

AWAVA

Australian Women Against Violence Alliance

Committee Secretary
Senate Legal and Constitutional Affairs Committee
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Canberra ACT 2600

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Submission in Response to the Senate Inquiry The Practice of Dowry and the Incidence of Dowry Abuse in Australia

Thank-you for the opportunity to make a submission in response to the Senate Inquiry on the practice of dowry and the incidence of dowry abuse in Australia.

AWAVA endorses the submission made by the Harmony Alliance – Migrant and Refugee Women for Change in relation to dowry abuse.

About Australian Women Against Violence Alliance

Australian Women Against Violence Alliance (AWAVA) is one of the six National Women's Alliances funded by the Australian Government to bring together women's organisations and individuals across Australia to share information, identify issues and contribute to solutions. AWAVA's focus is on responding to and preventing violence against women and their children. AWAVA's role is to ensure that women's voices and particularly marginalised women's voices are heard by Government, and to amplify the work of its member organisations and Friends and Supporters. AWAVA's members include organisations from every State and Territory in Australia, representing domestic and family violence services, sexual assault services, and women's legal services, as well as organisations representing Aboriginal and Torres Strait Islander women, young women, women educators, women in the sex industry and other groups. AWAVA's contract manager is the Women's Services Network (WESNET).

Summary of recommendations

1. That the Australian Government expands the definition of family violence in the Family Law Act 1975 to include dowry abuse
2. That the Australian Government continue to support primary prevention and early intervention approaches to end violence against women, embedding intersectional and culturally-sensitive approaches targeting all age groups
3. That the relevant decision makers undertake extensive training on family violence, trauma-informed practice and cultural competency according to standards outlined by the National Domestic and Family Violence Bench Book

4. That the Australian Government adopts the Recommended National Standards for Working with Interpreters in Courts and Tribunals prepared by the Judicial Council on Cultural Diversity across courts, tribunals, judicial officers, interpreters and members of the legal profession
5. That the Australian Government takes all measures to ensure better accessibility of the family law system for diverse groups of women
6. That the Australian Government establish bi-national working groups with countries of origin to provide better support, pathways and access to justice within a human rights framework
7. That the Australian Government expands the definition of family violence within the family violence provisions to include dowry abuse;
8. That the Australian Government amends the Migration Regulations 1994 (Cth) and extends the definition of family violence as violence committed not only by a sponsor but their extended family members;
9. That the Australian Government amends the process of applying for family violence provisions in a way that the evaluation of the genuineness of the relationship does not precede or take place in isolation from consideration of family violence claims;
10. That the relevant decision makers undertake extensive training on family violence, trauma-informed practice and cultural competency according to standards outlines by the National Domestic and Family Violence Bench Book;
11. That the Immigration policy must remove any obstacles to reporting violence and seeking help for family violence with assurances that women and children will not risk being deported or criminalised if they disclose violence to government, justice or community services.

Gendered nature of dowry abuse

Dowry refers to a cultural practice involving the exchange of substantial gifts at the time of marriage. The practice of dowry can be associated with abuse, control and demands for more substantial gifts or financial contributions.

While dowry abuse is generally understood as a cultural practice, it is important to recognise that it occurs in a broader environment where male privilege is normalised¹ and relationships are not gender equal. Patel *et al* argue that dowry “has come to devalue women’s lives; reinforcing and perpetuating their commodification and unequal status in the family and wider society.”²

¹ Australian Women Against Violence Alliance (2016) Policy Brief The role of specialist women’s services in Australia’s response to violence against women and their children
<http://awava.org.au/2016/04/07/research/role-specialist-womens-services-australias-response-violence-women-children>

² Patel, P., Handa, R., Anitha, S., Jahangir, S. Emerging issues for international family law: Part 3: Transnational marriage abandonment and the dowry question

Regardless of which party is the recipient of dowry, dowry abuse bears a gendered nature, as it manifests itself as male violence against women. O'Connor argues that "it is the young bride who suffers abuse; either because he did not get enough dowry; or because he was aggrieved for having to give 'too much dowry'".³ Patel *et al* note that dowry generally contributes to "the maintenance of highly patriarchal family structures and widening gender inequality".⁴

In this sense, dowry abuse is another manifestation of violence against women, the main driver of which is gender inequality, operating on many levels from social and cultural norms to economic and structural injustices. Thus, it is important to analyse dowry abuse from the feminist perspective. Using a feminist approach in conceptualising violence against women ensures that it is understood in terms of power dynamics and social structures, rather than treated as purely individual experiences, or experiences that are defined by a given culture or background. In circumstances of extreme inequality, such as domestic and family violence involving dowry abuse, there is also a question of whether any sexual interaction can be truly consensual. This means that service providers and policy makers need to maintain attention to sexual violence in responding to dowry abuse, as well as other forms of domestic and family violence.

We recognise that financial and decision-making dominance by the man/husband in strong patriarchal community hierarchies in some CALD groups, as well as community understanding of ownership of women and children by the husband, impact the woman's sense of agency and hence her ability to advocate for herself and her children. It is, however, important to recognise diversity within CALD communities, to address existing stereotypes about culture and/or religion, and prevent overgeneralisation of experiences i.e. avoid attributing particular experiences as normative to the whole community and using the language of 'all community members' or 'all women' without acknowledging diversity and complexity within the CALD community.

Efforts to prevent and respond to dowry abuse in Australia should be a part of the general commitment to end violence against women. In any efforts addressing violence against diverse groups of women an intersectional lens and culturally competent approaches are essential for success. This means recognising their specific needs yet not treating people's experiences as 'foreign' or attributing higher rates of violence to personal or cultural traits. It is vital that diverse communities are consulted in developing responses, that they are taking a lead in their implementation with appropriate levels of funding and resourcing and that women's voices are central in decision making processes.

RECOMMENDATIONS:

12. That the Australian Government expands the definition of family violence in the *Family Law Act 1975* to include dowry abuse
13. That the Australian Government continue to support primary prevention and early intervention approaches to end violence against women, embedding intersectional and culturally-sensitive approaches targeting all age groups

³ ACHRH. Refusal to Comply with Dowry Demands Contributes to Family Violence and Death in Victoria, 2015, available at <http://achrh.org/wp-content/uploads/2016/07/ACHRH-SUBMISSION-TO-ROYAL-COMMISSION-ON-DOWRY-RELATED-FAMILY-VIOLENCE-AND-DEATH-11-May-2015.pdf>.

⁴ Patel et al, p. 2

The need for the cultural competency across the family law system

It is important to recognise existing barriers for CALD women experiencing violence including dowry in disclosing it and seeking to obtain justice.

Migrant and refugee women are less likely to seek assistance in situations of family violence due to compounding barriers such as isolation of living in a new country, community pressures and expectations, higher levels of financial dependence on perpetrators or community, lack of knowledge of rights and available services; and fear of deportation and removal of children or perpetrator. Insecure migration status is an additional barrier to seeking such assistance, as perpetrators may use victims'/survivors' temporary migration status as a weapon to deter them from reporting violence and to keep them subservient.⁵

Perpetrators are also able to use misinformation about women's visa status and threats of withdrawing their support in partner visa applications as another form of violence. Anecdotal evidence suggests that perpetrators may enter into marriage with a goal to obtain dowry and later withdraw their sponsorship. This means that women are returned to their countries of origin where they may be subjected to discrimination, human rights abuses, reprisals and ostracism from their family and community, being blamed for the relationship breakdown and deemed as causing family shame.⁶ In these instances, there is no justice for victims/survivors as there are no mechanisms to hold perpetrator accountable.

Building the cultural competence of family law professionals would help ease the number of barriers that women from culturally and linguistically diverse backgrounds currently face when navigating the legal system. Specific training to deliver knowledge of cultural norms and how these affect family dynamics and awareness of specific cultural practices (for example, wailing, pulling at one's own hair as part of help seeking behaviour and misinterpreting these as mental illness) are essential to develop a supportive system for victims/survivors. The need for capacity development of translators and interpreters cannot be underestimated, as well as the availability of relevant information in languages other than English.

We also recommend the following improvements that are necessary to ensure the accessibility of courts:

- Courts and tribunals should engage Cultural Liaison Officers, establish Cultural Diversity Committees, introduce multicultural plans, and actively recruit employees from migrant and refugee backgrounds.
- Courts and tribunals should review the appropriateness of signage, brochures, services, procedures for engagement of interpreters, and support for vulnerable witnesses, to ensure they are accessible to all.

⁵ inTouch Inc. Multicultural Centre Against Family Violence. (2010). I lived in fear because I knew nothing: Barriers to the justice system faced by CALD Women experiencing family violence. Melbourne: InTouch; Rees, S., & Pease, B. (2006). Refugee settlement, safety and wellbeing: Exploring domestic and family violence in refugee communities. Melbourne: Immigrant Women's Domestic Violence Service; Rees, S., & Pease, B. (2007). Domestic violence in refugee families in Australia: Rethinking settlement policy and practice. *Journal of Immigrant and Refugee Studies*, 5(2), 1-19; Judicial Council on Cultural Diversity (2016) The Path to Justice: Migrant and Refugee Women's Experience of the Courts Report prepared for the Judicial Council on Cultural Diversity.

⁶ Immigrant Women's Support Service (2010) Policy Brief Assisting Temporary Visa Holders Who Have Experienced Domestic Violence in Australia. Available at <http://www.iwss.org.au/>; Judicial Council on Cultural Diversity (2015) The Path to Justice: Migrant and Refugee Women's Experience of the Courts. Available at http://jccd.org.au/wp-content/uploads/2016/04/JCCD_Consultation_Report_-_Migrant_and_Refugee_Women.pdf

- Women from culturally and linguistically diverse backgrounds should be consulted meaningfully when developing products and procedures designed for and about them.
- Courts and tribunals should schedule regular activities to engage women from migrant and refugee background, such as stakeholder meetings, court open days and tours, and community education forums.
- Court staff should receive compulsory cultural capability training.
- Courts work to make legal documents and support resources more approachable through the use of clear and simple language, and translation of key materials into major languages.
- Alternatives to questioning in courtrooms be offered, in order to provide contextual safety and enable women to feel more comfortable in disclosing information.

Core competencies of professionals and judicial officers in the family law system

All participants in court processes, judges, lawyers and court staff should have a thorough understanding of the nature and dynamics of domestic and family violence including its different manifestations such as dowry abuse. Increased knowledge regarding gender bias and the nature of family violence amongst staff in the judicial system can assist in holding perpetrators to account, and, ensure that victims are treated in a consistent manner⁷.

Further, the training of staff within the judicial system should account for the specific needs of CALD women that have been subjected to domestic violence. A consultation report prepared by the Judicial Council on Cultural Diversity (JCCD) identified that CALD women who experience family violence may have different experiences to non-CALD women which require comprehensive cultural competency training for court staff that interact with them, for example instances of dowry-related violence, forced marriage and female genital mutilation.⁸

We recommend that the training includes the following topics:

- the nature and dynamics of family violence;
- working with vulnerable clients;
- cultural competency (working with Aboriginal and Torres Strait Islander people and people from culturally and linguistically diverse backgrounds);
- working with people who identify as LGBTIQ;
- intersectionality of clients' needs that includes recognition of structural inequalities arising from the interconnectedness of gender, age, sexuality, disability, culture, religion, race and/or other experiences;
- trauma informed practice;
- the intersection of family law, child protection and family violence;
- identifying labour and/or sexual servitude
- technology facilitated abuse; and

⁷ Wakefield S & Taylor A (2015) Judicial education for domestic and family violence. ANROWS Landscapes 02/2015. At: anrows.org.au/publications/landscapes/judicial-education-for-domestic-and-family-violence-state-knowledge-paper (see footnote 155 of the COAG advisory panel report below)

⁸ Judicial Council on Cultural Diversity (2016) *The Path to Justice: Migrant and Refugee Women's Experience of the Courts.*, p 31; Judicial Council on Cultural Diversity (2017) *National framework to improve accessibility to Australian courts for Aboriginal and Torres Strait Islander women and migrant and refugee women.*

- the intersection of family violence and family law in property determinations that includes:
 - the financial impacts of family violence
 - the nature and impacts of economic abuse.⁹

Property Settlements

In a determination of a property settlement under the *Family Law Act 1975* the court must take into account each party's net assets and the financial and non-financial contributions of each party to the asset pool¹⁰. Future needs are also considered by the Court in their decisions. Women are currently disadvantaged in three key ways in obtaining a fair property settlement.

Firstly, the family law system is lengthy and legalistic for women with low income or assets – particularly where they have been victims of family violence. This results in many women walking away from a property settlement entirely. This contributes to the financial hardship that disproportionately impacts women following relationship breakdown.

Secondly, the impacts of family violence are not adequately taken into account in property settlements. Family violence is not specifically identified as a relevant consideration in property matters in the *Family Law Act*. While case law exists, this is not always considered in determining the adjustment in a negotiation, which is the way most matters are finalised. As a result, women who have been subjected to domestic violence may have their actual contributions reflected unfairly. The court must take into account additional factors based on the future needs of the parties, including their age, health, income, property, financial resources, and capacity for gainful employment and having care of children. There should be a legislative requirement for the court to consider the impact of family violence when determining a property division as consistent with the Family Law Council's 2001 advice to the Attorney General.¹¹

Thirdly, abusive men are frequently reported as engaging in protracted litigation and in some cases vexatious or abusive behaviour. An example of this type of systems abuse is failure to disclose relevant financial documents during the discovery stages of family law proceedings. The *Family Law Rules 2004*¹² require parties to make full and frank disclosure of their financial circumstances. However, perpetrators frequently engage in deceitful and controlling behaviours, avoiding disclosure obligations. For example, a common behaviour reported by women is an ex-partner hiding their income due to their self-employment¹³ or withholding other financial information in order to lessen the property settlement or spousal maintenance their ex-partner would otherwise be entitled to.¹⁴

⁹ Smallwood, E. (2015) *Stepping Stones: Legal barriers to economic equality after family violence*, Women's Legal Service Victoria, Melbourne.

¹⁰ Family Law Act 1975 s79(4)

¹¹ WLSA. 2016. *Safety First in family law: Five steps to creating a family law system that keeps women and children safe* 4b.

¹² Family law Rules 2004 Rule 13.04. See: http://www.austlii.edu.au/au/legis/cth/consol_reg/flr2004163/s13.04.html

¹³ Women's Legal Services Australia (WLSA) Submission to House of Representatives Standing Committee on Social Policy and Legal Affairs on Child Support. 2014, p 12. See: http://www.wlsa.org.au/uploads/submission-resources/WLSA_Child_Support_Submission.pdf

¹⁴ *Ibid* page 10

Responses to dowry abuse need to be attentive to these issues involved in property settlement in cases of domestic and family violence. At the same time, reforms to family law to improve financial outcomes for victims/survivors need to be relevant and responsive to the fact that domestic and family violence may include dowry abuse. It should be noted that issues of perpetrators hiding income are also relevant to assessments of Child Support.

RECOMMENDATIONS:

14. That the relevant decision makers undertake extensive training on family violence, trauma-informed practice and cultural competency according to standards outlines by the National Domestic and Family Violence Bench Book
15. That the Australian Government adopts the Recommended National Standards for Working with Interpreters in Courts and Tribunals prepared by the Judicial Council on Cultural Diversity across courts, tribunals, judicial officers, interpreters and members of the legal profession
16. That the Australian Government takes all measures to ensure better accessibility of the family law system for diverse groups of women
17. That the Australian Government establish bi-national working groups with countries of origin to provide better support, pathways and access to justice within a human rights framework

Family violence provisions under Migration regulations

Under the Migration Regulations 1994 (Cth), the partner of an Australian citizen or primary applicant for permanent residency may be granted permanent residency notwithstanding the fact that her relationship has broken down, if she can prove that she and/or her dependents have been victims of family violence, and that she had a genuine relationship at the time of the violence. The violence must have been committed by her spouse and while still in a relationship.

While we commend the government on maintaining the family violence provisions in the migration legislation, we are concerned by the limitations of this process.

In the process of evaluating the eligibility to access family violence provisions, the Department of Home Affairs (the Department) assesses the **existence of a genuine relationship** prior to looking at the existing of family violence. This assessment is guided by four aspects of what the Department considers as the manifestation of a genuine relationship. They are:

- documents that show you and your partner share financial responsibilities (eg. mortgage or lease documents showing joint ownership or rental of property, household bills in both names, joint bank accounts etc.);
- documents that show that you and your partner share household responsibilities (eg. mail or emails addressed to both of you, your living arrangements, a statement about the way housework is distributed etc.);
- documents that show your relationship is known by others (eg. joint invitations, going out together, friends and acquaintances in common, proof that you and your partner have declared your relationship to government bodies, commercial or public institutions etc.)

- documents to show you are committed to each other your long term relationship (eg. knowledge of each other's personal circumstances such as background and family situation, documents that show you have combined your personal matters, the terms of your wills etc.).

It is problematic that the assessment of the genuineness of relationships precedes assessment of family violence claims.

The definition of family violence as used by the Department of Home Affairs is not aligned with the Family Law Act 1975 (Cth) and the National Domestic and Family Violence Bench Book. While the current definition is not limited to physical violence only and is open for interpretation, it creates risks of non-consistent application and identification of family violence. Moreover, there have been some decisions refusing the access to family violence provisions where the manifestations of family violence such as the absence of joint finances have been mistaken for a sign of non-genuine relationships.

An analysis by Segrave uncovered concerning signs that the 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.

Lastly, under the family violence provisions, the only 'recognised' perpetrator of violence is an intimate partner. This is problematic, especially in cases of dowry abuse, as violence may be perpetrated by other family members.

More work needs to be done by the Department of Home Affairs to ensure that the process used to assess applications for the family violence provisions is appropriate and accurate, including in relation to cases of dowry abuse.

For full analysis in relation to improvement of the family violence provisions under the Migration regulations, we refer you to [AWAVA's submission](#) on the visa simplification.

RECOMMENDATIONS:

18. That the Australian Government expands the definition of family violence within the family violence provisions to include dowry abuse;
19. That the Australian Government amends the Migration Regulations 1994 (Cth) and extends the definition of family violence as violence committed not only by a sponsor but their extended family members;
20. That the Australian Government amends the process of applying for family violence provisions in a way that the evaluation of the genuineness of the relationship does not precede or take place in isolation from consideration of family violence claims;
21. That the relevant decision makers undertake extensive training on family violence, trauma-informed practice and cultural competency according to standards outlines by the National Domestic and Family Violence Bench Book;
22. That the Immigration policy must remove any obstacles to reporting violence and seeking help for family violence with assurances that women and children will not risk being deported or criminalised if they disclose violence to government, justice or community services.

Once again we thank you for the opportunity to provide input to this consultation. If you would like to discuss the contents of the submission further, please contact Merrindahl Andrew, AWAVA Program Manager, using the details below.

Merrindahl Andrew

Program Manager

Australian Women Against Violence Alliance