Krishna, President, Federation of Indian Associations of ACT

RICHARDS, Mr Peter, Acting First Assistant Secretary, Immigration and Visa Services Division, Department of Home Affairs

SAINT, Ms Ashleigh, Assistant Secretary Family Law Branch, Attorney-General's Department

SAINT, Ms Ashleigh, Assistant Secretary Family Law Branch, Attorney-General's Department

WILLARD, Mr Michael, Assistant Secretary, Global Mobility, Department of Home Affairs

WILLIAMS, Ms Kimberley, Director, Family Safety Branch, Attorney-General's Department

