

Additional Remarks from Government Senators

1.1 Government members of the committee support the rights of individuals of any gender to be free from abuse or violence.

1.2 Dowry-related family violence is a complex issue that must be handled with sensitivity. Coalition Senators urge care in approaching the legal, cultural, social and economic implications of this phenomenon.

1.3 Government members of the committee are satisfied that the elements of the offences described in the Chair's report as dowry-abuse and dowry-related violence are already sufficiently addressed under state and territory criminal law and criminal codes, and are given adequate consideration in the operation of commonwealth family law.

1.4 Government members agree that more can be done to inform and empower individuals around family and dowry-related violence and acknowledge that this Inquiry has "shone a light" on the need for more grassroots assistance to be made available to victims of family violence, including those experiencing dowry abuse.

1.5 The disadvantages potentially experienced by victims of dowry-abuse – in terms of language, financial literacy, lack of support networks etc – are present in many situations of family violence more generally. Committee members were reassured by evidence from, for example, the Attorney-General's Department, that extensive programming exists at both the commonwealth and state levels to address such disadvantage in family violence matters. Committee members are however supportive of recommendations for additional resources and information to be made available to vulnerable demographics.

1.6 Senators believe it is important to be tolerant of the cultural traditions of others and to take care not to demonise all practices, which are often benign in effect, due to a small number of unfortunate and/or illegal outcomes. It is however worth noting that the practice of dowry is banned in some jurisdictions.

1.7 Governments members agree that consideration should be given to the inclusion of 'economic abuse' in the national Family Law regime however suggest caution in the development of the elements of such an offence to ensure that innocent conduct is not criminalised and that unsuspecting members of the community are not inadvertently exposed to prosecution.

1.8 The committee agrees that there will be value in the harmonisation of state and federal laws around family violence – including those offences that may be enlivened by cases of dowry-abuse or dowry-related violence. However, as with the proposed inclusion of 'economic abuse' in the family law regime, committee members urge caution in the harmonisation of the elements of these offence to ensure that innocent conduct is not criminalised and that unsuspecting members of the community are not inadvertently exposed to prosecution.

1.9 Additionally, committee members are reluctant to characterise dowry abuse, or family violence more generally, as gender violence that is only perpetrated against

women. Government members of the committee are of the view that family and domestic violence manifests in multiple ways and impacts men, women and children without discrimination. Evidence to that effect was given to the committee.

1.10 The committee notes that the Australian Law Reform Commission are currently conducting a review of Family Law and note that the inclusion of 'economic violence' and other family-violence related matters may be included in the ALRC's deliberations.

1.11 Government members of the committee are substantially persuaded that existing legal frameworks adequately capture offences that could be deemed 'dowry abuse' or 'dowry-related violence'. As the Chair's Report noted at paragraph 2.13:

The following exchange between the Chair and Ms Ashleigh Saint of the Attorney-General's Department (AGD)—which administers the Family Law Act—at the committee's public hearing in Canberra on 3 December 2018, sets out the intersection between federal, state and territory laws with respect to family violence:

Ms Saint:...In terms of the criminalisation of that behaviour, that is predominantly dealt with under state and territory law in relation to abuse.

CHAIR: Why is it primarily within state and territory law and not within family violence law?

Ms Saint: The Family Law Act deals with family violence in the context of proceedings in family law. General assault and family violence offences against the person and other offences like that fall within state and territory law.

CHAIR: That's right. I just have to go back to understanding this. So, even though family violence, assaults et cetera are relevant within family law, the offences themselves are defined within state law. That's what you're saying?

Ms Saint: That's correct. But those offences having occurred would be relevant in family law proceedings.¹

1.12 The Chair's report also details the relevant legislative schemes that are already operating in the ACT, New South Wales, Northern Territory, Queensland, South Australia, Tasmania, Victoria, and Western Australia from paragraph 2.24 to paragraph 2.45. The Committee is persuaded by evidence from the Attorney-General's Department that these schemes, coupled with the relevant provisions of the Family Law Act, provide sufficient operable legal protection for victims of the offences that could be characterised as 'dowry abuse' or 'dowry-related violence'. This is particularly so should these schemes be nationally harmonised.

1 Ms Ashleigh Saint, Assistant Secretary Family Law Branch, Attorney-General's Department (AGD), *Committee Hansard*, 3 December 2018, p. 8.

1.13 The Chair's report also identified a range of potential problems with criminalising practices within the scope of 'dowry-abuse'. At paragraph 3.50 the Chair's report remarks that:

The committee accepts, however, the reasoning presented that a narrow approach of simply criminalising particular practices, such as dowry, may be counter productive as it ignores the complexity of family violence in certain cultures. The committee is also concerned that criminalisation of the practice of dowry may have the unintended result of driving this pernicious cultural practice underground, further isolating CALD women and causing greater harm. Criminalising or seeking to ban the practice of dowry would also complicate the task of making beneficial changes to reduce the impact of dowry abuse in areas such as family law property settlements and the migration system. In addition, there may be legitimate versions of property transfer that operate in different cultural contexts. A common example might be parents making gifts to children upon marriage, noting that these gifts belong to the couple and not to 'in-laws' or broader family interests.²

1.14 Government members of the committee suggest that further advice be sought, consultation be undertaken and caution be applied to any reform process.

1.15 It terms of the adjudication of matters pertaining to allegations of dowry abuse, the Chair's Report noted reassuring evidence regarding the approach of the judiciary. Paragraph 4.5 of the Chair's Report noted:

The AGD also referred to the National Domestic and Family Violence Bench Book (Bench Book), which 'is available to all judicial officers across Australia'. Indeed, all Family Court and Family Circuit Court judges have 'been trained in the contents of that bench book through judicial training which has been sponsored by the department'.³

1.16 And further, at paragraph 4.6:

Part 3.1.5 of the Bench Book refers expressly to dowry abuse as an example of cultural and spiritual abuse which comes within the meaning of family violence. Dowry abuse will be taken to have occurred where the perpetrator has asserted 'his entitlement to a dowry from the victim's family, or punishing the victim or her family for what he claims to be an insufficient dowry'.⁴

1.17 Additionally, the Chair's Report quoted evidence from Monash University that related to the treatment of a dowry-related case in the Federal Court:

2 Ms Ashleigh Saint, Assistant Secretary Family Law Branch, AGD, *Committee Hansard*, 3 December 2018, p. 8.

3 Ms Saint, AGD, *Committee Hansard*, 3 December 2018, p. 8.

4 *National Domestic and Family Violence Bench Book*, June 2018, section 3.1.5, <http://dfvbenchbook.aija.org.au/foundational-information/intersection-of-legal-systems/> (accessed 7 January 2019).

In that case, the Judge stated that the wife's dowry was 'a very significant direct financial contribution to the marriage'⁵ and that the wife's contributions '[o]verwhelmingly...exceeded those of the husband's prior to marriage'.⁶ The payment was not treated by the presiding Judge as a gift, 'but rather a joint asset of the property pool, resulting in a more equitable settlement in which financial justice was achieved'.⁷

Comment of Government Senators on the recommendations of the Majority Report

1.18 Recommendation 1 of the Chair's report (at paragraph 4.28) recommends that:

The committee recommends that the term 'economic abuse' is included as a form of family violence in subsection 4AB(2) of the *Family Law Act 1975*, and the subsection provide a non-exhaustive list of examples of economic abuse, including dowry abuse.

1.19 Government Senators do not agree with this recommendation and would instead seek further advice from the legal profession and stakeholders, and the report of the ALRC, before further complicating existing legislative and regulatory schemes around family violence.

1.20 Recommendation 2 of the Chair's report (at paragraph 4.51) recommends that:

The committee recommends that the Australian government work with the states and territories to harmonise existing legislation providing for intervention/violence orders to explicitly recognise dowry abuse as an example of family violence or economic abuse.

1.21 Government Senators agree that the harmonisation of laws relating to family violence could provide greater certainty and offer better outcomes to victims and litigants. Government Senators are, however, not currently persuaded that the inclusion of the term 'dowry abuse' in state, territory and national legal frameworks will deliver any particular benefit at this time. As with recommendation 1 (see paragraph 1.18 of these Additional Remarks) Coalition Senators urge a cautious and consultative approach.

1.22 Recommendation 3 of the Chair's report (at paragraph 4.54) recommends that:

The committee recommends that the Australian government give further consideration to legal and decision making frameworks to ensure that victims of dowry abuse are not disadvantaged in family law property settlements, given the community concerns about inconsistent approaches under the current family law framework.

5 *Singh v Dala* [2017] FCCA 2945 [57], per Judge Wilson.

6 *Singh v Dala* [2017] FCCA 2945 [59], per Judge Wilson.

7 Monash University, *Submission 15*, p. 11.

1.23 Government Senators are of the view that the operation of state, territory and commonwealth legal frameworks, and the guidance provided by the relevant Bench Books, currently deliver just and equitable outcomes to litigants in this space, and that education and awareness are critical to the protection of potential victims of family violence. As the Chair's report provided at paragraph 4.19:

In contrast to submitters who advocated for the explicit reference to dowry abuse in legislation, Professor Supriya Singh warned against highlighting dowry and dowry abuse as a specific form of family violence on the basis that it ignores other forms of economic abuse including that which may occur in Anglo Celtic culture.⁸ Professor Singh did not object to giving examples of economic abuse in legislation, but ultimately favoured raising awareness of economic abuse and increasing cross cultural understanding 'about the non-physical aspects of family violence'.⁹

1.24 Government Senators also look forward to any views that will be expressed on this issue in the report of the ALRC Review into family law.

1.25 **Recommendation 4 of the Chair's report (at paragraph 5.31) recommends that:**

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.**

1.26 Government Senators agree that there is a clear need for protections for victims of family violence under the Migration Regulations however are persuaded by evidence from the Department of Home Affairs that the current regulatory framework operates with sufficient vigour to provide these protections. The Chair's report notes evidence from the Department of Home Affairs provided at paragraph 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'.¹⁰

8 Professor Supriya Singh, *Committee Hansard*, 21 September 2018, p. 29.

9 Professor Singh, *Committee Hansard*, 21 September 2018, p. 29.

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

1.27 Recommendation 5 of the Chair's report (at paragraph 5.67) recommends that:

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.**

1.28 Government members of the committee agree that protections against violence that may occur within Australia should be provided regardless of immigration status. Government Senators would, however, suggest that this is a broad and complex subject matter that requires further investigation and consultation to develop an operable model.

1.29 Recommendation 6 of the Chair's report (at paragraph 5.71) recommends that:

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.

1.30 Government Senators are of the view that the relevant departmental processes and officials are both diligent and sensitive when dealing with any immigration matter and that all due care is taken to determine the true facts of any particular case.

1.31 Recommendation 7 of the Chair's report (at paragraph 5.76) recommends that:

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.

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.

1.32 Government Senators support any measure that increases transparency in the operation of the commonwealth's migration scheme and would welcome further

consultation with the Department to determine a practicable way to scrutinise the sponsorship framework to ensure it is not being abused.

1.33 Government Senators also do not object in-principle to the suggestion that the Department of Home Affairs should be mindful of Family Violence Prevention Strategies. Senators do, however, expect that the Department is already very much alive to these issues in its day-to-day operations.

1.34 Recommendation 8 of the Chair's report (at paragraph 6.27) recommends that:

The committee recommends that the Australian government, together with state and territory governments, work with culturally and linguistically diverse communities and service providers in order to determine ways in which to establish a firm evidence base on the incidence of dowry abuse.

1.35 Government Senators agree with the provision of culturally and linguistically appropriate information and services around family violence. Coalition Senators would submit that many of these functions already exist at the state level and that the harmonisation imperative suggested in the Chair's Report recommendation 2 will provide new opportunities to share information regarding the prevalence of, and responses to, these phenomena.

1.36 Recommendation 9 of the Chair's report (at paragraph 6.30) recommends that:

The committee recommends that the Australian government work with the States and Territories to improve and strengthen the governance of data collection practices and standards by implementing a system to capture and measure the extent and incidence of all forms of family violence in Australia, including dowry abuse as a form of economic abuse.

1.37 Government Senators agree with suggestions for the improved collection of data regarding forms of family violence that can be characterised as 'dowry-abuse' and suggest that such data could assist in the harmonisation and further development of legal frameworks relating to family violence.

1.38 Recommendation 10 of the Chair's report (at paragraph 6.63) recommends that:

The committee recommends the Department of Social Services Family Safety Pack is provided individually to all visa applicants in their first language, such as during the health examination required as a condition of their visa application.

1.39 Government Senators agree with Recommendation 10.

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