



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: HRC/DHas:1577040

17 August 2018

Mr Jonathan Smithers
Chief Executive Officer
Law Council of Australia
DX 5719 Canberra

By email: nathan.macdonald@lawcouncil.asn.au

Dear Mr Smithers,

The practice of dowry and the incidence of dowry abuse in Australia

Thank you for your memo dated 25 July 2018 seeking the contribution of the Law Society of NSW in respect of a possible Law Council submission to an inquiry by the Senate Legal and Constitutional Affairs References Committee into the practice of dowry and the incidence of dowry abuse in Australia.

The submission of the Law Society of NSW is informed by its Human Rights Committee and focuses primarily on the migration law aspects of this issue.

Definition of dowry abuse and legislative responses in Australia to date

A group of experts convened by the United Nations Division for the Advancement of Women in 2009 defined dowry-related abuse as “any act of violence or harassment associated with the giving or receiving of dowry at any time before, during or after the marriage.”¹ Dowry-related abuse can be psychological or physical, and involve financial abuse and controlling behaviour. In some instances the violence or harassment is perpetrated by the family members of the sponsor/partner. In Australia, there have been reported cases where dowry-related abuse includes threats to withdraw sponsorship unless further money or gifts are provided.²

The issue of dowry-related abuse and violence was considered by the Royal Commission into Family Violence that took place in Victoria from 2015 to 2016. The final report released in 2016 identified at page 113 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 United Nations Division for the Advancement of Women, *Good Practices in Legislation on “Harmful Practices” Against Women: Report of the Expert Group Meeting*, 29 May 2009
http://www.un.org/womenwatch/daw/egm/vaw_legislation_2009/Report%20EGM%20harmful%20practices.pdf

² Rachel Kleinman, ‘Dowry’s Dark Shadow’, *The Sydney Morning Herald*, 23 May 2014.

The report found that dowry-related violence is more likely to be experienced by women from certain culturally and linguistically diverse communities and that it can be aggravated by a woman's visa status. As a response, the report recommended that the Victorian Government amend the *Family Violence Protection Act 2008* (Vic) to expand the statutory examples of family violence to include forced marriage and dowry-related abuse. This recommendation has been followed in the *Justice Legislation Amendment (Family Violence Protection and Other Matters) Bill 2018* (Vic) that received assent from the State's Governor on 14 August 2018.

The adequacy of Australia's migration law system in terms of addressing dowry and dowry abuse

While there are some protections under Australian immigration law for victims of dowry-related abuse, there is scope for improvement. The family violence provisions found in Division 1.5 (reg 1.21 – 1.27) of the *Migration Regulations 1994* (Cth) determine whether, under Australian immigration law, family violence is taken to have occurred. If it has, then certain visa applicants may continue to be able to obtain a permanent visa even though the relationship with their partner/sponsor has ceased. These provisions exist to ensure that visa applicants do not feel compelled to remain in abusive and violent relationships in order to obtain 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
- (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 dowry-related abuse would likely meet the current definition (depending on the nature and severity) we recommend that 'financial abuse' and 'controlling behaviour' be included in the definition as examples of what may constitute "relevant family violence".

Another inadequacy of the family violence provisions is the requirement that the family violence needs to have been perpetrated by the sponsoring partner and that violence from members of the sponsor's family will generally not be sufficient to engage the definition (see for example *Bhalla v Minister for Immigration and Border Protection* [2016] FCA 395). We therefore recommend that there be amendments to the *Migration Regulations 1994* to extend the definition beyond intimate partner violence. This will allow women who are being coerced, treated as subservient or abused by in-laws within the context of dowry-related abuse to also have access to the family violence provisions.

A further inadequacy of the family violence provisions is that they only apply to certain visa subclasses and not to other family visas such as carer visas, aged dependent relative visas, remaining relative visas, New Zealand citizen family relationship visas or parent visas. We

recommend that the family violence provisions be extended to other relevant visa subclasses.

It is appropriate, in our view, that women who are the subject of a dowry should not be penalised or disadvantaged because of it. Any response should be focused on protection. There should be no imposition of a fine and they should not be excluded from accessing the family violence provisions on the basis that a relationship involving a dowry is not genuine because of it. This would be counterproductive.

Our concern around making dowry payments unlawful (or perhaps a marriage invalid where there has been a dowry payment) is that it may act as a disincentive for women to disclose abuse if they believe that they are a party to an act or offence which could jeopardise their visa and/or result in punishment to them or their partner. We therefore recommend community education around family violence and education for Government officials who make assessments under the family violence provisions.

Relevant obligations under international law

In their joint General Recommendation No. 31/General Comment No. 18, the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child clarified the obligations of States parties to the UN Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") and the UN Convention on the Rights of the Child ("CRC") with regard to certain harmful practices that overwhelmingly impact girls and women. The committees affirmed that the payment of dowries may increase the vulnerability of women and girls to violence. They also observed that "the husband or his family members may engage in acts of physical or psychological violence, including murder, burning and acid attacks, for failure to fulfil expectations regarding the payment of a dowry or its size." The committees stressed that:

[A]llowing marriage to be arranged by such payment or preferment violates the right to freely choose a spouse and... such agreements should not be recognized by a State party as enforceable.³

In its earlier General Recommendation No. 19, the Committee on the Elimination of Discrimination against Women recommended that:

States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity. Appropriate protective and support services should be provided for victims.⁴

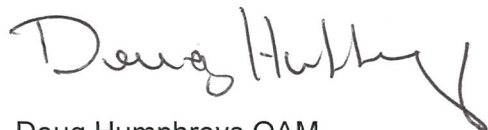
Given that Australia has ratified both CEDAW and CRC, and in light of our national commitment to gender equality and human rights, we recommend that Australia's response to the issue of dowry abuse take into account our obligations under these international instruments.

³ *Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices*, 14 November 2014, CEDAW/C/GC/31-CRC/C/GC/18, 24.

⁴ UN Committee on the Elimination of Discrimination Against Women, *CEDAW General Recommendation No. 19: Violence against women*, 1992, A/47/38, 4.

Thank you for the opportunity to provide input on this issue. Should you have any questions or require further information please contact Andrew Small, Policy Lawyer on (02) 9926 0252 or email andrew.small@lawsociety.com.au.

Yours sincerely,

A handwritten signature in black ink that reads "Doug Humphreys". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Doug Humphreys OAM
President