

The Senate

Legal and Constitutional Affairs
References Committee

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.¹

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.

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.²

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.³

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.⁴

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.⁵

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,⁶ as follows:

Table 1.1: Types of marriage payments

Marriage payment	Direction & volume of valuables
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'.⁷

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,⁸ 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.⁹

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.¹⁰ 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.¹¹ 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.¹²

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'.¹³ 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.¹⁴

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.¹⁵

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

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.

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- 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.¹⁶

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.¹⁷

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'.¹⁸ 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.¹⁹

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'.²⁰

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.

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

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