



Practice of dowry and the incidence of dowry abuse in Australia

Department of Home Affairs responses to Questions on Notice.

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QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 03 December 2018

HOME AFFAIRS PORTFOLIO

(IODAIA/001) – Recommendation from Anti-Slavery Australia

Asked:

Senator IAN MACDONALD: It was for everyone. What became clear was that there's never enough money for violence refuge, and there's never enough money for legal aid—but, as I explained to people, that's not confined to dowry; that's across Australia. It's another issue, another time and another place. I want to refer you to those recommendations by Professor Byrne, which, to me, seem to address issues to see if the government, on recommendation of this committee, could do anything practical to address a situation which exists, and which I believe all the laws are there to stop, but it's still happening. I'll precis these; I hoped you'd have had a look at them. The first recommendation from Anti-Slavery Australia was:

That the Commonwealth 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.

I would like you to do that as a question on notice. But I think you'll come back and say they're already there. If you want to make a comment now, do. There are some I do want you make a comment about.

The second recommendation was:

That the Commonwealth 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 it went on to say, let's get some evidence towards a view that this practice should be highlighted around the world as being, in Australia, not only frowned upon but illegal.

Anti-Slavery Australia then recommended some research:

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)—

which I understand are the human trafficking and slavery-like provisions. Then there was a recommendation about recognising dowry abuse:

as a form of family violence and draws on existing frameworks within the broader national agenda to reduce violence against women and their children ...

The next recommendation was something about the family violence provisions in the migration regulations, which I understand are already there, but there was a recommendation that:

the Commonwealth Government amend the Family Violence Provisions in division 1.5 of the Migration Regulations 1994 (Cth) to ensure that the regulatory framework is consistent with the policy intention—

CHAIR: Just while you pause, Senator, we're going to make some copies of that, just to make it easier.

Senator IAN MACDONALD: That would be much easier.

CHAIR: And these are just the recommendations: they will facilitate some discussions, but we can perhaps put some questions on notice as well.

Senator IAN MACDONALD: The next recommendation from Anti-Slavery Australia was:

That the Commonwealth Government establish dialogue with the Australian States and Territories to harmonise existing legislation—

Not that I'm here to answer Senator Pratt, but the states were, originally, the ones that dealt with that. Over the years, the Commonwealth has become more involved. But getting anything off the states is difficult. Education and awareness were No. 7. No. 8 was some material under the Family Law Act, which I think you'll say, from the evidence you've already given, is already there. For migration—I thought it was there but it's not—there was this suggestion that I thought was good, that, when people apply to migrate to Australia in overseas countries, in India, the women particularly—but it should apply equally to the men—are given clear information about what their rights are under Australian law—not under Indian law or African law but under Australian law—and who they can go to to get assistance. That's a very long question. You've all had a bit of a chance to look at them now in writing. Those seem to me to be the ways that this committee could recommend to the government practically to deal with the situation which is there and which, as I understand it, is already illegal.

A final comment from me is that the one that came up most in the migration area was where a man would say to a woman, 'If you don't do what I ask, or don't give me the money I ask for, I won't sponsor you for permanent residency in Australia,' in which case the woman can't go home, for shame, for any number of reasons, and so they just roll over and don't take it to court, because they think they will be thrown out of Australia. Perhaps starting there, could you tell me what we should do to try and address that? Then perhaps I could have a general comment from all of you on the other suggestions. I thought these recommendations of Anti-Slavery were the most practical. There were a lot of things raised, but as I understand it, most of them are already offences.

Answer:

The Department of Home Affairs notes Anti-Slavery Australia's submission to the inquiry made a number of recommendations for Government action in relation to data monitoring, research and victim protection.

Data monitoring and research

The Department does not collect data on the prevalence of dowry-related abuse, as it is not explicitly criminalised under Commonwealth law.

The Department is aware that the practice of dowry may drive the incidence of forced marriage. Since the Commonwealth criminalised forced marriage in 2013, the number of referrals to the Australian Federal Police (AFP) have continued to rise. As at 30 June 2017, the AFP had received 244 referrals involving people in, or at risk of, forced marriage.

The Government has funded the Australian Institute of Criminology's (AIC) dedicated Human Trafficking Research Program since 2007. In June 2018, the AIC released its research report, *When saying no is not an option: Forced marriage in Australia and New Zealand*. The paper explored the nature, context and consequences of forced marriage, including survivors' experiences of physical, sexual and financial abuse (such as dowry abuse).

To further strengthen the evidence base, in early 2019 the AIC, in partnership with the Walk Free Foundation, will release the first national estimate for the prevalence of human trafficking and slavery victimisation in Australia.

Protecting victims

The Department takes allegations of family violence, including dowry-related violence, very seriously and has strong protection measures in place.

The family violence provisions in the *Migration Regulations 1994* seek to ensure that victims of family violence do not feel compelled to remain in a violent relationship for fear of losing the right to permanent residence. The provisions apply to visas which lead to permanent residence on the basis of a sponsor relationship, and enable the grant of a permanent visa to be considered if the partner relationship has broken down, and the visa applicant or their child has suffered family violence committed by the applicant's ex-partner. Once granted permanent residence, a visa holder is able to remain in Australia indefinitely.

On 10 December 2019, the *Migration Amendment (Family Violence and Other Measures) Act 2018* came into force. It delivers reforms to the family sponsored visa program to further protect potentially vulnerable visa applicants from the risk of family violence by:

- establishing a framework to allow imposition of obligations relating to family violence on a family visa sponsor, and providing for administrative sanctions and civil penalties if obligations are not satisfied
- requiring sponsors to agree to share character check results with all parties to the application to allow a visa applicant to make an informed decision as to whether to proceed with their application or not, and
- allowing the Minister to refuse a sponsorship application, and cancel and/or bar a family sponsor where adverse information is detected, including serious offences (registrable offences and/or offences that indicate a heightened risk of family violence), especially those involving family violence.

To ensure ongoing investigative skills and capacity are maintained in the investigation of human trafficking and slavery-related cases, the AFP has developed the Look a Little Deeper e-learning training package and regularly conducts a specialised five-day Human Trafficking Investigations Course (HTIC), to which all Australian policing agencies, Department of Home Affairs and Fair Work Ombudsman frontline officers are invited to attend. The training covers indicators of exploitation and best practice responses, including aspects related to forced marriage offending and victim protection. The AFP conducted two HTICs in 2018, with a total of 47 officers trained. The e-learning package has been completed by over 350 AFP officers to date.

Additionally the AFP engages with state and territory police agencies in relation to the nexus between human trafficking and slavery, and family violence. In November 2018, the AFP attended the Australasian Family Violence Forum hosted by New South Wales Police and attended by all state and territory police services. At this three day forum, participants highlighted the linkages observed between forced marriage and family violence.

Questions relating to family law, marriage law and access to justice, including the definition of family violence under the *Family Law Act 1975* and training of marriage celebrants, are matters for the Attorney-General's Department.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 03 December 2018

HOME AFFAIRS PORTFOLIO

(IODAIA/002) – Validity of visa assessment

Asked:

CHAIR: There must be some kind of offence that covers the selling of a visa. Can you explain those offences to me?

Mr Richards: I'm not the expert around the payment for visa legislation. I don't believe any—

CHAIR: Clearly, it covers marriage already—does it?

Mr Richards: My understanding is that it actually applies to any type of visa. The typical one we get is around a sponsorship. It could be in relation to a business sponsor, but I stand to be corrected.

CHAIR: Could I have a description of those rules?

Answer:

The Paying for Visa Sponsorship provisions, introduced into the *Migration Act 1958* (the Act) in December 2015, make it illegal for any person to ask for, receive, offer or provide a benefit in return for a visa sponsorship, or employment that requires a visa sponsorship.

- 'Benefit' is defined in the Act as:
 - a) a payment or other valuable consideration;
 - b) a deduction of an amount;
 - c) any kind of real or personal property;
 - d) an advantage;
 - e) a service; or
 - f) a gift.
- These provisions allow for criminal, civil, infringement or administrative penalties to be imposed on sponsors, visa holders and other third parties who engage in paying for visa sponsorship activity. The administrative penalties include possible visa cancellation, and sponsorship cancellation or barring from the sponsorship program.

The Paying for Visa Sponsorship Framework applies to the following visa subclasses:

- Temporary Activity (subclass 408)
- Training (subclass 407)
- Temporary Work Skilled (subclass 457)

- Permanent Work Skilled - Employer Nominated Scheme (subclass 186)
- Permanent Work Skilled - Regional Skilled Migration Scheme (subclass 187).

The Paying for Visa Sponsorship provisions were introduced to protect migrant workers from exploitation and encourage fair recruitment practices.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 03 December 2018

HOME AFFAIRS PORTFOLIO

(IODAIA/003) – Recommendations from previous evidence provided

Asked:

Senator IAN MACDONALD: I know both departments have better things to do than this, but, if someone wasn't watching the previous hearings, could someone have a quick glance through all of the evidence and perhaps as an answer to a question on notice say to us: 'Yes, that shouldn't have happened; that issue is wrong. If they had looked at the brochures given by marriage celebrants or if they'd done this when they first applied.' That's because there are problems, and, as a member of the committee, I want to recommend to the government that you do something to fix it, but I think you've have done it all, as I suspected.

CHAIR: We might see if we can find a way of talking to those who gave us in camera evidence to see if we can draw out some of those examples for you to see as well.

Senator IAN MACDONALD: One of the things one of the witnesses did say was that you need to give it more publicity, and perhaps this inquiry will do just that. Anyhow, thank you. I don't want you to spend days going through it, but if you could have a glance through some of the things and say, 'We understand the issues, but this is already covered for in the Family Law Act or the regulations for applying for a visa.'

Answer:

The Department of Home Affairs has a range of responsibilities that relate to instances of dowry-related abuse, including:

- raising awareness of Australian laws and provisions to protect non-citizens, especially women from family violence
- administering provisions under the *Migration Act 1958* and *Migration Regulations 1994* relating to the entry and stay of non-citizens in Australia, including specific provisions aimed at protecting partner and certain other visa holders from ongoing family violence
- contributing to whole-of-government efforts to address and reduce domestic and family violence, particularly as it relates to the migration program, and
- leading Australia's whole-of-government response to human trafficking, slavery and slavery-like practices, including forced marriage.

The Committee received evidence about a range of situations involving potential dowry-related abuse, including those that relate to Australia's migration framework.

The family violence provisions in the *Migration Regulations 1994* seek to ensure that victims of family violence do not feel compelled to remain in a violent relationship for fear of losing the right to permanent residence. The provisions apply to visas which lead to permanent residence on the basis of a sponsor relationship, and enable the grant of a permanent visa to be considered if the partner relationship has broken down, and the visa applicant or their child has suffered family violence committed by the applicant's ex-partner. Once granted permanent residence, a visa holder is able to remain in Australia.

On 10 December 2018, the *Migration Amendment (Family Violence and Other Measures) Act 2018* came into force. It delivers reforms to the family sponsored visa program to further protect potentially vulnerable visa applicants from the risk of family violence by:

- establishing a framework to allow imposition of obligations relating to family violence on a family visa sponsor, and providing for administrative sanctions and civil penalties if obligations are not satisfied
- requiring sponsors to agree to share character check results with all parties to the application to allow a visa applicant to make an informed decision as to whether to proceed with their application or not, and
- allowing the Minister to refuse a sponsorship application, and cancel and/or bar a family sponsor where adverse information is detected, including serious offences (registrable offences and/or offences that indicate a heightened risk of family violence), especially those involving family violence.

While dowry abuse is not explicitly criminalised under Australian law, there are a range of existing offences at both the Commonwealth and state and territory level that may apply in cases where dowry abuse is present.

At the Commonwealth level, the human trafficking, slavery and slavery-like offences in the *Criminal Code Act 1995* cover a range of exploitative conduct and may be applicable in circumstances involving dowry-related abuse. For example, if a person were to be inherited, sold or transferred into a marriage for payment (such as a dowry), this may constitute chattel slavery, which is punishable by up to 25 years' imprisonment. If a dowry was used as a means to coerce, threaten or deceive a person into a marriage without their full and free consent, this may constitute a forced marriage offence, which attracts a maximum penalty of seven years' imprisonment (or nine years' imprisonment in aggravating circumstances).

Questions relating to family law and marriage law are matters for the Attorney-General's Department.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 03 December 2018

HOME AFFAIRS PORTFOLIO

(IODAIA/004) – Limitations on sponsor and country of origin for Partner visa applicants

Asked:

CHAIR: If you'd had four or five spousal visas rejected, would you know whether there'd been a number of marriages that had taken place? I know that the application fee for a spousal visa is quite high, in any case, and that's a disincentive. But I'm interested in asking if you could have a look at people who've made multiple visa applications and whether there were any specific nationalities attached to that. I'm really just trying to work out—we've certainly heard of cases, where people have had marriages overseas, where they've demanded dowries but where the spousal application was never lodged or was dropped or, in some circumstances, was even rejected by the department. I'd be interested in seeing if there were any statistical bumps in the nationalities of Australian citizens or permanent residents, to which countries they might have made multiple applications. Does that sound feasible?

Mr Johnson: Can I just clarify that, Chair? Are you talking about sponsorship arrangements or visa applicants by the spouse who is applying for the partner visa, for example?

CHAIR: Where the spouse is an Australian or a permanent resident and they are seeking to bring in a spouse from overseas.

Mr Johnson: We can take that on notice.

Answer:

Sponsors are required to provide information about their previous relationships in the sponsorship application. Previous refusal of sponsorship and partner visa applications are also recorded in the Departmental visa processing systems.

Sponsorship limitations exist within the *Migration Regulations 1994* to limit the number of Partner category (Partner and Prospective marriage visa) applicants that a person can sponsor. 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.

The overwhelming majority of sponsors only lodge a single sponsorship for a Partner visa applicant.

Between 1 July 2008 and 31 December 2018, the top five nationalities of Partner visa applicants where their sponsor had lodged more than one Partner visa sponsorship were China, India, Vietnam, Philippines and Afghanistan.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 03 December 2018

HOME AFFAIRS PORTFOLIO

(IODAIA/005) – Requirements for Partner sponsors and visa applicants

Asked:

CHAIR: I'm interested in knowing what countries they come from. I was pleased to see the changes in relation to adverse character checks. What information, in general terms, do you require from the Australian spouse in an application and is that comparable with what the overseas spouse is also asked to supply?

Mr Johnson: Yes. It might be useful if we have Mr Richards take you through what is currently required and then, perhaps, Mr Willard will be able to talk to what we envisage would be required, given the passage of the recent legislation.

Mr Richards: Sorry, if you could just bear with me.

CHAIR: That's all right.

Mr Richards: Actually, I'm just wondering, Chair—I have a document that outlines the previous provisions, in relation to sponsorship and how they will change.

CHAIR: Okay, if you want to—

Mr Richards: If we can take that on notice.

CHAIR: Table that. If you can answer my question specifically, one of the examples given to us by some women was that they had to tell Immigration and their spouses what their incomes were, what their qualifications were and how much money they had, but never that their spouse had lied to them about those things. So I would imagine that, on a spousal visa, someone has to write down their academic qualifications. Is that correct?

Mr Johnson: They don't. Not for a spousal visa; they wouldn't have to. They can certainly submit it as part of the information with their application but it's not a requirement. The main requirement is the nature of the relationship—unlike, for instance, our skill streams, where we are looking for qualifications and skills.

Answer:

Sponsors and visa applicants are required to provide a range of information and supporting documents via online lodgment and as requested by the Department of Home Affairs as part of the sponsorship and partner visa processing.

Please see below a comparison table on general requirements for Partner sponsors and visa applicants.

Required information and supporting documents	Sponsor	Visa Applicant
Sponsorship form including personal details of both parties, details of current and previous relationships of both parties, details of members of the family unit, character declaration, living arrangements, undertaking and declaration to assist partner visa applicant financially and for the first 2 years of accommodation in Australia, consent to the Department obtaining information from other government and non-government bodies relevant to the sponsorship, and consent to the Department disclosing to the visa applicants any convictions sponsor has for relevant offences	Yes	No
Visa application form including personal details of both parties, details of current and previous relationships of both parties, details of members of the family unit, health and character declaration	No	Yes
Identity documents	Yes	Yes
Evidence of Australian citizenship, permanent resident status in Australia, or eligible Zealand citizen	Yes	No
Evidence of relationship, for example, any documents supporting shared finances, household, social matters and commitment	Optional	Yes
Evidence of previous relationship if applicable	Yes	Yes
Character information – police clearance from Australia and/or overseas where applicable	Yes	Yes
Form 80 – Personal particulars for character assessment, including employment and education details of the visa applicant	No	Yes
Health checks	No	Yes

Family Violence and Other Measures Bill

Under current provisions, Partner sponsors are generally required to provide Australian and/or foreign police checks. This is consistent with the existing policy which requires visa applicants to provide relevant police checks in order to assess the public interest criterion relevant to their visa application.

The sponsorship form also requires the sponsor to disclose criminal convictions they have had and/or charges awaiting legal action, and consent to the Department disclosing convictions for relevant offences to the visa applicant(s).

The Migration Amendment (Family Violence and Other Measures) Act 2016 (the Act), was first introduced to Parliament on 16 March 2016, and passed in the Senate on Wednesday, 28 November 2018. Measures to be introduced as part of the Act and implemented in the Migration Act 1958 (the Act) and the Migration Regulations 1994 (the Regulations) are designed to:

- 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.

Expanding the sponsorship framework currently applied to the temporary sponsored work visa program to family visas will establish an assessable framework for family sponsored visas to:

- require the approval of persons as family sponsors before a visa application is made;
- impose statutory obligations on approved family sponsors;
- provide for sanctions if such obligations are not satisfied; and
- facilitate the sharing of personal information between parties associated with a family visa application.

These measures will be applied initially to family sponsors under the new Temporary Sponsored Parent Visa arrangement to be introduced in early 2019, and progressively expanded to other Family visas, such as the Partner visa, subject to legislative and systems requirements.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 03 December 2018

HOME AFFAIRS PORTFOLIO

(IODAIA/006) – Information sharing between sponsor and visa applicant

Asked:

CHAIR: Does a spouse being sponsored automatically see all of the information on their spouse's visa application?

Mr Johnson: Does it see it provided to the sponsor?

CHAIR: Spouse. Is that information exchanged between both the spouses?

Mr Johnson: Sorry, Chair, do I understand you as saying that the partner applies for the partner visa and, then, the information that's submitted as that application, is that shared with the person whose spouse is sponsoring the visa application?

CHAIR: And vice versa. One of the situations that was put to me was that an Australian citizen thought they were in a legitimate relationship, paid a dowry and thought it was true love, but they found out in hindsight that their spouse had lied about their employment, about their criminal record—which I know you're fixing—about their qualifications and about all of that other basic information. It clearly goes down to the genuineness of the relationship. I know you ask people in those interviews, 'What do you know about your spouse and partner?' But it seems to me that there's still a great deal of scope for someone who's intentionally exploiting their future spouse to hide that information. You wouldn't necessarily know if they had. You're testing whether it is genuine; you're not testing if one suppose is deliberately out to try and exploit the other.

Mr Johnson: Unless we have separate information which would lead to us to that judgement.

Mr Richards: Chair, I'd just like to take that on notice. Given, as I mentioned, it's an online process now, I just don't want to—

CHAIR: Yes. If you can take that on notice for me. There are elements in your assessment in relation to genuineness that really go to the point of whether one prospective spouse is trying to exploit the other in any way, and how you test that. It's separate, really, to the question of genuineness, where both people might be applying for a visa outcome. I think I've probably exhausted my intellect tonight for asking any further questions, although there are plenty more that I perhaps would have liked to ask Ms Harders and Ms Mills. Did you have anything that you'd like to add that's useful to us in relation to the exchanges that we've had?

Answer:

There is no legislative power to compel sponsors and their respective partners to share all of the information that is submitted as part of their sponsorship and visa applications. While it is expected that in a genuine relationship, a sponsor and their partner may exchange information and/or prepare their respective applications together to submit via online lodgement, they may not automatically see all of the information provided in their respective partner's application.