

## Chapter 5

### Migration law

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

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

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

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

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

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

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

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

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

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

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

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

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

## Dowry abuse and the Migration Regulations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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8 Migration Regulations 1994, reg. 1.21.

9 See chapter 2.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Committee view**

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

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

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

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

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

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

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

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

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

#### **Recommendation 4**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### *A 'genuine relationship'*

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Economic abuse and joint bank accounts*

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

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

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

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

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

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

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

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

### *Sponsorship*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Committee view

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

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

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

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

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

## Recommendation 5

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

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

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

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

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

### **Recommendation 6**

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

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

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

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

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

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

### **Recommendation 7**

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

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

