



Inquiry into the 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 : 19 October 2018

HOME AFFAIRS PORTFOLIO

(DAIA/001) – SENATE LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES COMMITTEE

INQUIRY INTO THE PRACTICE OF DOWRY AND THE INCIDENCE OF DOWRY ABUSE IN AUSTRALIA -

1. The Third Action Plan 2016-2019 of the National Plan -

Asked:

1. 1. The Third Action Plan 2016–2019 of the National Plan to Reduce Violence against Women and their Children 2010–2022 (the Plan) contains a 'key action' to ensure that 'migration rules and eligibility requirements for support services do not disempower victims of violence or discourage them from leaving violent relations'.¹ Specifically, the actions set out in the Plan are to:

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.

a. Has the government taken any steps to introduce reforms in relation to the above actions since the publication of the Plan?

b. To what extent is the Department currently working toward implementing these actions, including working with other Commonwealth departments and agencies?

c. If steps have not been taken in relation to one or more of the above actions, can you advise the committee why this is the case?

Answer:

The Migration Amendment (Family Violence and Other Measures) Bill 2016 (the Bill) passed the Parliament on 29 November 2018. The Bill amends the Migration Act 1958 (the Act) by extending the work visa sponsorship framework to family visa sponsors.

The Bill introduces reforms to strengthen integrity and create enforceable sponsorship obligations while increasing protections for potentially vulnerable migrants.

The reforms include, but are not limited to:

- A separate sponsorship assessment prior to visa application for family sponsored visas;

- Approval of persons as family sponsors required before a visa application can be lodged;
- Statutory obligations on family sponsors and sanctions if obligations are not met;
- sharing personal information between parties to an application, including previous criminal convictions; and
- enabling regulations to prescribe further details of the sponsorship framework for specific family sponsored visas.

The reforms provide for penalties to apply to sponsors, including the refusal/cancellation/barring of sponsorship where there has been inappropriate use of the visa program or serious offences are detected, particularly those involving family violence.

Additionally, the Government's Support for Trafficked People Program (Support Program) provides targeted, individualised case management support to victims, including those in, or at risk of, forced marriage. This can include victims who are non-citizens. The Support Program is administered by the Department of Social Services and delivered nationally by the Australian Red Cross. It assists victims to access accommodation, financial support, medical treatment, counselling, and legal and migration advice.

All suspected victims of human trafficking and slavery who are referred by the Australian Federal Police to the Support Program are eligible to receive intensive support for a minimum of 45 days. Longer-term support is provided to victims who are assisting with an investigation or prosecution.

In February 2018, the Australian Government committed \$500,000 to conduct a 12-month trial which allows victims of forced marriage to access up to 200 days of support through the Support Program without being required to assist with the criminal justice process. The trial will be evaluated and will inform future support provided to victims of forced marriage.

In March 2018, the Government committed a further \$750,000 to fund a secure forced marriage accommodation service in Melbourne with 24/7 live-in support from experienced carers to support victims on the Support Program.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 19 October 2018

HOME AFFAIRS PORTFOLIO

(DAIA/002) – SENATE LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES COMMITTEE

INQUIRY INTO THE PRACTICE OF DOWRY AND THE INCIDENCE OF DOWRY ABUSE IN AUSTRALIA - (General Questions) 2. Australian laws and cultural expectations around domestic and family violence -

Asked:

2. What information is given to people arriving to and departing from Australia about Australia's laws and cultural expectations around domestic and family violence?

- a. Does this include information on the family violence protections available to visa holders?
- b. Does this include information on financial abuse, such as dowry abuse, including as a subset of broader information on family violence protections available to visa holders?
- c. In which languages is this information made available?
- d. How is this information disseminated?

Answer:

Migration law includes measures aimed at preventing family violence, such as the family violence provisions. However, the Department of Home Affairs is not responsible for administering protections for migrants subject to family violence or dowry abuse.

The Department's ability to provide new arrivals with information regarding access to family violence protections is dependent on information from other Commonwealth agencies responsible for administering these protections.

For example, the Department of Social Services (DSS) produces the Family Safety Pack for visa applicants and migrants which provides information on Australia's laws regarding domestic and family violence, sexual assault and forced marriage, and a woman's right to safety. The publication, which is currently available in 46 languages, contains information on support services for victims and emergency contacts in Australia. Provisional Partner (Subclass 309) visa applicants are advised in their grant notification letter about the Family Safety Pack.

- a. The Family Violence and Partner Visas fact sheet includes police and counselling contact details, advice that Partner visa holders do not need to remain in an abusive relationship, and a link to the Department of Home Affairs website. The Home Affairs site includes a page titled 'Family Violence

and your Visa' that explains the provisions for obtaining a Partner visa if your relationship has broken down due to family violence.

- b. No. Family violence is defined as conduct, either actual or threatened, that causes the person to fear for their safety or wellbeing. The conduct can be directed at the person, their dependants or their property. Family violence may include physical or psychological abuse or harm, forced sexual relations, forced isolation or economic deprivation.
- c. The Family Safety Pack is translated into 46 languages (see <https://www.dss.gov.au/family-safety-pack>).

The Family Violence and your Visa fact sheet has been translated into 30 languages (see <https://www.homeaffairs.gov.au/trav/brin/part/family-violence-and-your-visa>).

- d. All applicants who are granted a Provisional (Subclass 309) or Temporary (Subclass 820) Partner visa are provided with the Family Safety pack information in their visa grant letter. In addition to a low literacy storybook, the Family Safety pack includes four factsheets on the following topics:
 - domestic and family violence
 - sexual assault
 - forced and early marriage
 - family violence and partner visas.

The Family Safety pack is freely available on the DSS website:

<https://www.dss.gov.au/family-safety-pack>

Humanitarian entrants are also provided with information on Australian Law, including in relation to marriage and cultural practices, in orientation training both before and after their arrival in Australia through the Australian Cultural Orientation (AUSCO) Program. This program 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.

Other Australian Government resources available in a number of languages for people settling in Australia include the *Beginning Life in Australia* booklet (available on the Department of Social Services website) and the *Life in Australia* booklet

(<https://www.homeaffairs.gov.au/trav/life/aust/life-in-australia-book>). These resources include information about Australia.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 19 October 2018

HOME AFFAIRS PORTFOLIO

(DAIA/003) – SENATE LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES COMMITTEE

INQUIRY INTO THE PRACTICE OF DOWRY AND THE INCIDENCE OF DOWRY ABUSE IN AUSTRALIA - (General Questions) 3. Women on temporary visas being the subject of domestic and family violence.

Asked:

3. The committee has received evidence from women who have been victims of domestic and family violence while they have been in Australia on temporary visas. The committee has also received evidence in relation to instances where foreign national women have been abandoned overseas, following their marriage to Australian citizens or permanent residents.

a. What support is available from the Department for victims of domestic and family violence who are in Australia on permanent or temporary visas, particularly in understanding their legal rights and obligations?

b. Is there any potential recourse through the Department and the visa system for those 'abandoned brides' who have married Australian citizens or permanent residents overseas, and who were subsequently left in those countries and allege dowry abuse?

Answer:

- a. The Department's role in supporting victims of family violence is limited to regularising a person's visa status while they remain in Australia. Access to support and legal services by migrants is managed by other agencies and does not fall within the Department's responsibilities.

Contact details for the Police (000) and the National Sexual Assault, Domestic and Family Violence Counselling Service (online at 1800RESPECT.org.au, or by phone 1800RESPECT 1800 737 732) are provided on the Department of Home Affairs website.

Suspected victims of forced marriage identified by the Australian Federal Police (AFP) are eligible to receive support through the Australian Government's Support for Trafficked People Program (Support Program). The Support Program is administered by the Department of Social Services (DSS) and delivered nationally by the Australian Red Cross. The Support Program provides clients with individually tailored support, including assistance with

accessing suitable accommodation, financial support, medical treatment, counselling, and referral for legal and migration advice, as well as developing options for life after they leave the program.

The Government's dedicated Human Trafficking Visa Framework enables foreign nationals who do not already hold a valid visa and are suspected victims of forced marriage to remain lawfully in Australia on either a temporary or permanent basis to receive support and assist in the criminal justice process.

Further support for victims of forced marriage can be accessed through My Blue Sky, Australia's national Government-funded forced marriage website (www.mybluesky.org.au). The national My Blue Sky helpline is 02 9514 8115 and operates Monday to Friday between 9.00am and 5.00pm, with an out of hours recorded message. People can also get help by emailing help@mybluesky.org.au, sending an SMS to 0481 070 844, or completing an online inquiry (<https://www.mybluesky.org.au/contact-us/>).

- b. Applicants who have been granted a temporary or permanent Partner visa have a travel facility on the visa that allows them to travel to Australia.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 19 October 2018

HOME AFFAIRS PORTFOLIO

(DAIA\004) – SENATE LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES COMMITTEE

INQUIRY INTO THE PRACTICE OF DOWRY AND THE INCIDENCE OF DOWRY ABUSE IN AUSTRALIA - 4. Consistent definition of family violence included in the Migration Regulations 1994. -

Asked:

4. The Australian Law Reform Commission (ALRC) report 117, Family Violence and Commonwealth Laws—Improving Legal Frameworks, recommended a consistent definition of family violence across Commonwealth acts and legislative instruments, including the Migration Regulations 1994 (the Regulations).

- a. Has the Department considered this recommendation? If so, what is the Department's position on this recommendation?
- b. Has the Department engaged in any consultation with the Attorney-General's Department on this matter?

Answer:

- a. Providing a consistent definition of family violence across Commonwealth acts and legislative instruments appears to fall within the responsibilities of the Attorney-General's Department.
- b. No.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 19 October 2018

HOME AFFAIRS PORTFOLIO

(DAIA/005) – SENATE LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES COMMITTEE - INQUIRY INTO THE PRACTICE OF DOWRY AND THE INCIDENCE OF DOWRY ABUSE IN AUSTRALIA - 5. ALRC recommendation to amend the Migration Regulations 1994(Cth) regarding family violence exception. -

DAIA/005 Asked:

5. The ALRC also made the following recommendations:

Recommendation 20—1 The Australian Government should amend the Migration Regulations 1994 (Cth) to allow Prospective Marriage (Subclass 300) visa holders to have access to the family violence exception.

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:

- a. make arrangements to leave Australia; or
- b. apply for another visa.
- a. Has the Department considered these recommendations, or consulted on them with other departments? If so, what is the Department's position on these recommendations?

Answer:

From a migration law perspective, Australia's migration program must strike the right balance between facilitation and control. The family violence provisions are available to temporary Partner visa holders, Prospective Marriage visa holders who have married their sponsor and dependent applicants for a Distinguished Talent visa. The provisions are not available to skilled or other temporary visa holders.

Prospective Marriage (Subclass 300) visa holders have access to the family violence provisions after they have married their partner. The Prospective Marriage visa is a temporary visa valid for nine months and allows the visa holder to travel to Australia to marry their partner before applying for a Partner visa.

There are no plans to create 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. The Department can provide support by regularising a person's visa status while they remain in Australia and will consider any visa application lodged by a victim of family violence on its own merits according to the requirements prescribed in Australian law.

The Family Violence Bill has now passed the Parliament.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 19 October 2018

HOME AFFAIRS PORTFOLIO

**(DAIA/0006) – SENATE LEGAL AND CONSTITUTIONAL AFFAIRS
REFERENCES COMMITTEE - INQUIRY INTO THE PRACTICE OF DOWRY AND
THE INCIDENCE OF DOWRY ABUSE IN AUSTRALIA - (Migration Regulations
1994) - 6. Broaden the definition of family violence. -**

Asked:

6. The Victorian Royal Commission into Family Violence recommended that the Victorian Government, through the Council of Australian Governments, encourage the Commonwealth 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), and to ensure that all people seeking to escape violence are entitled to crisis payments, regardless of visa status. What is the Department's position on this recommendation?

Answer:

As noted in response to Question 3, access to support and legal services is managed by other agencies and does not fall within the Department's responsibilities. The Department's role in providing support to victims of family violence is limited to regularising a person's visa status while they remain in Australia.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 19 October 2018

HOME AFFAIRS PORTFOLIO

(DAIA/007) – SENATE LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES COMMITTEE - INQUIRY INTO THE PRACTICE OF DOWRY AND THE INCIDENCE OF DOWRY ABUSE IN AUSTRALIA - 7. How many people have applied for protection under the family violence protection provisions. -

Asked:

Family violence provisions

7. How many people have applied for protection under the family violence protection provisions in the Regulations since the introduction of these provisions?
 - a. How many of these applicants were granted protection?
 - b. How many of these applicants were victims of financial abuse?
 - i. How many of these applicants were victims of dowry abuse?
 - c. If the Department does not collect data in relation to the specific types of abuse suffered by applicants who have applied for and/or been granted protection under the family violence protection provisions in the Regulations, is there any reason it could not do so in the future? Does the Department have a view as to the potential value of such data relative to the resources required to collect and maintain it?
 - d. What data does the Department collect on the incidence of family violence in visa holders or applicants, including in cohorts on particular types of visas, the nationalities of the applicants or visa holders, and the gender of victims/perpetrators?

Answer:

7. In the period 1 July 2011 to 30 September 2018, there were 4,596 family violence claims under the provisions of the Partner visa.

- a. In the period 1 July 2011 to 30 September 2018, a total of 3,727 visas were granted following family violence claims. 3,032 visas were granted because the claim was assessed as having met the Family Violence Provisions. A total of 695 visas were granted following family violence claims, without the claim necessarily having met Family Violence Provisions. This may be the case in the circumstance where the applicant has parental responsibility for an Australian citizen child.
- b. The Department does not collect data on the specific nature of abuse suffered by family violence victims.
- c. Systems changes would be required to report on specific types of abuse.

- d. The Department can provide information on nationalities and gender of victims. Family Violence Provisions and associated data is only available on applicants for Partner visas.

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING : 19 October 2018

HOME AFFAIRS PORTFOLIO

(DAIA/008) – SENATE LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES COMMITTEE - INQUIRY INTO THE PRACTICE OF DOWRY AND THE INCIDENCE OF DOWRY ABUSE IN AUSTRALIA - 8. Figures in relation to the nationality of victims who received visas under family violence provisions. -

Asked:

8. The committee is aware that the Department recently released figures under freedom of information showing the nationality of victims who received visas under family violence provisions. These figures show that 280 Indian nationals have received protection under these provisions in the period 2012–2013 to 2017–2018. Has the Department:

Has the Department:

- a. collected data on the intersection of financial and dowry abuse in any of these cases?
- b. considered if there are barriers to reporting, which might in turn mean the real incidence of family violence is significantly higher?

Answer:

- a. No, the Department does not collect data on dowry related incidents of family violence.
- b. The Department acknowledges incidences of family violence may not be reported.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 19 October 2018

HOME AFFAIRS PORTFOLIO

(DAIA/009) – SENATE LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES COMMITTEE - INQUIRY INTO THE PRACTICE OF DOWRY AND THE INCIDENCE OF DOWRY ABUSE IN AUSTRALIA - 9. Spousal visa applicants and consideration of any matters relating to potential family violence. -

Asked:

9. The committee refers to the assessment by the Department of the existence of a genuine relationship for a couple applying for a spousal visa, prior to considering any matters relating to potential family violence in that relationship.
- a. Has the Department considered inverting the way in which this assessment is undertaken, such that an evaluation of a 'genuine relationship' could be informed by an understanding of manifestations of violent or abusive relationships?
- b. The committee has received evidence that the existence of joint bank accounts can demonstrate that the applicant and the applicant's partner share financial responsibilities:
- i. Is the Department aware of the extent to which joint accounts can be linked to domestic and family violence? ii. Is the Department aware of any cases where joint accounts have been misused in the context of dowry abuse?

Answer:

- a. 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.

- b. i The Department does not consider whether there is a link between joint bank accounts and incidents of family violence.
- ii. The Department 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.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 19 October 2018

HOME AFFAIRS PORTFOLIO

(DAIA/010) – SENATE LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES COMMITTEE - INQUIRY INTO THE PRACTICE OF DOWRY AND THE INCIDENCE OF DOWRY ABUSE IN AUSTRALIA - 10. Possibility that family violence can also be perpetrated by the wider family of a visa applicant. -

Asked:

10. In applying the Regulations, does the Department take account of the possibility that family violence, including financial abuse, can also be perpetrated by the wider family of a visa applicant or the applicant's own family, rather than solely by the applicant's partner?

a. To what extent would applicants who are suffering financial abuse at the hands of their partner's family or their own family be protected under the family violence provisions in the Regulations?

b. To the extent applicants suffering financial abuse at the hands of their partner's family or their own family are not protected by the family violence provisions in the Regulations, has the Department considered amending the Regulations to extend this protection?

Answer:

The Migration Regulations require the delegate to be satisfied that the sponsor of the visa applicant is the perpetrator of the claimed family violence. 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.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 19 October 2018

HOME AFFAIRS PORTFOLIO

(DAIA/011) – SENATE LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES COMMITTEE - INQUIRY INTO THE PRACTICE OF DOWRY AND THE INCIDENCE OF DOWRY ABUSE IN AUSTRALIA - (Family violence provisions) - 11. Appropriate and regular training -

Asked:

11. How often and to what extent do decision makers receive appropriate and regular training for recognising family violence and patterns of abuse in making assessments regarding whether relationships are genuine and continuing?

Answer:

Claims of family violence for eligible visa applicants are assessed by a team located in a centralised Family Violence Unit (FVU), located in Victoria. Staff in the FVU receive initial specialist family violence training, including three programs run by external providers, and refresher training as needed.

All visa decision makers in the Partner program receive lawful decision making training, which includes modules on the Family Violence Provisions.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 19 October 2018

HOME AFFAIRS PORTFOLIO

(DAIA/012) – SENATE LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES COMMITTEE - INQUIRY INTO THE PRACTICE OF DOWRY AND THE INCIDENCE OF DOWRY ABUSE IN AUSTRALIA - 12. Is 'financial abuse' or 'controlling behaviour' egs of 'relevant family violence' in the Regulations? -

Asked:

12. Has the Department considered amending the Regulations such that 'financial abuse' or 'controlling behaviour' are provided as examples of what may constitute 'relevant family violence'?

Answer:

No. Existing regulations are broadly framed to retain flexibility. Policy advice provides further detail, which ensures the definition of family violence remains current.

QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 19 October 2018

HOME AFFAIRS PORTFOLIO

(DAIA/013) – SENATE LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES COMMITTEE - INQUIRY INTO THE PRACTICE OF DOWRY AND THE INCIDENCE OF DOWRY ABUSE IN AUSTRALIA - 13. Partner visas and providing signed affidavits in relation assets in the event of separation. -

Asked:

13. Has the Department considered the extent to which a requirement for applicants to provide a signed affidavit listing their assets when applying for a partner visa would assist the Family Court in determining property disputes in the event of a divorce or separation?
- a. What would be the barriers to collecting this information as part of a visa application process?

Answer:

13. No.

- a. The Department has not considered such a requirement and it appears to fall outside the Department's area of responsibility, noting that information regarding a person's assets is not required to determine whether they meet the requirements for grant of a partner visa.

This issue would be more appropriately handled by courts in specific circumstances as required, rather than requiring this information from all visa applicants, without justification as part of a partner visa application process.