

The Practice of Dowry and the Incidence of Dowry Abuse in Australia

Submission of the Legal Services Commission of South Australia

Background

The coercive demand for dowry in a marriage is a practice which the Legal Services Commission has encountered amongst clients from the Indian subcontinent consisting of countries such as India, Pakistan, Bangladesh, Nepal, Bhutan and Sri Lanka. It is also experienced by clients from Afghanistan, South Sudan and the Middle East.

The Legal Services Commission provides duty lawyer services and legal information and advice to victims of family violence through our Access Services Branch and as part of our Family Law practice. Statistics for legal advice interviews and duty lawyer sessions show an increase in the number of clients from the Indian subcontinent seeking advice. There has also been an increase in the assistance sought among clients from the Middle East and Sudan over the previous 5 years. The table below shows the increase in female clients from the stated countries who accessed the services of the Commission from the years 2013 to 2018 in relation to domestic and family violence.

Legal assistance for Domestic/Family Violence for the period between 1/7/2013 to 30/6/2018

Applications for Aid Received	2013	2014	2015	2016	2017	2018
Female: Indian Subcontinent	1	1	2	10	26	19
Female: Middle East	0	1	2	4	11	11
Female: Sudan	0	0	2	3	3	3
Other	248	322	435	1105	1225	1051

Initial Grants of Aid	2013	2014	2015	2016	2017	2018
Female: Indian Subcontinent	1	1	2	9	21	13
Female: Middle East	0	1	2	3	9	10
Female: Sudan	0	0	2	3	3	3
Other	247	321	434	1078	1098	897

Legal Advice Interviews	2013	2014	2015	2016	2017	2018
Female: Indian Subcontinent	167	81	232	310	291	332
Female: Middle East	40	28	39	152	66	125
Female: Sudan	11	12	15	4	4	12
Other	1539	1385	1624	1557	2289	2470

Duty Lawyer Sessions	2013	2014	2015	2016	2017	2018
Female: Indian Subcontinent	1	0	0	0	43	83
Female: Middle East	0	1	0	0	7	18
Female: Sudan	0	1	0	0	3	6
Other	24	58	10	65	763	1105

The Legal Services Commission does not currently keep statistical information on whether dowry is a feature of a domestic violence complaint. However, we have empirical data showing an increasing number of young migrant women with dowry related abuse encountered through our legal advice and information service.

In our experience, this abuse takes the form of further financial demands on the bride's family from the groom, the refusal to allow the woman access to the dowry funds and physical violence. These women are often overwhelmed by their circumstances, compounded by the fact that they are frequently new migrants to Australia. As new migrants they face various issues including a language barrier and a lack of knowledge of the local laws as well of Australian mainstream culture and social norms. They experience an added cultural pressure to remain in the marriage despite the abuse.

Terms of Reference: Inquiry into the Practice of Dowry and the Incidence of Dowry Abuse in Australia

The Commission would like to make the following comments on the Terms of Reference with case studies drawn from our client base.

(a) The extent and nature of knowledge regarding cultural attitudes to, the practice of, and the prevalence of dowry in Australia, both before and after marriage.

Based on our clients' narratives the public at large appears to lack knowledge of the cultural practice of dowry and knows even less of dowry abuse. Clients generally experience difficulties when approaching the police as illustrated by the following case study.

Case Study 1

The sense of entitlement to dowry by the husband and his family can be a deeply entrenched cultural practice. Our client was a 22 year old woman from Afghanistan who brought a dowry consisting mainly of jewellery provided by her family for the marriage. Upon marriage in Australia she moved in with her husband and his family comprising his mother and his adult siblings. Within days she discovered her new husband was a serious drug user. He would regularly assault her and none of his family members would intervene. After a hospital admission relating to domestic violence, the police accompanied her to the house where she unsuccessfully sought to recover the jewellery. Given that the client did not speak English, the police sought the assistance of her husband's siblings as interpreters to communicate with her mother-in-law who had possession of the jewellery.

Our client was highly distressed and she found the police lacked sensitivity for her situation and knowledge of the concept of dowry and its related abuse. The police did not appreciate our client's sense of deep loss resulting from a failed marriage and the life savings in the form of dowry.

We advised the client on divorce proceedings. In relation to the return of the dowry we advised she could seek its return as part of her property settlement as she brought the jewellery with her to Australia before marriage.

(b) The appropriateness and impacts of dowry as a cultural practice in modern Australia, taking account of our national commitment to gender equality and human rights, and approach to multiculturalism.

The Legal Services Commission has observed that the practice of dowry in Australia can have an element of coercive demand from the groom and his family. An Indian groom from a first world country such as Australia draws a high premium and the bride's family, wanting their daughter to enjoy a comfortable life, often accede to these demands. This seems to be the case even when the brides are highly educated professional women capable of earning an income to support themselves.

Similar problems are encountered with the practice of bride price among the South Sudanese community where a substantial sum is paid by a groom and his family in exchange for a bride. Rev

Duku Atuko presenting on “*Dowry in the African communities*” at the Australian National Anti Dowry Summit stated that the treatment of a wife as a chattel often results in violence and death.²

The Australian Government has international obligations which would conflict with practices that engender violence against women. For example, in December 2016, the Australian Government and UN Women signed a new four-year Partnership Framework Agreement, reaffirming their shared commitment to the advancement of women’s empowerment and gender equality in the Indo-Pacific region and globally, including strengthening the coordination and promotion of gender equality within the United Nations system, enhancing women’s economic empowerment in the Pacific region, and ending violence against women and girls, among others.

Changes to embedded cultural practices can sometimes be more effective than efforts to eradicate a long-held tradition. The Commission submits that amendments to the laws governing matrimonial property in the *Family Law Act 1975* stipulating that at law ownership of the dowry remains with the bride could assist in many cases. In a similar manner, the *Married Women’s Property Act 1882*, passed in England and adopted in Australia gave married women the right to own property and to enforce that right of ownership.

(c) Reports of dowry abuse, including potential links to family violence, pretext for arranged marriage, forced marriage, modern day slavery, financial abuse, domestic servitude, murder, and other crimes, as well as any connections between dowry abuse and adverse mental health outcomes for affected women, including self-harm and suicide.

Generally, in the Legal Services Commission’s experience, clients suffering dowry abuse do not refer to it as the cause of family violence. As clients, they focus their complaint on the violence and only after detailed questioning do they reveal that the root cause stems from their refusal to meet their husbands’ demands for more dowry. Some clients’ omit to raise this issue due to their acceptance of dowry as a cultural practice and therefore as a norm. Others express embarrassment in revealing a cultural practice that seems to have gone wrong. These clients are of the view that Australians on the whole do not understand their cultural practice and see no advantage in bringing up the subject of dowry.

The Legal Services Commission has noted that the source of the dowry-related violence is not always the husband but can be his parents and extended family. This happens as the new wife is traditionally expected to live with them.

The Legal Services Commission has had clients who admitted that the dowry related abuse reached a point where they were on antidepressants and felt suicidal particularly in view of the shame, humiliation and stigma of a failed marriage and having to face the family and community back in their country of origin.

Case Study 2

Our client was a 22 year old accountant from India. Her family had provided a substantial amount as dowry to the groom and his family prior to the marriage. After the marriage ceremony overseas the client moved in with her husband and his parents. The next day his parents terminated the employment of two maids ordering the client to undertake all household chores including cooking, cleaning and caring for them reducing her to a domestic helper. Her husband returned alone to Australia as the client needed to wait for approval of her visa. In the meantime, his parents did not allow the client to seek gainful employment and she was made to beg for funds from them to purchase toiletries. About a year later when the client joined her husband in Australia, domestic abuse commenced due to client’s failure to meet further demands for dowry. The abuse included the husband cutting the client’s hair whilst she was asleep.

A few months later the client succeeded in securing a job and the husband instructed her to direct her pay into a joint account on the pretext of purchasing a property. She was not allowed to touch the funds. If she needed to purchase some items he would accompany the client and pay for her. He would hand her a meagre sum for daily expenses. The client then discovered her father was

² National Anti Dowry Summit, 14 December 2016, <http://achrh.org/anti-dowry-campaign/>

suffering from terminal cancer and sought the husband's permission to return to India and to purchase an airline ticket, but he refused. Eventually the client's father organised for funds to be sent. Upon her father's death and subsequent return to Australia the client discovered all the funds in the joint account which were in thousands of dollars had been transferred to the husband's account and she was asked to leave their home immediately. The client was left penniless and homeless. With the assistance of support services the client was placed in a shelter.

The client wanted to retrieve the funds and sought representation from the Commission. Due to evidence suggesting that the husband had transferred the funds to India we could not meet the client's needs for assistance.

(d) The adequacy of the family law system, including how divorce and property settlement proceedings deal with dowry and dowry abuse, and the operation of and need for extra-jurisdictional (including international) enforcement mechanisms.

The Australian family law system as it stands does not adequately address dowry and its related abuse in divorce and property settlement proceedings. Currently the family law only considers assets and properties that are held in Australia but not those overseas. This has a huge impact on a wife whose family may have parted with their life savings only for the marriage to end within a short time. The husband benefits from the dowry leaving the wife penniless. The Legal Services Commission submits that the proceeds of a dowry should be considered as part of a marital property settlement regardless of the fact that the exchanges occurred overseas. Given that providing and accepting of dowry is a criminal offence in countries such as India, the ability of the women to recover it as part of property settlement in Australia will assist in preventing perpetrators and their families benefitting from their abusive behaviour.

Case Study 3

The Commission's client was 23 year old dentist from India. The woman's mother provided AUD\$60, 000.00 as a dowry to ensure that her daughter would be well looked after. Nine months after the payment of the dowry, the woman joined her husband in Australia. On seeking work, she discovered that she would have to undertake several examinations that involved expensive fees to recognise her professional qualification before commencing employment. The husband demanded that she sought costs from her mother to sustain her daily living expenses including her examination fees or else leave the home. When she refused his demands the abuse began and escalated until eventually he threw her out of the home. After two years of marriage the husband served the woman with divorce papers. Our client sought the return of the dowry. We provided advice on the client's response to her husband's divorce application. The client was happy to consent to the divorce. However, when she sought the return of her dowry we advised that given the transaction occurred in India it would not form part of the property settlement and it was a separate matter from the divorce application.

The client had a comfortable life as a dentist back in India. With a failed marriage and unable to pursue her profession, she was struggling to make ends meet working casual in a retail store. She stated if she could recover her dowry it would help her pay her examination fees and she could move forward. The client said she was ashamed and humiliated that her life had come to this and was suffering from mental health issues.

(e) Confirmed and potential links between dowry, dowry abuse and forced and/or arranged marriages, both in Australia and in connection with Australia's migration program.

The Legal Services Commission does not have any data to support the view that the practice of arranged marriage in itself is linked to dowry abuse. It is noted however that the practice of giving and receiving dowry generally occurs in the context of an arranged marriage. In our experience, the coercive demand for additional dowry payments begins when the wife arrives in Australia under the migration sponsorship of the husband. When the demand for increased dowry provisions is not met, a husband often withdraws the wife's sponsorship and cancels her private health cover. This means that the victim may have to return to her country of origin to avoid deportation. While

women sponsored on a partner visa can access the family violence provisions under the *Migration Regulations*, the Commission is aware of several instances where support services have been refused to victims due to their residency status leaving them vulnerable and homeless.

(f) The adequacy of Australia's migration law system in terms of addressing dowry and dowry abuse, including:

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

As indicated in our response to term of reference (e) above, women sponsored on a partner visa can access the family violence provisions under the 1994 Regulations to the *Migration Act (Cth) 1958*. However, the definition of 'relevant family violence' in the Regulations is narrower than in other pieces of legislation and in common parlance. It is qualified by who the alleged perpetrator is and when the alleged family violence has occurred. The violence must be perpetrated by the sponsor, not another member of his family.³ It must also occur *prior to* the breakdown of the marriage.⁴ This is to distinguish it from incidents occurring in the context of the separation itself, for example an altercation occurring because of one party's refusal to vacate the marital home.

An initial issue is whether this definition of 'relevant family violence' recognises cases of dowry abuse. It is submitted that all types of family violence fall within the definition of 'relevant family violence' given the broad definition in the Regulations. The problem, however, lies in what evidence can be provided for this type of abuse. As with all forms of non-physical abuse, evidence is problematic and often relies solely on the statement of the victim.

An applicant under the family violence provisions must be able to provide evidence that she meets the definition of being a 'spouse' prior to the breakdown of the relationship. The definition of 'spouse' under the Migration Regulations requires that there be a mutual commitment to the relationship and that the relationship is 'genuine and continuing'. The same definition applies to a de facto relationship. In assessing the genuineness of the relationship, the Department of Home Affairs considers the evidence provided by the applicant across four aspects including the financial aspects of the relationship with a focus on joint/shared finances.⁵ To some extent, a dowry payment that serves the interests of one party may affect the Department's assessment of the relationship notwithstanding the applicant's genuine commitment.

(ii) Vulnerabilities experienced by women suffering dowry abuse as a result of temporary migration status, including disincentives to report dowry abuse and the ability of victims to access the family violence protections afforded by the Migration Act 1958 and associated regulations

As mentioned in our previous answer, instances where the family violence alleged consists solely of one type of non-physical abuse, such as emotional abuse or financial abuse can be difficult for the victim to prove. It is also difficult to distinguish a situation of abuse from a relationship characterised by marital conflict, where both parties are unhappy in the relationship. The relative shortness of the relationship would also be an issue in these cases.

Our migration law advisers have devised the case study below based on their experience of cases of alleged family violence which have a number of common characteristics and with which they are increasingly confronted.

³ Migration Regulations 100.221(4)(c)(i) and 801.221(6)(c)(i) http://classic.austlii.edu.au/au/legis/cth/consol_reg/mr1994227/

⁴ Migration Regulations 1.23(3), (5), (7) and (12)

⁵ Migration Regulations 1.15A (3)

Case Study 4

A marriage is arranged and the ceremony takes place overseas together with a dowry payment. The sponsor groom, a permanent resident, returns to Australia and the bride waits in her country of origin for the appropriate visa. The sponsor views the marriage as one of convenience and has no intention of cohabiting with the visa applicant when she arrives. The sponsor may in fact be in another relationship in Australia. The parties do not cohabit when the bride arrives. The sponsor makes a demand for further dowry payment with the threat that the visa application will not proceed to the second stage of (permanent) partner application unless the demand is met. Although the bride would consider herself in a genuine marriage, her situation may not be able to meet the criteria for the definition of 'spouse' in the Regulations. The absence of cohabitation also makes it difficult to establish fear or apprehension required to constitute family violence.

(iii) Recommendations for change if necessary

The Legal Services Commission recommends that the definition of 'relevant family violence' in the *Migration Act (Cth) 1958* be expanded to encompass acts of coercion and control. We note 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. A further complication when considering penalties is the role played by the sponsor's extended family in perpetuating the abuse

(g) Training and reporting regimes which apply to Commonwealth, and State and Territory police forces and family violence services in relation to dowry and dowry abuse.

The Legal Services Commission submits that police officers should be provided with training in cultural competency as they are the first point of contact for many victims of dowry abuse. Judicial officers should also be provided cultural competency training to appreciate the various cultures and their practices and to have a better understanding of the dynamics of this form of family violence.

Dean McWhirter, Assistant Commissioner of Victoria Police, has acknowledged and identified the need for a better education among the police force on the issue of dowry demands particularly in relation to incidents of family violence.⁶ Community education programs would assist with raising awareness amongst the victims of dowry abuse through CALD community groups. Ideally a Commonwealth funded national education program would be of greatest benefit.

It is recommended that the courts are made 'culture friendly', and in line with this, cultural liaison officers could be introduced in courts as the first point of contact to assist victims of dowry abuse and other CALD clients in navigating the court process.

(h) Investigation of laws and practices in international jurisdictions, in relation to defining dowry and combating dowry abuse, with particular regard to how these approaches could be applied in the Australian context.

Australia can learn much from the international experience of combatting dowry abuse, particularly as regards calls to ban the practice of dowry in Australia and the failure of such laws in jurisdictions and cultures where dowry is an entrenched practice.⁷

Australian law encounters the practice of dowry in a migration context. Investigations into how dowry is defined and how the abuse is dealt with in countries which are popular migration

⁶ National Anti Dowry Summit, 14 December 2016.

⁷ Strategies for Combating the Culture of Dowry and Domestic Violence in India, Madhu Purnima Kishwar, "Violence against women: Good practices in combating and eliminating violence against women" Expert Group Meeting Organized by: UN Division for the Advancement of Women in collaboration with: UN Office on Drugs and Crime, 17 to 20 May 2005, Vienna, Austria
<http://www.un.org/womenwatch/daw/egm/vaw-gp-2005/docs/experts/kishwar.dowry.pdf>

destinations such as the United Kingdom, United States of America and Canada, would be beneficial. Closer working ties with these nations could promote a common legal and legislative approach to dowry abuse which would help to discourage the practice on an international level.

An International Convention, under the auspices of the United Nations, which recognises the bride's proprietary right to the dowry regardless of the country in which it is located, could enable brides to seek and enforce court orders internationally to obtain the dowry for themselves.

(i) The adequacy of current Commonwealth and State and Territory laws in establishing broadly accepted community norms and in preventing dowry abuse and specific recommendations for change if laws need to be strengthened

The Commonwealth, State and Territory Governments have dedicated programs to tackle family violence.⁸ These programs generally, seek to reduce domestic violence and raise community awareness about the seriousness of the problem. Considerable efforts have been made to reach out to CALD communities.⁹

The Legal Services Commission submits that the current legal frameworks established to tackle domestic violence do not adequately address issues relating to coercive dowry abuse. In particular, the definition of 'family violence' in legislation such as the *Migration Act (Cth) 1958* and the *Family Law Act (Cth) 1975* needs to factor in dowry-related abuse and similarly harmful cultural practices.

⁸ The National Plan to Reduce Violence against Women and their Children 2010 – 2022, <https://www.dss.gov.au/women/programs-services/reducing-violence/the-national-plan-to-reduce-violence-against-women-and-their-children-2010-2022>

⁹ AIFS, Empowering migrant and refugee women: Supporting and empowering women beyond five-year post-settlement, Research Report No. 38 – September 2017
<https://aifs.gov.au/publications/empowering-migrant-and-refugee-women/4-service-delivery-landscape-types-programs-available-barriers-service-access-and-best-practice>