



Immigration Advice
and Rights Centre

17 August 2018

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6021
Parliament House
Canberra ACT 2600

BY EMAIL: legcon.sen@aph.gov.au.

Re: Inquiry into the practice of dowry and the incidence of dowry abuse in Australia

The Immigration Advice and Rights Centre (**IARC**), established in 1986, is a community legal centre in New South Wales specialising in the provision of advice, assistance, education, training and law and policy reform in Australian immigration and citizenship law. IARC provides free and independent advice. IARC also produces client information sheets and conducts education/information seminars for members of the public. Our clients are low or nil income earners, frequently with other disadvantages such as having low level English language skills, disabilities, past torture and trauma experiences and domestic violence survivors.

IARC welcomes the opportunity to comment on the Committee's inquiry into the practice of dowry and the incidence of dowry abuse in Australia. We limit our comments to paragraph (f) of the terms of reference.

Dowry Abuse in Australia

Dowry related abuse and violence was considered by the Royal Commission into Family Violence. In its final report, the Commission identified that "[D]owry refers to money, property or gifts transferred by a woman's family to her husband upon marriage. Sometimes, dowry demands can be for substantial amounts of money which are multiple times the annual

income of a bride or the groom's family"¹. The report further identified that dowry-related violence is more likely to be experienced by women from certain culturally and linguistically diverse backgrounds and that it can be aggravated by a woman's visa status². This is consistent with IARC's experience.

The extent to which requirements for spouse and family visas may enable or prevent dowry abuse

It is not useful to describe the requirements for a partner or family visa as either enabling or preventing dowry abuse. They do neither – they simply set out the relevant criteria that needs to be satisfied for the grant of a visa. The processing of the application can, however, help to identify incidents of dowry abuse and offer protection in certain circumstances.

For example, a criteria for the grant of a partner visa is that the applicant is the spouse or de-facto partner of a person who is an Australian citizen, an Australian permanent resident or eligible New Zealand citizen³. Where appropriate, consideration can be given to whether a marriage or partnership involves 'real consent'. Further, in determining whether a relationship is genuine and continuing, consideration will be given to a non-exhaustive list of factors including:

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

The Minister is also required to approve a sponsorship which must remain in force at the time a decision is made on the application. The elements of a sponsorship undertaking are found in Regulation 1.20 and for partner visas require a sponsor to undertake to assist the visa applicant, to the extent necessary, financially and in relation to accommodation for a

¹ See page 113 of the final report available at <http://www.rcfv.com.au/>

² IBID at pages 34 and 101

³ See for example Regulations 309.211 and 820.211 in schedule 2 of the Migration Regulations 1994 (Cth)

specified period of time⁴. While the undertaking may not be enforceable an application may be refused on the basis that a sponsor cannot fulfil their sponsorship undertaking⁵.

It is IARC's experience that dowry related abuse for migrant women can involve threats to withdraw sponsorship unless further money or gifts are provided. The abuse can be from a partner but it can also be from members of their partner's family. The abuse typically involves financial abuse and controlling behaviour but can extend to greater psychological abuse and physical violence. It is also IARC's experience that many migrant women do not disclose abuse because of a fear that it may lead to a negative visa outcome.

The Family Violence provisions

The Family Violence provisions, found in Division 1.5 (reg 1.21 – 1.27) of the *Migration Regulations* 1994, are essentially deeming provisions which determine whether, under Australian immigration law, family violence is taken to have occurred. If it has, then certain visa applicants⁶ may continue to be able to obtain a permanent visa even though the relationship with their partner/sponsor has ended. The Provisions exist to ensure that visa applicants do not feel compelled to remain in abusive and violent relationships for the sake of obtaining a visa.

The definition of "relevant family violence" is set out under Regulation 1.21 to mean "*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

⁴ This varies depending on whether or not the applicant is in Australia.

⁵ See for example reg. 820.325 and the decision of the Migration Review Tribunal in *Gaigerov, Vladislav* [2002] MRTA 5857.

⁶ The Provisions only apply to certain visa subclasses and do not apply to other family visas such as carer visas, aged dependent relative visas, remaining relative visas or parent visas.

(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.”

While it is likely that dowry-related abuse would satisfy the definition (depending on the nature and severity) IARC **recommends** that ‘financial abuse’ and ‘controlling behaviour’ be inserted into the definition as examples of what may constitute “relevant family violence”.

IARC also **recommends** that consideration be given to extending the family violence provisions to other family visa subclasses. 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.

There are two other matters that are deserving of the Committee’s attention:

1. The ‘genuine and continuing’ requirement

The family violence provisions are only engaged if the visa applicant can demonstrate that the relationship between them and their sponsor was genuine and continuing prior to it ending. This process requires them to produce evidence of, among other things, the financial aspects of the relationship. It is inevitable that where a visa applicant has experienced financial abuse and/or controlling behaviour they will have great difficulty producing the necessary evidence to satisfy this requirement and, in turn, may have their visa refused without their claims for family violence being considered.

IARC **recommends** 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.

2. Family violence by sponsor's family

A further limitation of the family violence provisions is that abuse or violence from a sponsor's family (such as their parents) will generally not be sufficient to engage the definition (see for example *Bhalla v Minister for Immigration and Border Protection [2016] FCA 395*). IARC **recommends** that the family violence provisions be amended to include family violence that has been perpetrated by a sponsor's family. This will allow women who are subject to dowry abuse by their in-laws to also have access to the family violence provisions.

Conclusion

It is our view that any response by the Committee to this inquiry should focus on the protection of women who are subject to dowry abuse. It would not be appropriate, for example, to make recommendations that would place migrant women in a position of further vulnerability and/or disadvantage.

We thank you again for the opportunity to comment on the Committee's inquiry into the practice of dowry in Australia. We would welcome the opportunity to address any questions that the Committee may have about our submission.

Kind regards,

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Principal Solicitor