

Submission to the Senate Standing Committee on Legal and Constitutional Affairs

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

Good Shepherd Australia New Zealand and

inTouch Multicultural Centre Against Family Violence

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## About Good Shepherd Australia New Zealand

Good Shepherd Australia New Zealand (GSANZ) is a community services organisation that has been delivering on its mission to disrupt the intergenerational cycle of disadvantage, with a focus on women and girls, since 1864 in Australia and 1886 in New Zealand. We achieve this by challenging disadvantage and gender inequality through services, research, advocacy, and social policy development.

Our specific expertise is in:

- **Safety and Resilience-** supporting women to be resilient provides a buffer between an individual and adversity, allowing them to achieve improved outcomes in spite of difficulties.
- **Financial Security-** supporting women to ensure they have access to sufficient economic resources to meet their material needs so that they can live with dignity.
- **Educational Pathways-** assisting women and girls to overcome the obstacles in their life that hinder them from achieving their educational/vocational capacity.
- **Outcomes and Evaluations-** developing evidence-based program designs across all Good Shepherd Australia New Zealand programs and services.
- **Research, social policy and advocacy-** researching emerging issues and identifying effective change interventions for program design, policy analysis and systemic advocacy.

GSANZ is part of a global network of services and advocates established by the Congregation of Our Lady of Charity of the Good Shepherd, which has had special consultative status with the United Nations Economic and Social Council (ECOSOC) since 1996.

GSANZ is part of the Good Shepherd Asia-Pacific Anti-Trafficking Network which includes units representing 19 countries across the region dedicated to ending trafficking and exploitation; GSANZ is also represented as a key stakeholder on state wide networks to address forced marriage in New South Wales and Victoria.

### About inTouch Multicultural Centre Against Family Violence

inTouch Multicultural Centre against Family Violence (inTouch), was established in 1984. Today, inTouch is a leading state-wide accredited service, which provides programs and responses to issues of family violence in migrant and refugee communities.

inTouch has provided integrated, culturally-responsive family violence services to migrant and refugee communities across Victoria for over 30 years. inTouch also builds the capacity of specialist family violence providers and mainstream services and engages in important community education and primary prevention work.

As a specialist family violence service with a focus on providing support and information to culturally diverse women, their children and perpetrators of family violence, inTouch is in a unique position to provide practice informed analysis and recommendations on the issue of dowry abuse.

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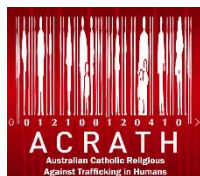
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## ENDORSEMENTS

This submission has been endorsed by:



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People are NOT for sale

Australian Catholic Religious Against Human Trafficking  
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ntv.org.au

## 1. INTRODUCTION

Good Shepherd Australia New Zealand (GSANZ) and inTouch Multicultural Centre against Family Violence (inTouch) welcome the opportunity to contribute to this inquiry. We congratulate the Senate Standing Committee on Constitutional and Legal Affairs (the Committee) on developing a broad consultative agenda reflective of the range of issues that have recently arisen within the public domain.

This submission responds to the Committee's Terms of Reference C, D, E, F, H and I, with a focus on gender and the intersections between dowry abuse and domestic and family violence. Several case studies are presented which illustrate the ways in dowry abuse can be considered a part of the continuum of violence faced by women from Culturally and Linguistically Diverse (CALD) communities. We would welcome the opportunity to provide verbal evidence to the Committee.

For over a decade we have seen the practice of dowry in marriage throughout our work in the field of family violence with individuals from CALD. It is a practice that remains largely unidentified and unrecognised within legal and policy frameworks.

Dowry payment for marriage, whilst outlawed in some countries including India, is still practiced as a cultural norm in some countries. Migrant diaspora communities living in Australia continue to engage in the practice of dowry. The practice of dowry is understood to be part of complex family structures and traditional cultural practices that inform the daily lives of women and men.

Dowry is not a distinctly religious practice. It is a custom that has been adopted over centuries and passed through generations taking on different forms in different communities. There is recent evidence of dowry negotiations taking place in Hindu, Sikh, Muslim, Christian and non-religious families.<sup>1</sup>

GSANZ and inTouch consider the practice of dowry and dowry abuse to be inherently gendered. It is our experience that dowry abuse disproportionately impacts women and girls because they often start in a position of reduced power—power with respect to the social status attributed to women and girls within communities—and their reduced access to economic wealth and security, compared with men and boys.

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<sup>1</sup> Debra Jopson, "The secret scourge of family violence and murder in Australian Hindu and Sikh communities", ABC News, (2017), <http://www.abc.net.au/news/2017-12-18/scourge-family-violence-in-hindu-and-sikh-communities/9257724>; Islamic Relief, "An Islamic human rights perspective on early and forced marriage- Protecting the sanctity of marriage", *Islamic Relief Worldwide, United Kingdom*, (Year Unknown); Sushi Das, "Marrying for the money: The dark side of India's dowry culture", SBS News, (2017) <https://www.sbs.com.au/topics/life/culture/article/2017/03/22/marrying-money-dark-side-indias-dowry-culture>.

Contemporary manifestations of dowry practice is seen to “devalue women’s lives; reinforcing and perpetuating their commodification and unequal status in the family and wider society”.<sup>2</sup>

### 1.1 Distinguishing between the practice of dowry and dowry abuse

#### Dowry

The practice of dowry usually involves the giving of gifts<sup>3</sup> by one family to another before, during or any time after marriage. It is a practice that has different customary characteristics across different communities. Dowry exchange in South Asian communities is characterised by the woman’s family providing goods (including but not limited to money, jewellery, furniture and appliances) to the male and his family. In North African communities dowry is characterised by the man’s family providing goods (predominantly in the form of money or cattle) to the female and her family.

Dowry is not always disadvantageous to women and not all women experience dowry as a repressive practice. Some may “consider dowry a rightful share of their parent’s wealth in the context that daughters do not commonly inherit property”<sup>4</sup> in the same way as sons.

Additional terminology used to define dowry (or like practices) within specific communities; includes:

*Mahr*: is a mandatory payment in the form of money or possessions paid by the male or the male’s family in an Islamic marriage.<sup>5</sup>

*Stridhan*: a Hindu term translated to mean ‘women’s property’, stridhan consists of valuable presents given to the bride by her parents and close family voluntarily on the occasion of her marriage . . . concepts of stridhan and dowry have become interchangeable since Stridhan is used as a means of getting around the current law (in India) on dowry.<sup>6</sup>

#### Dowry Abuse

Dowry abuse refers to violence (sexual, physical and psychological) that arises in the context of a dowry negotiation. This can be in the form of ongoing demands for “gifts” starting before marriage to long after the marriage has taken place. It can also refer to

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<sup>2</sup> Pragna Patel, Radhika Handa, Sundari Anitha, Sulema Jahangir, “Emerging issues for international family law: Part 3: Transnational marriage abandonment and the dowry question”, *Family Law Journal*, 46 (12), (2016):1444.

<sup>3</sup>Ibid, 1443.

<sup>4</sup> Sundari Anitha, Harshita Yalamarty and Anupama Roy, “Changing nature and emerging patterns of domestic violence in global contexts: Dowry abuse and the transnational abandonment of wives in India”, *Women’s Studies International Forum*, 69, (2018): 69-70.

<sup>5</sup> Islamic Relief, “An Islamic human rights perspective on early and forced marriage- Protecting the sanctity of marriage”, *Islamic Relief Worldwide, United Kingdom*, (Year Unknown): 4.

<sup>6</sup> Pragna Patel, Radhika Handa, Sundari Anitha, Sulema Jahangir, “Emerging issues for international family law: Part 3: Transnational marriage abandonment and the dowry question”, *Family Law Journal*, 46 (12), (2016): 1443-1444.

ongoing violence as a result of what is perceived to be an unsatisfactory dowry amount or arrangement. International research has well documented the various forms that dowry abuse can take, including battering, mutilation, rape, acid throwing, wife burning, murder and suicide.<sup>7</sup> It is our experience in the Australian context that abuse arising from not fulfilling dowry expectations follows this pattern, but can also include:

- threats of cancellation of visa sponsorship and deportation
- threats to annul the marriage with the consequence of bringing shame on the family
- abandonment and
- demands to terminate a pregnancy.

## 1.2 Framing dowry abuse as domestic and family violence

In other contexts, such as India, dowry has been recognised as “a key factor that underpins domestic violence”.<sup>8</sup>

This submission draws a distinction between the practice of ‘dowry’ and ‘dowry abuse’. The system of dowry in and of itself is not inherently exploitative or abusive, as Sundari et al note:

Recent scholarship dissociates the presumed automatic causal link between dowry and domestic violence by emphasising that the giving of dowry does not always result in domestic violence, and not all domestic violence is related to dowry demands.<sup>9</sup>

The practice of dowry does however have the potential to become exploitative and harmful when it is practised in a way that involves force, fraud, coercion, threats and violence (sexual, physical and psychological). It is at this intersection of dowry, abuse and violence from which our experiences are drawn. The recommendations made in this submission are made specifically in relation to dowry abuse and should not be applied as blanket measures over the system of dowry itself.

Our framework for viewing dowry abuse is the lens of domestic and family violence. Given this framework, the recommendations and illustrative examples provided in this submission distinctly address the interrelation between domestic and family violence and dowry abuse.

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<sup>7</sup> Ibid, 1444.

<sup>8</sup> Sundari Anitha, Harshita Yalamarty and Anupama Roy, “Changing nature and emerging patterns of domestic violence in global contexts: Dowry abuse and the transnational abandonment of wives in India”, *Women’s Studies International Forum*, 69, (2018): 69.

<sup>9</sup> Ibid, 70.



## 2. RECOMMENDATIONS

### 2.1 GSA NZ and inTouch Recommendations

*Term of Reference C- Dowry Abuse and family violence, modern day slavery, financial abuse, domestic servitude and murder.*

1. Include dowry abuse in the definition of domestic and family violence nationally; with a clear acknowledgement that domestic and family violence can include multiple perpetrators (such as family members) not just intimate partners.
  - Extend access to protection orders and specialist services for women who experience dowry abuse.
2. Adapt data collection related to domestic and family violence to include markers specific to CALD communities, including, but is not limited to:
  - Migration status
  - Perpetrators of violence—family members and intimate partners
  - Dowry as a trigger for abuse and violence.
3. Resource specialised services to ensure that the needs of CALD women are met inclusively and effectively. This includes, but is not limited to:
  - Development of a risk assessment tool that is inclusive of CALD specific markers of abuse and violence <sup>10</sup>
  - Coordinated service delivery models inclusive of case work, family lawyers, migration agents and bi-cultural workers <sup>11</sup>
  - Recognition of multiple perpetrators of violence, including spouses and extended family members
  - Opportunities for women to self-identify the type of service provision that they would like to access, which may not be directly related to their cultural or religious background.
4. Recognise that dowry abuse is a means of control and abuse which may facilitate other exploitative or violent practices, such as servitude.
  - Reform regarding dowry abuse in Australia must consider the extent to which other offences such as human trafficking, forced labour and

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<sup>10</sup> See generally: Department of Social Services, “Hearing her voice: Kitchen table conversations on violence against culturally and linguistically diverse women and their children”, *Commonwealth of Australia*, (2015)

<sup>11</sup> As defined by the Federation of Ethnic Community Councils in Australia, a bi-cultural worker refers to: “Staff with bilingual skills who are employed either for their linguistic ability or as a generalist worker whose bilingual skills are utilised by the organisation to support the delivery of services to people with low English language proficiency...[and] a person employed to work specifically with people or communities with whom they share similar cultural experiences and understandings, and who is employed to use their cultural skills and knowledge to negotiate and communicate between communities and their employing agency” FECCA, “Australia’s Bilingual and Bicultural Workforce”, *FECCA*, (2017):4-5, <http://fecca.org.au/wp-content/uploads/2017/12/Australias-bilingual-and-bicultural-workforce-Report-2017.pdf>

- domestic servitude interface with situations that occur within a domestic/familial context.
- Fund services to build capacity in identifying and responding to human trafficking and slavery offences that occur within the context of domestic and family violence.
5. Develop a nationally consistent approach to gender based and family violence in Australia supporting recommendation 27 (b)<sup>12</sup> of the recent concluding observations from the Committee the Elimination of Discrimination against Women (CEDAW) review of Australia.
  6. Adopt a nationally consistent and holistic definition of economic abuse. The definition should at a minimum include the following examples:
    - Withholding financial support that is considered reasonably necessary to maintain a partner
    - Unreasonably preventing a person from taking part in decisions over household expenditure or the disposition of joint property
    - Controlling behaviour that denies personal financial autonomy
    - Force, fraud or coercion in obtaining social security payments
    - Force, fraud or coercion in obtaining bank loans, credit cards or other forms of financial debt
    - Force, fraud or coercion in relinquishing control over assets
    - Preventing a person from seeking, gaining or maintaining employment.
  7. Develop mandatory protocols for financial institutions when working with individuals facing financial hardship as a result of economic and/or financial abuse, including dowry abuse. The protocols should include provision for financial hardship waivers when debt has been accumulated through force, fraud and coercion.
  8. Add dowry abuse to the review criteria for family violence related deaths in order to establish a clearer picture about the relationship between murder and dowry abuse, which will in turn support the development of targeted prevention and intervention strategies.
  9. Establish a national reference group of civil society and government agencies to map the impact of domestic and family violence, including dowry abuse, within CALD communities and develop a set of guidelines to inform practice.

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<sup>12</sup> "The lack of national legislation prohibiting all forms of gender-based violence against women prevents the equal protection of women and girls throughout the State party". Committee on the Elimination of Discrimination against Women, "Concluding observations on the eight period report of Australia", *CEDAW C/AUS/CO/8*, (2018):6.

*Term of Reference D—the adequacy of the family law system, divorce and property settlement and the need for extra-jurisdictional enforcement mechanisms.*

10. Recognise transnational abandonment within the *Marriage Act (1961)* (Cth) and the *Family Law Act (1975)* (Cth); in doing so, we recommend that provisions are put in place to:
  - Build capacity amongst communities and non-government service providers to appropriately identify and respond to transnational abandonment. This includes raising awareness about trafficking and slavery offences, to ensure that individuals are aware of their right to report such crimes to the Australian Federal Police.
  - Develop guidelines that identify transnational abandonment in ex-parte divorce applications, ensuring that they are not successful if this is proven to be the case. This would also require resources to train judiciary on the guidelines to ensure that they are implemented.
  - Develop guidelines that identify transnational abandonment within visa cancellation applications, ensuring that visas are not cancelled if this is proven to be the case. This would also require resources to train Department of Immigration and Border Protection (DIBP) personnel on the guidelines to ensure that they are implemented.
11. Introduce cooperation agreements and enforcement mechanisms between Australia and countries whereby the practice of dowry takes place. This will assist women who have been abandoned overseas to facilitate a claim for restitution of their dowry.

*Term of Reference E-Dowry abuse and forced and arranged marriage.*

Given the prominent place the practice of dowry has in marriage in some CALD communities, we ask that the Committee consider recommendations in relation to forced marriage with the view that these enhanced provisions will have a positive impact on reducing dowry abuse.

12. Expand the definition of domestic and family violence nationally to include forced marriage—this will open up opportunities for wider multi-sectoral engagement and information and support services for individuals at risk.
  - This expanded definition also presents an opportunity to embed forced marriage into national secondary education curricula on domestic and family violence, which would raise awareness among potential victims and their peers.
13. Resource a prevention program for local communities founded on partnership and inclusion. Forced marriage is a complex social problem which requires multi-platform solutions, including but not limited to:
  - Engaging influential community stakeholders including men and faith leaders, who of hold and promote cultural and traditional norms. Leadership from within communities is an essential element to changing social norms.

- Targeted community-led strategies in areas of high prevalence that focus on dialogue and localised action within communities.
14. Resource capacity building of mainstream and specialist workforces—including state and territory police—to understand and respond to diversity through cultural training. This training should place particular emphasis on the concepts of arranged and forced marriage, dowry and dowry abuse, and complex familial relations and practices within CALD communities.
  15. Invest in an information development framework for data relating to forced marriage in order to identify gaps and determine priority information needs. This work should inform the collection of nationally consistent data which will establish the true nature and prevalence and support targeted interventions that show clear impact in preventing the practice and protecting individuals at risk.
  16. De-link, in full, victim engagement and participation with law enforcement as a gateway to support.
  17. Enhance the Australian migration program's efforts to ensure that women—not the husband who sponsors the visa—have information in language about their rights regarding migration, marriage and domestic and family violence, including Australia's law and support options.
    - Women must be provided with pre-departure and arrival information regarding Australia's position on domestic and family violence and the support available to them should they find themselves in this situation.
    - Women must also have access to ongoing information through a range of platforms and mediums which requires specific resourcing of services and supports that target CALD communities.
  18. Strengthen the family violence provisions within the *Migration Act (1958)* (Cth) to include threats of deportation and withdrawal of visa as a component of domestic and family violence. This information should be disseminated in diverse languages via both print and electronic platforms.
    - The *Migration Act (1958)* (Cth) should recognise that economic abuse, including that which stems from the practice of dowry, is a valid reason for relationship breakdown.
  19. Extend the family violence provisions within the *Migration Act (1958)* (Cth) to visa subclasses other than spousal visas to ensure that women who are married or in de-facto relationships brought to Australia on alternative visas can access appropriate support and immigration relief.
  20. Amend the *Migration Act (1958)* (Cth) to prohibit offenders of domestic and family violence, including dowry abuse, from sponsoring spouses to come to Australia.

- Amend Migration Regulations (1994) Division 1.4B which places limitation on certain sponsorship and Division 1.5 pertaining to special provisions for family violence.

*Term of Reference F—Training and reporting regimes within the Commonwealth, states and territories*

21. Commonwealth, state and territory governments to allocate resources for community capacity building and training, including:
- Partnering and working with communities on social norm change.
  - Educating service providers on awareness and response.
  - Empowering law enforcement with tools to support women facing violence and exploitation as a result of dowry abuse.

*Term of Reference H & I—Laws and practices in international jurisdictions and the adequacy of current Commonwealth, state and territory laws.*

22. Amend Section 90B of the *Family Law Act 1975* (Cth) to include a listing of gifts exchanged between both parties to a marriage so as to ensure that in the case of a marriage dissolution, this would form evidentiary grounds for the return of property, including dowry. In the absence of compliance with creating a register of gifts exchanged, flexible evidentiary provisions to prove the exchange of dowry should also be introduced. Including, but not limited to, photos, videos, and statements from family members, receipts from gifts purchased, written negotiations over text message, email or social media.
- Add 'dowry as property' to Section 4 of the *Family Law Act (1975)* (Cth).
23. Review the case law<sup>13</sup> in the United Kingdom that has led to successful outcomes for the recuperation of dowry. This review should include considerations to amend the *Family Law Act (1975)* (Cth) and corresponding guidelines to consider the following issues in separation and divorce:
- Mechanism to sue for the return of dowry
  - Consideration of cultural factors that impact on divorce and financial settlements
  - Determination that dowry is the sole property of the person who brought it into the marriage.
24. Consistent with the approach adopted in Victoria following the Royal Commission into Family Violence<sup>14</sup> expand the definition of family violence to include forced marriage and dowry related abuse.

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<sup>13</sup> See: *Shahnaz v Rizwan* [1965] 1 QB 390, *Uddin v Choudhury* [2009] EWCA Civ 1205, *Otobo v Otobo* [2002] EWCA Civ 949, *A v T (Ancillary Relief: Cultural Factors)* [2004] EWHC 471 (fam), [2004] 1 FLR 977.; Also Appendix A

<sup>14</sup> Recommendation 156: "The Victorian Government amend section 6 of the Family Violence Protection Act (2008) (Vic) to expand the statutory examples of family violence to include forced marriage and dowry related abuse [within 12 months]" Neave, M. Faulkner, P. Nicholson, T. "Royal Commission into Family Violence: Summary and recommendations", *Victorian Government Printers*, (2016): 87. This recommendation was adopted in full, and the legislation

- Complement this change with sector wide and community capacity building for an effective and efficient response.

## 2.2 Recommendations from other inquiries

We draw the Committee's attention to the range of other inquiries and projects which include a series of recommendations relevant to the terms of reference of this inquiry. We encourage the Committee through the course of this inquiry to review these recommendations as part of its discovery process, and harmonise its own findings in light of these inquiries and projects.

The following eight inquiries and projects are of particular note:

1. **2012 - Family Law Council Project for the federal Attorney General's Department - "Improving the family law system for clients from CALD backgrounds".**<sup>15</sup> All eight recommendations from this project remain relevant to improving the situation for women who face dowry abuse in Australia.
2. **2012 - Coroners Court of Victoria - "Victorian Systematic Review of Family Violence Deaths- First Report".**<sup>16</sup> This report draws attention to specific vulnerabilities that individuals from culturally and linguistically diverse (CALD) backgrounds face. Ten per cent of homicide incidents highlighted in this report involve CALD communities presenting complexities which are unique to that of other communities. This report discusses the reality of individuals from "CALD backgrounds encountering greater difficulty eliciting assistance and support from mainstream service providers",<sup>17</sup> concluding that there is a distinct need to improve responsiveness in CALD communities to situations that create risk of homicide—of which dowry abuse is one.
3. **2015/16 - "Royal Commission into Family Violence Victoria".**<sup>18</sup> We support the Royal Commission into Family Violence in Victoria finding that forced marriage and dowry-related abuse are examples of family violence and recommended<sup>19</sup> that both be included in the *Family Violence Protection Act (2008)* (Vic).

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received royal assent on 14 August 2018. See:

[http://www.legislation.vic.gov.au/domino/Web\\_Notes/LDMS/PubPDocs.nsf/ee665e366dcb6cb0ca256da400837f6b/e510bf2e1aa1a1c4ca2582a30077cb80!OpenDocument](http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/PubPDocs.nsf/ee665e366dcb6cb0ca256da400837f6b/e510bf2e1aa1a1c4ca2582a30077cb80!OpenDocument)

<sup>15</sup> Family Law Council, "Improving the family law system for clients from culturally and linguistically diverse backgrounds- A report to the Attorney-General", *Commonwealth of Australia*, (2012).

<sup>16</sup> Coroners Court of Victoria, "Victorian Systemic Review of Family Violence Deaths- First Report", *Coroners Court of Victoria* (2012), <http://www.coronerscourt.vic.gov.au/resources/54bbc2f9-bb23-45c0-9672-16c6bd1a0e0f/vsrfvd+first+report+-+final+version.pdf>.

<sup>17</sup> Ibid, 39.

<sup>18</sup> The Hon. Marcia Neave AO, Patricia Faulkner AO, Tony Nicholson, "Royal Commission into Family Violence- Summary and recommendations", *Victorian Government Printer*, (2016).

<sup>19</sup> Ibid, 87 Recommendation 156: "The Victorian Government amend section 6 of the Family Violence Protection Act (2008) (Vic) to expand the statutory examples of family violence to

4. **2015/16 - Family Law Council Project for the federal Attorney General's Department - "Families with complex needs and the intersection of the family law and child protection systems".**<sup>20</sup> This report highlights the challenge of Australia's legal system in the operation of multiple jurisdictions, specifically, parenting disputes, child protection and family violence being addressed by three separate jurisdictions. In relation to dowry abuse, all three of these issues may present and the multiple jurisdictions that do not necessarily overlap create a confused, uncoordinated, inflexible and time consuming process for individuals to seeking redress and/or support. This is exacerbated for women from CALD communities where there are additional barriers in place, such as language. The report recommends improvements to the justice system in a way that maximises its effectiveness for families with multiple and complex needs.<sup>21</sup>
5. **2017- Standing Committee on Social Policy and Legal Affairs, Commonwealth of Australia - "A better family law system to support and protect those affected by family violence".**<sup>22</sup> We support each of the recommendations made by the Committee in this inquiry and note their implementation would have significant bearing on the terms of reference currently being considered. We draw special attention to the issues that impact CALD communities. The inquiry found that people from CALD backgrounds are underrepresented in the family law system and are less likely to seek help for issues regarding family violence.<sup>23</sup>

Section 7.57,<sup>24</sup> 7.67 and 7.69<sup>25</sup> of the Committee's final report details evidence specifically in relation to dowry demands. It also highlights that the definition of economic abuse as defined in the *Family Law Act (1975) (Cth)* as a form of family violence is widely misunderstood and even more so when there are cultural aspects related to the abuse.

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include forced marriage and dowry –related abuse [within 12 months]. This recommendation was adopted in full, and the legislation received royal assent on 14 August 2018. See: [http://www.legislation.vic.gov.au/domino/Web\\_Notes/LDMS/PubPDocs.nsf/ee665e366dcb6cb0ca256da400837f6b/e510bf2e1aa1a1c4ca2582a30077cb80!OpenDocument](http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/PubPDocs.nsf/ee665e366dcb6cb0ca256da400837f6b/e510bf2e1aa1a1c4ca2582a30077cb80!OpenDocument)

<sup>20</sup> Family Law Council, "Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems: Interim Report to the Attorney General", *Commonwealth of Australia*, (2016).

<sup>21</sup> Ibid, 99.

<sup>22</sup> House of Representatives Standing Committee on Social Policy and Legal Affairs, "A better family law system to support and protect those affected by family violence. Recommendations for an accessible, equitable and responsive family law system which better prioritises safety of those affected by family violence", *Commonwealth of Australia*, (2017), [https://www.aph.gov.au/Parliamentary\\_Business/Committees/House/Social\\_Policy\\_and\\_Legal\\_Affairs/FVlawreform/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/FVlawreform/Report).

<sup>23</sup> Ibid, 241.

<sup>24</sup> Ibid, 245.

<sup>25</sup> Ibid, 248.



We support the report's call for a culturally inclusive and responsive family law system, particularly recommendation 25<sup>26</sup> which details specific reforms that would create greater equity and accessibility to the court system by people from a CALD background.

6. **2017 - Joint Committee on Law Enforcement - "An inquiry into human trafficking, slavery and slavery-like practices".**<sup>27</sup> This inquiry undertook a systemic review of trafficking, slavery and slavery-like practices in Australia which includes forced marriage. We support the recommendations of this inquiry in relation to forced marriage, particularly, 18, 19 and 20. We submit that we are not in agreement with the recommendation to not introduce a forced marriage protection order as modelled by the United Kingdom.
7. **2017/18 - Joint Standing Committee on Foreign Affairs, Defence and Trade, Commonwealth of Australia - "Establishing a Modern Slavery Act for Australia".**<sup>28</sup> This inquiry endorses the recommendations made in the inquiry detailed above at point six, emphasising the importance of strengthening programmatic responses in addressing forced marriage; including the resourcing of appropriate services.
8. **2017- Legislative Select Committee on Human Trafficking in New South Wales - "Human Trafficking in New South Wales".**<sup>29</sup> This inquiry led to the introduction of the Modern Slavery Bill [2018] (NSW), which includes direct provisions to address forced marriage. We support the introduction of specific provisions within New South Wales that allows for an apprehended violence order to be made in situations of child forced marriages.<sup>30</sup> However, we submit that we are not in favour of state criminalisation of the practice of child forced marriage as the Commonwealth offence of this nature is sufficient and duplication of laws will not necessarily lead to increased prevention and/or prosecution.

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<sup>26</sup> Ibid, xxxvi.

<sup>27</sup> Joint Committee on Law Enforcement, "An inquiry into human trafficking, slavery and slavery-like practices", *Commonwealth of Australia*, (2017).

<sup>28</sup> Joint Standing Committee on Foreign Affairs, Defence and Trade, "Establishing a Modern Slavery Act for Australia- Hidden in Plain Sight", *Commonwealth of Australia*, (2017), [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Foreign\\_Affairs\\_Defence\\_and\\_Trade/ModernSlavery/Final\\_report](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/ModernSlavery/Final_report).

<sup>29</sup> Legislative Select Committee on Human Trafficking in New South Wales, "Human Trafficking in New South Wales", *New South Wales Parliamentary Library*, (2017), <https://www.parliament.nsw.gov.au/committees/listofcommittees/Pages/committee-details.aspx?pk=250#tab-reportsandgovernmentresponses>.

<sup>30</sup> Modern Slavery Bill 2018 [NSW]. Schedule 5. Section 40 Interim apprehended violence order must be made on charge for certain offences. Insert after section 40 (5) (c): (c1) 'an offence under section 93AC (child forced marriage) of the *Crimes Act 1990* (NSW).



### 3. TERM OF REFERENCE C

Reports of dowry abuse, including 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.

The giving and receiving of dowry remains prominent in marriage practices across some communities in Australia. The practice is diverse amongst these communities and it is our experience that negotiations and demands in relation to dowry can become abusive. In situations where dowry abuse occurs, the traditional meaning of dowry has been replaced with an economical practice more akin to paying to secure a marriage. This has a disproportionate impact women as there is no support (financial or otherwise) if she chooses to leave the marriage and a dowry has already been paid.

GSANZ and inTouch have seen examples of dowry abuse that span the breadth of those provided by this term of reference—family violence, modern day slavery, financial abuse, domestic servitude and murder. Illustrated examples of each are provided below with the exception of forced marriage, which is addressed at Term of Reference E. We understand dowry abuse to occur along a continuum of domestic and family violence. It is not an issue that occurs in isolation, and as such we see significant overlap in the issues within this term of reference. For example, financial and/or economic abuse almost always occurs in parallel with other violence such as sexual, physical and/or psychological.

This overlap of presentation requires a response that is holistic and comprehensive, taking into account the various different avenues of intervention and opportunities for prevention.

### 3.1 Family violence

#### CASE STUDY: UDAYATI & MAHENDRA<sup>31</sup>

Udayati and Mahendra married in India in 2016. The marriage was arranged by their parents. Mahendra was a very desirable groom as he was permanently residing and working in Australia and once married, Udayati would join him in Melbourne. This advantageous marriage of Udayati meant for her parents that the wedding and the dowry would need to reflect the good fortune of the daughter and the possibility of a good life for her in Australia. The wedding was lavish and the dowry included tens of thousands of dollars in cash, gifts of 22 carat gold ornaments and items of personal use for the bride.

As is the custom, after the wedding, the newly-wed went to live with the groom's parents and soon after, the groom returned to Australia. Udayati later reflected that the time with her in-laws was a prelude to what was to come later. She had to serve the in-laws and extended family and was verbally abused if the mother-in-law was displeased with her work. Her in-laws did not like that Udayati was employed and had financial independence in India. When Udayati joined her husband in Melbourne, two months after the wedding, all her gifts, gold and other items remained with the mother-in-law.

In Melbourne, the couple lived in shared accommodation and Udayati had to do housework for her husband and the other housemates, including cooking, washing, cleaning the house and the garden. The possibility of her finding employment was denied by her husband who told her that "her duty was to be a good wife and look after him and his mates." Mahendra became very controlling and monitored her contact with family, controlled the finances of the family as well as all the household expenses. Udayati was isolated in her new country, without family, friends or financial support.

The demands for additional dowry started as Mahendra faced pressure to send funds to his parents in India. Udayati's parents sent additional money on two occasions upon her request. When Udayati opposed Mahendra's further demands and declined to request any more money from her parents, the threats of sending her back to India started and the abuse escalated to physical and sexual violence. Udayati remained under those oppressive conditions until Mahendra called her parents directly to demand more money. The parents were not able to assist Mahendra as they had spent all their savings and had a younger unmarried daughter still living at home.

Udayati could no longer hide her situation from her family and the shame that it would bring them.

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<sup>31</sup> Case study supplied by inTouch Multicultural Centre Against Family Violence and is an account from case work staff about their direct experiences working with women where dowry abuse has been a cause of domestic and family violence. The case has been de-identified through the changing of names and other indicators which may reveal the identity of the individuals.

Udayati sought assistance when, during an argument, she was locked out of the house by her husband. A shop owner in her neighbourhood called the police and Udayati was later referred to inTouch.

The extent of dowry abuse as a causal factor in domestic and family violence is unknown due to the lack of disaggregated data that is collected about domestic and family violence in Australia. This is particularly evident in the lack of specific markers relevant to CALD communities being included in the broad analysis on domestic and family violence—additionally, these markers often missing from risk assessment tools.

As illustrated by Udayati and Mahendra's case, the issue of dowry was a contributing factor to the overall pattern of abuse and violence in their marriage. What the case also illustrates is that there are unique differences in the presentation of domestic and family violence within CALD communities. This includes the levers which are used to perpetrate violence, some of which are explored in the examples provided throughout this submission.

Of particular note is our experience of multiple perpetrator violence within the familial setting being more dominant in situations involving women from CALD backgrounds. For women from CALD backgrounds it is more common to experience violence from their in-laws, in addition to their husband. This is exemplified in Udayati's situation whereby her life living in India with her in-laws was characterised by oppression and abuse.

Family members are often the ones engaged in negotiations for dowry and differing expectations can often lead to violence and abuse being perpetrated toward women.

Secondly, the influence of migration status is a powerful lever in the perpetration of abuse and violence as is illustrated in section 5.2 of this submission—and exemplified in Udayati and Mahendra's case. This calls for specific attention to be drawn to how we understand the impact of migration on domestic and family violence within CALD communities.

It is important for the Committee to consider the unique presentation of domestic and family violence within CALD communities, and consider dowry demands as part of the continuum of abuse and violence perpetrated within this context.

### 3.2 Modern day slavery including domestic servitude

#### CASE STUDIES: Multiple extracts from inTouch family violence casework<sup>32</sup>

The victim-survivor was not in paid work. It was noted that for 21 months of living with the perpetrator the victim-survivor was doing all of the housework, such as cleaning, cooking, doing grocery shopping and caring for him in general.

Victim-survivor was forced to do all of the housework, cleaning and cooking for her husband.

Victim-survivor was working as a cleaner but was forced to stop working. She is now treated as a slave at home.

The victim-survivor was not in paid work. The victim-survivor was required to do all of the housework in a house she shared with her husband and his family.

Victim-survivor indicated that her husband was severely disabled, and during a conversation with her brother-in-law he stated that the reason they brought her to Australia was to look after her husband and 'work like a servant for them'. She explained that she was doing all the housework (cooking, cleaning, etc.)

Modern slavery is a non-legal umbrella term that is used to describe a range of exploitative practices where an individual is not free to cease providing labour or services. Slavery offences are outlined in the *Commonwealth Criminal Code (1995)* (Cth) s.70 and 271. Of particular note to this inquiry is the definition of servitude as it applies in both public and private settings.

Servitude is the condition of a person (the victim) who provides labour or services, if, because of the use of coercion, threat or deception" (a) a reasonable person in the position of the victim would not consider himself or herself to be free: (i) to cease providing the labour or services or (ii) to leave the place or area where the victim provides the labour or services; and (b) the victim is significantly deprived of personal freedom in respect of aspects of his or her life other than the provision of labour or services.<sup>33</sup>

The above case study extracts demonstrate the control and abuse experienced by migrant women in relation to employment and labour within the context of their marriage. They illustrate labour performed within a domestic setting which is unique from domestic duties that are part of the everyday lives of families and are more akin to servitude.

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<sup>32</sup> As reported in: Marie Seagrave, "Temporary Migration and Family Violence: An analysis of victimisation, vulnerability and support", *Border Crossing Observatory Monash University*, (2017):32.

<sup>33</sup> Commonwealth Criminal Code (1995) (Cth), s.270.4 "Definition of Servitude".

It is our experience that there are women from CALD backgrounds experiencing both sexual servitude and domestic servitude within their marital relationships. Domestic and family violence services regularly hear accounts from women who are in marriages where they are not free to cease providing labour either in the home or commercial businesses. They are also frequently engaging in non-consensual sexual acts with their spouse and experiencing regular threats and physical violence which maintains a pattern of control.

Women who migrate for and through marriage are highly vulnerable. They are dependent on their spouses to meet basic needs, lack the language skills to engage in Australian society, and have either limited or no information about their rights.

Australia's inquiry into establishing a modern slavery act, as noted in section 2.2, subsection 7, provided the most comprehensive overview of modern slavery in Australia to date. The issue of dowry abuse was not raised as a dominant feature in this inquiry, as it is rightly not defined as a practice of slavery. However, multiple examples of servitude were provided in domestic and commercial contexts. We encourage the Committee to review the findings of this inquiry to build a comprehensive picture of the nature of servitude in Australia, and the legal protections that are in place to address this issue. We draw the Committee's attention to the current gap in addressing servitude—ensuring that appropriate programmatic responses are in place to complement the legal framework. There is a lack of specialised services that are resourced to provide targeted outreach and support to this highly vulnerable cohort of women.

Research completed in partnership with inTouch and Monash University in 2017 on temporary migration and family violence<sup>34</sup> explored the relationship between family violence and individuals who hold temporary migration status. Importantly, the research discussed the challenges women with temporary migration status face in particular—as migration status is used as a lever for “financial, emotional, technological, psychical and sexual abuse . . . uncertainty of migration status creates additional leverage for violence and control”.<sup>35</sup>

Many of the cases presented in this research demonstrate family violence that may in some circumstances escalate to the level of slavery, and in many situations may fulfil the definition of servitude. These cases do however need to be considered in context, and must demonstrate a pattern of behaviour versus one episode for a definition of slavery to be accurately applied.

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<sup>34</sup> Marie Seagrave, “Temporary Migration and Family Violence: An analysis of victimisation, vulnerability and support”, *Border Crossing Observatory Monash University*, (2017):25.

<sup>35</sup> *Ibid*, 1

One account of this involved a victim-survivor who was responsible for all domestic work, and who at times was locked up:

The victim-survivor reported in the IVO application that when she arrived [to Australia] all the money and jewellery she was given was taken by the perpetrator and his family, and they were pressuring her to get a dowry for them. She was physically, emotionally, and financially abused, and was made to do all the housework, heavy lifting and cooking even whilst pregnant. The victim-survivor had a miscarriage due to the abuse from the perpetrators. When the victim survivor's cousin came to check in on her the victim-survivor was locked in a room by the perpetrators and [they] threatened to make her disappear if she spoke to her cousin.<sup>36</sup>

Further detail needs to be extrapolated from this case to make a definitive assessment about slavery, however, there are indicators which could mean that this case may have escalated to the level of slavery; including excessive domestic labour, being locked in a room, and having restricted freedom (e.g. not being able to speak with her cousin). This case indicates that dowry demands were also a feature. What must be made clear here is that the practice of dowry is a cultural norm in marriage for some communities, including this example. However, when exploited, it fits the overall picture of domestic and family violence in Australia, particularly with reference to economic abuse.

GSANZ and inTouch believe that dowry abuse should not be considered a practice of slavery per se, rather that it is a means of control and abuse – essentially a form of domestic and family violence - which may in turn facilitate other exploitative or violent practices such as servitude. Importantly, reform regarding dowry abuse in Australia must consider the extent to which other offences such as human trafficking, forced labour and domestic servitude interface with situations that occur within a domestic/familial context. We must also recognise that there is limited identification and referral of these offences when they occur within this context.

We support in full the recommendations produced by the inTouch and Monash University research referenced above,<sup>37</sup> with particular emphasis drawn to recommendation 3 relating to the provision of specialist services and recommendation 4 which outlines legislative responses.

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<sup>36</sup> Ibid, 65.

<sup>37</sup> Ibid, 4.

### 3.3 Financial Abuse

#### CASE STUDY: SAMIRA

Samira\* presented to financial counselling services for assistance in relation to multiple credit card debts. Samira states that it was her husband who took out the credit cards in her name because he already had some ‘trouble’ with the bank and could not take out any further loans or credit cards. Samira discloses that her marriage breakdown was due to family violence. In explaining the circumstances of how she came to be married to her husband, Samira shared that her husband paid her family a significant dowry in order to secure the marriage, which was a standard expectation within her North African community. Samira stated that her husband believed he ‘owned’ her as a result of paying the dowry and had demands of her, which when not met resulted in physical and psychological violence. Samira said her husband frequently threatened her about money, telling her that he would ‘send her back’, ‘cancel her sponsorship’, or ‘hurt her family’ if she did not agree to sign application forms to take out the credit cards when he asked. Samira presented with in excess of \$60,000 of debt on multiple credit cards that was accumulated by her husband. [\*Not her real name, adapted from financial counsellor account]

GSANZ’s experience providing financial counselling services has demonstrated an upward trend in the last decade of both male and female clients presenting for assistance in relation to financial hardship arising out of dowry.

Samira’s case is one example that highlights the multiple layers of abuse and violence that can arise out of expectations in relation to dowry, with a particular emphasis placed on forcing Samira to go into financial debt on behalf of her husband. This force involved both physical and psychological violence and Samira consenting to taking out this debt under duress.

Samira’s case is also consistent with compelling data that demonstrates that people who experience domestic and family violence are more likely to encounter issues such as poor credit records.<sup>38</sup> Financial abuse has a long term impact on women, which extends beyond the violence and abuse they may experience whilst in their marriage, including but not limited to:

- Damaged credit records
- Loss of sense of financial capability
- Poverty.<sup>39</sup>

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<sup>38</sup> Tanya Corrie, “Economic Security for Survivors of Domestic and Family Violence: Understanding and Measuring the Impact”, *Good Shepherd Australia New Zealand*, (2017): 9.

<sup>39</sup> Ibid, 19.

Section 4AB of the *Family Law Act (1975)*(Cth) defines family violence, within this definition several articles address specifically financial abuse:

(2) (g) unreasonably denying the family member the financial autonomy that he or she would otherwise have had; or (h) unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or his or her child, at a time when the family member is entirely or predominantly dependant on the person for financial support.<sup>40</sup>

The definition is limited in its applicability to financial abuse that arises as a result of dowry abuse.

This inquiry is an opportunity for the Committee to recommend a nationally consistent approach to gender based and family violence in Australia supporting recommendation 27 (b)<sup>41</sup> of the recent concluding observations from the Committee the Elimination of Discrimination Against Women (CEDAW) review of Australia.

Australia does not have a nationally consistent approach to defining and addressing domestic and family violence across Australia.<sup>42</sup> To address these gaps the Committee will need to consider law and policy across different jurisdictions. For those states where economic and/or financial abuse is recognised as a form of family violence, there will be greater readiness for activating a protection order over those states who do not. An absence of a nationally consistent approach renders ineffective and inefficient responses to women at risk of abuse and violence and also creates inequality across the country.

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<sup>40</sup> *Family Law Act (1975)*(Cth), Section 4AB, "Definition of family violence etc."

<sup>41</sup> "The lack of national legislation prohibiting all forms of gender-based violence against women prevents the equal protection of women and girls throughout the State party". Committee on the Elimination of Discrimination against Women, "Concluding observations on the eight period report of Australia", *CEDAW C/AUS/CO/8*,(2018):6.

<sup>42</sup> For example, economic or financial abuse is only recognised in legislation in Victoria, South Australia, Tasmania and the Northern Territory.



### 3.4 Murder

#### CASE STUDY: DEEPSHIKHA GODARA<sup>43</sup>

Deepshikha Godara (Ms) married Sunil Beniwal (Mr) in New Delhi in May 2007, in a marriage arranged by their families. Sunil was a permanent resident of Australia, working and living in Melbourne. Deepshikha joined Sunil in Melbourne in August 2007 after her visa was approved. In March 2011 their son, Josh Beniwal, was born. There was evidence suggesting that family violence within the marriage had started soon after arrival in Australia. Statements provided by Deepshikha's family allege that, in the first year of marriage, Deepshikha had contacted the family and told them that she was being "tortured and harassed both mentally and physically by Sunil". The family also disclosed that the initial discord within the marriage was the result of Sunil's family's demand for additional dowry. Subsequent infidelity and drinking by Sunil was reported as ongoing conflict between the spouses. The couple separated and shared custody of their son. In November 2014, they travelled to India and returned to Australia in December 2014. Deepshikha was strangled and stabbed by Sunil on 14 December 2014 at his home. He then took his own life, leaving a note with his confession and the reasons for the killing.

The case of Ms. Godara has some specific characteristics relevant to this inquiry which were illustrated by the Coroner:<sup>44</sup>

The familial, social and cultural background appear to have impacted significantly upon the dynamics of their relationship; and it is clear from the evidence that both Ms. Godara and Mr Beniwal were conscious that any decision they made about their relationship would have broader implications on their families.

This further reinforces earlier information presented about the nature of abuse and violence occurring within a familial context, and the importance of recognising this in our overall approach to domestic and family violence.

In 2014 inTouch provided confidential advice to the Coroners Court in Victoria during their inquiry into family violence related homicides involving families from an Indian background. This advice cited that "the practice of dowry is one of the most significant contributing factors to family violence, resulting in deaths".<sup>45</sup>

It also indicates that in the homicide cases that were reviewed, dowry was prevalent and could be taken to be a contributory factor to murder—but was not a factor that could be viewed in isolation.

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<sup>43</sup> Judge Sara Hinchey, State Coroner, "COR 2014 6332 finding into Death with Inquest, Deepshikha Godara", *Coroners Court of Victoria: Melbourne*, (2016), [http://www.coronerscourt.vic.gov.au/resources/88ce10ce-492a-43e6-bd23-95fb3c828635/deepshikhagodara\\_633214.pdf](http://www.coronerscourt.vic.gov.au/resources/88ce10ce-492a-43e6-bd23-95fb3c828635/deepshikhagodara_633214.pdf).

<sup>44</sup> Ibid, 16.

<sup>45</sup> Further information about the confidential advice offered to the Victorian Coroners Court can be accessed by contacting inTouch directly.

Of significant note are the barriers that exist for CALD women in accessing services, which can be hypothesised to increase the risk of domestic and family violence leading to murder. Barriers include, but are not limited to:

- *Perception of domestic and family violence*—including the abuse of dowry being a form of violence. In many CALD communities, domestic and family violence is seen as a private matter between husband and wife. Women are usually fearful of disclosing events to family members, and particularly outside services.
- *Financial constraints and dependency*—as noted in section 3.2 of this submission women are often forced to give up paid work to be available to perform excessive household labour. This eliminates their access to financial resources for survival outside of their marriage and enhances dependence on their spouse.
- *Lack of knowledge about the Australian legal system and rights within the system*—women are often not aware of services and even if they are aware, are reluctant to engage police or the court because they are fearful and untrusting (due to their experiences in countries of origin). Women experience extreme pressure from their family and community to remain in their marriage, and will face shame and isolation which can be exacerbated by the involvement of outside services.
- *Language barriers* - isolation and control that is exercised in violent relationships often limits individuals from being able to learn English. This limits access to many services which have restrictions on their access to interpreting services.
- *Fear of losing the right to reside in Australia* - due to their dependency on their husband's migration status. This is often used as a lever to continuing perpetrating abuse and violence.

There is an absence of data, at both state/territory level and nationally that illustrates the connection between dowry abuse and murder. This is particularly evident in the assessment of homicides that is routinely conducted by state and territory Domestic Violence Review Teams.<sup>46</sup> In establishing their data collection protocols the Australian Domestic and Family Violence Death Review Network<sup>47</sup> did not include specific markers for individuals from CALD communities. As a result they routinely miss deaths that may arise out of dowry abuse or other specific patterns of violence experienced by women from CALD communities.

While the practice of dowry has the potential to lead to domestic and family violence, and/or domestic homicide, we caution an approach that simply criminalises the practice. Experience from other jurisdictions, namely India, has found that “the initial demand by women’s groups focused on laws to prevent dowry-related violence . . .

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<sup>46</sup> Australian Domestic and Family Violence Death Review Network, “Data Report 2018”, *Domestic Violence Death Review Team Sydney*, (2018): 3 outlines the various different death review teams that are currently established across Australia.

<sup>47</sup> Ibid, 6.

ultimately proved to be inadequate for the task of dealing with wider domestic violence".<sup>48</sup> We reiterate the importance of embedding dowry abuse into a broader framework of abuse and violence and that specialised resources are made available to ensure that current barriers that exist for women from CALD backgrounds to access appropriate services are eliminated. We also note that in consideration of any criminal offence in relation to dowry abuse, attention must be given to the intended outcome of creating this offence. Law reform may indeed create awareness, but may not necessarily result in any prosecutions, or realistically curb the practice. A complementary approach to building capacity within communities which is focused on changing social norms will also be required.

### 3.5 Mental health outcomes for affected women

The negative impacts of domestic and family violence on mental health are well documented.<sup>49</sup> Domestic and family violence is an important risk factor affecting mental health and wellbeing, with women who experience gender-based violence reporting a higher level of severity and co-morbidity of mental health disorders, greater mental health related dysfunction, general disability and impaired quality of life. In an Australian study, 89 per cent of women exposed to three or four types of gender-based violence experienced a mental disorder.<sup>50</sup>

This compares with a lifetime prevalence rate of 43 per cent among the general population of Australian women.<sup>51</sup> Women who have experienced violence also report higher rates of past suicide attempts.<sup>52</sup>

It is our experience that individuals from CALD communities experience compounded trauma from violence. They often lack the safety base that is required to engage in help seeking. As a migrant to Australia there is reduced infrastructure that a woman has access to in order to make help-seeking safe, such as family or community supports. There is also a lack of culturally specific and inclusive services that provide pro-active outreach to women from these communities.

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<sup>48</sup> Sundari Anitha, Harshita Yalamarty and Anupama Roy, "Changing nature and emerging patterns of domestic violence in global contexts: Dowry abuse and the transnational abandonment of wives in India", *Women's Studies International Forum*, 69, (2018): 71.

<sup>49</sup> Rochelle Braaf and Isobelle Barrett Meyering, "Domestic Violence and Mental Health", *Australian Domestic and Family Violence Clearinghouse*, (2013), <http://www.nifvs.org.au/wp-content/uploads/2015/01/Domestic-Violence-and-Mental-Health.pdf>.

<sup>50</sup> S Rees, D Silove, Tien Chey, L Ivancic, Z Steel, and M Creamer et al., "Lifetime prevalence of gender-based violence in women and the relationship with mental disorder and psychosocial function", *Journal of the American Medical Association*, 306(5), 2011, pp. 513-521. (77% for anxiety disorder; 52.5% for a mood disorder).

<sup>51</sup> Maria Duggan, "Investing in Women's Mental Health: Strengthening the Foundations for Women, Families and the Australian Economy", *Policy issues paper no. 2016-02, Australian health Policy Collaboration*, April 2016.

<sup>52</sup> S Rees, D Silove, Tien Chey, L Ivancic, Z Steel, and M Creamer et al., "Lifetime prevalence of gender-based violence in women and the relationship with mental disorder and psychosocial function", *Journal of the American Medical Association*, 306(5), 2011, pp. 513-521.

Delayed help seeking exacerbates the impact of violence and in turn, generates poor mental health outcomes. As demonstrated by the ASPIRE project, consequences of domestic and family violence:

may be heightened for immigrant and refugee women in light of evidence that suggests that these women are likely to endure family violence for longer periods of time before seeking help. This potentially increases the likelihood of chronic physical sequelae and the development of severe mental disorders including suicidality.<sup>53</sup>

Some of our casework has illustrated high levels of suicidal ideation as women feel that they have no way out of their situation. They also report feelings of shame due to the social stigma that is attached to separation and divorce. They believe their families and communities would not support their separation and they would be left destitute.

The overall service sector is not sufficiently inclusive of women from CALD communities:

Immigrant and refugee women have limited access to preventative and early intervention programs across Australia and as a result are over-represented in the crisis response system.<sup>54</sup>

There is also an absence of guidelines domestically and internationally to inform the health sector response to women from immigrant and refugee backgrounds or broader CALD communities. This is further compounding the poor mental health outcomes for this cohort. This issue could be considered as part of the Mental Health Commission's National Multicultural Mental Health Project. A national reference group of civil society and government agencies should be established to map the impact of domestic and family violence on CALD communities and develop a set of guidelines to inform practice. Investing in mainstream policy and programmatic responses to address women's mental health more broadly – such as gender analysis of mental health trends and developing specific promotion, prevention and intervention and postvention for women within existing mental health and suicide prevention frameworks – would lay the foundations for this work.<sup>55</sup>

## Recommendations

1. Include dowry abuse in the definition of domestic and family violence nationally; with a clear acknowledgement that domestic and family violence can include multiple perpetrators (such as family members) not just intimate partners.

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<sup>53</sup> Cathy Vaughn, Erin Davis, Adele Murdolo, Jasmin Chen, Linda Murray, Karen Block. Regina Quaizon, Deb Warr, "Promoting community-led responses to violence against immigrant and refugee women in metropolitan and regional Australia: The ASPIRE Project: State of knowledge paper", *ANROWS*, (2018):19.

<sup>54</sup> Ibid, 14.

<sup>55</sup> Sarah Squire, "Women and children being left behind in Australia's mental health priorities", Women's Policy Action Tank (2018), <http://www.powertopersuade.org.au/blog/women-and-children-being-left-behind-in-australias-mental-health-priorities/28/2/2018>

- Extend access to protection orders and specialist services for women who experience dowry abuse.
2. Adapt data collection related to domestic and family violence to include markers specific to CALD communities, including, but is not limited to:
    - Migration status
    - Perpetrators of violence—family members and intimate partners
    - Dowry as a trigger for abuse and violence.
  3. Resource specialised services to ensure that the needs of CALD women are met inclusively and effectively. This includes, but is not limited to:
    - Development of a risk assessment tool that is inclusive of CALD specific markers of abuse and violence <sup>56</sup>
    - Coordinated service delivery models inclusive of case work, family lawyers, migration agents and bi-cultural workers <sup>57</sup>
    - Recognition of multiple perpetrators of violence, including spouses and extended family members
    - Opportunities for women to self-identify the type of service provision that they would like to access, which may not be directly related to their cultural or religious background.
  4. Recognise that dowry abuse is a means of control and abuse which may facilitate other exploitative or violent practices, such as servitude.
    - Reform regarding dowry abuse in Australia must consider the extent to which other offences such as human trafficking, forced labour and domestic servitude interface with situations that occur within a domestic/familial context.
    - Fund services to build capacity in identifying and responding to human trafficking and slavery offences that occur within the context of domestic and family violence.

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<sup>56</sup> See generally: Department of Social Services, “Hearing her voice: Kitchen table conversations on violence against culturally and linguistically diverse women and their children”, *Commonwealth of Australia*, (2015)

<sup>57</sup> As defined by the Federation of Ethnic Community Councils in Australia, a bi-cultural worker refers to: “Staff with bilingual skills who are employed either for their linguistic ability or as a generalist worker whose bilingual skills are utilised by the organisation to support the delivery of services to people with low English language proficiency...[and] a person employed to work specifically with people or communities with whom they share similar cultural experiences and understandings, and who is employed to use their cultural skills and knowledge to negotiate and communicate between communities and their employing agency” FECCA, “Australia’s Bilingual and Bicultural Workforce”, *FECCA*, (2017):4-5, <http://fecca.org.au/wp-content/uploads/2017/12/Australias-bilingual-and-bicultural-workforce-Report-2017.pdf>

5. Develop a nationally consistent approach to gender based and family violence in Australia supporting recommendation 27 (b)<sup>58</sup> of the recent concluding observations from the Committee the Elimination of Discrimination against Women (CEDAW) review of Australia.
6. Adopt a nationally consistent and holistic definition of economic abuse. The definition should at a minimum include the following examples:
  - Withholding financial support that is considered reasonably necessary to maintain a partner
  - Unreasonably preventing a person from taking part in decisions over household expenditure or the disposition of joint property
  - Controlling behaviour that denies personal financial autonomy
  - Force, fraud or coercion in obtaining social security payments
  - Force, fraud or coercion in obtaining bank loans, credit cards or other forms of financial debt
  - Force, fraud or coercion in relinquishing control over assets
  - Preventing a person from seeking, gaining or maintaining employment.
7. Develop mandatory protocols for financial institutions when working with individuals facing financial hardship as a result of economic and/or financial abuse, including dowry abuse. The protocols should include provision for financial hardship waivers when debt has been accumulated through force, fraud and coercion.
8. Add dowry abuse to the review criteria for family violence related deaths in order to establish a clearer picture about the relationship between murder and dowry abuse, which will in turn support the development of targeted prevention and intervention strategies.
9. Establish a national reference group of civil society and government agencies to map the impact of domestic and family violence, including dowry abuse, within CALD communities and develop a set of guidelines to inform practice.

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<sup>58</sup> “The lack of national legislation prohibiting all forms of gender-based violence against women prevents the equal protection of women and girls throughout the State party”. Committee on the Elimination of Discrimination against Women, “Concluding observations on the eight period report of Australia”, *CEDAW C/AUS/CO/8*, (2018):6.

## 4. TERM OF REFERENCE 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).

### 4.1 Marriage, divorce and separation

Marriage, separation and divorce are deeply influenced by cultural and social norms and values in all societies. In our work with South Asian and North African communities, this has been characterised by patriarchal structures which promote the subordination of women and the supremacy of men. In this context, men and women are raised differently from birth and expectations around gender are carried through their lifetime.

At inTouch, a large proportion of women from South Asian backgrounds whereby their marriage has been arranged by parents, family members, friends or intermediaries. A 'love marriage'<sup>59</sup> remains uncommon. Despite the fact that India is moving toward a nuclear family system, the large majority of households remain living in joint households.<sup>60</sup> It is naturally expected that the woman will move into her husband's family home and serve the needs of not only the husband but the entire household.

Decisions regarding separation and divorce are largely influenced by the wider familial ecosystem—and are widely unaccepted and considered a taboo. Socio-cultural norms which stigmatise divorce often prevent women from seeking help or taking actions to end the relationship.

Typically there is no support provided to a woman if she leaves her marriage—and she is often blamed for the breakdown of the marriage. Women who leave their marriages or who are abandoned (see section 4.2 of this submission) “are left with no choice but to try and return to their own families, although not all are accepted back because they are perceived to be a financial drain on their families' wealth”.<sup>61</sup>

Of particular interest to this inquiry is the role that dowry abuse has in separation and divorce. In South Asian communities, dowry is to be considered the property of the woman, however what this has translated to in more recent times and in situations which involve migration is more of a 'payment' to the husband and his family. This renders the woman in a powerless position to claim the dowry back should the marriage dissolve. Compounding this, is the fact that dowry generally takes the form of gold ornaments, jewellery and cash gifts which are not recorded—making it difficult for the dowry to be traced.

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<sup>59</sup> Common in South Asia, the term 'Love Marriage' refers to a “self-chosen marriage which is arranged without the involvement of family”. Katherine Twamley, “Love, Marriage and Intimacy among Gujarati Indians: A Suitable Match”, *Palgrave Macmillan United Kingdom*, (2014):68.

<sup>60</sup> A joint-household is where the husband remains living with his parents after marriage, and his wife is expected to reside within that family unit.

<sup>61</sup> Pragna Patel, Radhika Handa, Sundari Anitha, Sulema Jahangir, “Emerging issues for international family law: Part 3: Transnational marriage abandonment and the dowry question”, *Family Law Journal*, 46 (12), (2016): 1446



Without being able to access their dowry, if a marriage dissolves, women are likely to find themselves without access to their dowry and to find themselves in poverty. Their status as a 'divorced woman' means that they cannot access the same types of social or community supports typically available to other women. They also experience barriers to employment due absence of skill or language development.

There are currently no mechanisms within Australia for dowry to be a) recognised as property (typically belonging to the woman) and b) that it is factored into property settlements during separation and divorce.

#### 4.2 Transnational marriage abandonment

Transnational marriage abandonment is an emerging and growing problem globally, including in Australia. A United Kingdom study of 57 women in India<sup>62</sup> explored the situation of men who are resident in another country, who abuse their Indian-origin wives, appropriate their dowry and abandon them. The study includes accounts of women whose husbands continue to reside in Australia (n=4) following this abandonment. In this study abandonment is described in three ways:

1. A woman, migrating after marriage to her Indian-origin husband's country of residence, may be ousted or (less commonly) flee after a period of abuse.
2. A woman who has migrated with her husband after marriage may be deceived into visiting India and abandoned there, whilst her husband returns and revokes her visa.
3. A woman may be left behind with her in-laws in India after marriage whilst her husband goes back with assurances that he will sponsor her visa, but the woman is eventually ousted from their home or leaves because of domestic violence.<sup>63</sup>

The study concluded that:

. . . it could be argued that the extraction of dowry was the primary purpose of a small minority of transnational marriages, and one of the key factors of abandonment . . . in most cases however, dowry abuse occurred within the normative framework of a marital relationship and women tolerated it so long as they felt they could 'adjust' or compromise to make their relationship work.<sup>64</sup>

In 2017 the Australian Federal Police charged a man of Indian decent for the abandonment of his wife and child.<sup>65</sup> This case involved the man coercing his wife into travel to India and on his return to Australia providing false information to the

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<sup>62</sup> Sundari Anitha, Harshita Yalamarty and Anupama Roy, "Changing nature and emerging patterns of domestic violence in global contexts: Dowry abuse and the transnational abandonment of wives in India", *Women's Studies International Forum*, 69, (2018)

<sup>63</sup> Ibid, 68.

<sup>64</sup> Ibid, 82-84

<sup>65</sup> Liv Casben, "Sydney man allegedly made family fly to India against their will and tried to cancel Australian Visa", *ABC News*, (2017), <http://www.abc.net.au/news/2017-12-05/human-trafficking-sydney-husband-charged-over-wife-baby-to-india/9226616>



Department of Immigration and Border Protection in an attempt to cancel his wife's visa. The charges were laid under *the Commonwealth Criminal Code (1995)* (Cth), as an offence of trafficking persons, exiting Australia. This particular offence carries a maximum penalty of 12 years. This case demonstrates that in some situations transnational abandonment of a spouse can be considered to be an offence of human trafficking. As this submission has already highlighted it is pertinent that the findings of this Committee are consistent with existing laws and policies in relation to these issues.

The impact of this type of abandonment is multi-layered, but not least often leads to the impoverishment of the woman following the husband taking the woman's dowry and leaving them with no means of survival. It is also not uncommon for a husband to initiate ex-parte divorce proceedings in his country of residence, often without the woman's knowledge or consent; rendering them without an opportunity to reclaim their dowry and financial livelihood.

### Recommendations

10. Recognise transnational abandonment within the *Marriage Act (1961)* (Cth) and the *Family Law Act (1975)* (Cth); in doing so, we recommend that provisions are put in place to:
  - Build capacity amongst communities and non-government service providers to appropriately identify and respond to transnational abandonment. This includes raising awareness about trafficking and slavery offences, to ensure that individuals are aware of their right to report such crimes to the Australian Federal Police.
  - Develop guidelines that identify transnational abandonment in ex-parte divorce applications, ensuring that they are not successful if this is proven to be the case. This would also require resources to train judiciary on the guidelines to ensure that they are implemented.
  - Develop guidelines that identify transnational abandonment within visa cancellation applications, ensuring that visas are not cancelled if this is proven to be the case. This would also require resources to train Department of Immigration and Border Protection (DIBP) personnel on the guidelines to ensure that they are implemented.
11. Introduce cooperation agreements and enforcement mechanisms between Australia and countries whereby the practice of dowry takes place. This will assist women who have been abandoned overseas to facilitate a claim for restitution of their dowry.

## 5. TERM OF REFERENCE E

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

### 5.1 Arranged and Forced Marriage

#### CASE STUDY: NINA<sup>66</sup>

Nina\* is a 24 year old woman who was born in Australia. When Nina was 16 years old her parents took her to Turkey for a holiday. While they were there, they paid someone to change her birth certificate to indicate that she was 18 years old. Nina was subsequently forced to marry a man in his 40s. After the wedding, Nina and her husband moved to Melbourne. Following this, she was repeatedly raped and physically abused by her husband. Nina has two younger sisters. When her sisters were aged 17 and 19, they were forced into marriage by their parents. Both the younger sisters' husbands were abusive. Nina and one of her sisters were living in a house together with their husbands. Nina and her sister decided that they had had enough and told their father that they were leaving their husbands. Their father told them that this was unacceptable. He made threats against their lives and severely beat them. [\*Not her real name]

#### 5.1.1 Forced marriage

Nina's case is a typical presentation of forced marriage in Australia. The common trend involves Australian residents or citizens under the age of 18 being forced into a marriage overseas, with the expectation that the individual will sponsor their spouse for migration to Australia. Often, relatives are alleged to have organised or be organised marriage without full and free consent.<sup>67</sup> Anecdotal reports from civil society organisations responding to forced marriage show that those commonly affected include females aged between 16 and 21 years of age.<sup>68</sup>

Forced marriage was criminalised as a practice of slavery in Australia under the *Commonwealth Criminal Code (1995)* (Cth) in 2013. The true extent of forced marriage in Australia is unknown as available data is not comprehensive. Since criminalisation, the Australian Federal Police as the primary investigative body has received 230 reports<sup>69</sup> of forced marriage, a number which has gradually increased each year.

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<sup>66</sup> Magdalena McGuire, "The Right to Refuse: Examining Forced Marriage in Australia", Good Shepherd Youth & Family Service, *Domestic Violence Victoria and Good Shepherd Australia New Zealand*, (2014): 24.

<sup>67</sup> Interdepartmental Committee on Human Trafficking and Slavery, "Trafficking in Persons- The Australian Government Response 1 July 2015-30 June 2016", <https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Pages/Australias-responsetohuman-trafficking.aspx>.

<sup>68</sup> Good Shepherd Australia New Zealand, "Submission to the Legal and Constitutional Affairs Legislation Committee: Modern Slavery Bill 2018", (2018): 8.

<sup>69</sup> Commander Lesa Gale, "Public Address", *Prevention and Prosecution: Australia's Inaugural Conference on Forced Marriage*, University of Technology Sydney, 18 June 2018.

There have been no prosecutions under the *Commonwealth Criminal Code (1995)* (Cth) for a number of reasons, including that victims form the foundational evidentiary base and are often required to testify against their parents/relatives who are primarily responsible for facilitating the marriage. In this situation many victims are unwilling to participate in the criminal justice process.<sup>70</sup>

### 5.1.2 Arranged Marriage

There is a distinct legal differentiation made between an arranged and a forced marriage in Australia, with the primary distinguishing feature being consent. A forced marriage is considered to be a marriage that is entered into without giving free and full consent.<sup>71</sup> An arranged marriage is a practice whereby parties to the marriage may be introduced by others (e.g. their parents), but ultimately consent to the marriage takes place. In practice, there can often be a blurred line between an arranged and a forced marriage. Many individuals from diverse communities are raised with the understanding that their marriage would be arranged. Many experience subtle and covert pressure to comply with the arrangement.

In a recent study completed by the Australian Institute of Criminology (AIC), the practice of arranged marriage was identified as a risk factor that may lead to a forced marriage.

Victim/survivors reported that it was common for their male and female parents, siblings and cousins to have been forced into marriage in Australia, New Zealand and elsewhere. The community also had a prominent role in determining who and when a person marries. Individuals were identified as being at risk of forced marriage if they had siblings or cousins who were forced to marry, particularly if the siblings or cousins were female, and if they had siblings that chose their own partner in a community where arranged marriages were expected of them.<sup>72</sup>

The Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children, in her report to the United Nations General Assembly indicates:

. . . Marriage imposed on a women not by explicit force, but by subjecting her to relentless pressure and/or manipulation, often by telling her that a refusal of a suitor will harm her family's standing in the community, can also be understood as a forced marriage.<sup>73</sup>

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<sup>70</sup> Ibid, 8.

<sup>71</sup> *Commonwealth Criminal Code (1995)* (Cth), s. 271

<sup>72</sup> Samantha Lyneham and Samantha Bricknell, "When saying no is not an option: Forced marriage in Australia and New Zealand", Australian Institute of Criminology Research Report 11, (2018): viiii <https://aic.gov.au/publications/rr/rr11>.

<sup>73</sup> Sigma Huda, "Report of the Special Rapporteur on the human rights aspects of victims of trafficking in persons, especially women and children", *United Nations General Assembly*, (2007): 10.

### 5.1.3 Dowry abuse in arranged and forced marriages

Dowry as a central practice in marriage for members of CALD communities is often by default involved in arranged or forced marriages. What is important to note here is that dowry is not necessarily used differently in forced or arranged marriages as it is in other marriages. In the above mentioned study by the AIC only one marriage in their sample involved a dowry or other type of exchange as a condition for the victim/survivor to wed.<sup>74</sup> The study does however illustrate in another case that post a marriage taking place, “the husband and his family made various financial demands on her, including continuously harassing her and her family for more dowry”.<sup>75</sup>

It is our experience that forced marriages are often characterised by abuse and violence (as demonstrated by Nina’s case), and dowry expectations, abuse or demands form part of this experience of violence.

Criminalising forced marriage has illuminated the challenges of a criminal justice approach which we would only anticipate to have many parallels with the issue of dowry abuse. We acknowledge that in addressing issues like this the law is usually the first step and a vital tool to respond. As Triggs and Vidal state:

The reality however is that forcing a person to marry is often a reflection of gender inequality and relative powerlessness . . . Legal tools are a long way from addressing the cultural context, social complexities and gender inequality that underpin the practice. We need preventative action at the beginning of the problem, not only at the end, by working closely with families to make informed and alternative choices. While the law sets benchmarks, it is often too limited and too late to prevent the practice and change the attitudes and behaviours of those facilitating forced marriage.<sup>76</sup>

### 5.2 Australia’s Migration Program

There is some evidence that women who migrate for marriage may attract a higher ‘bride price’ because the citizenship of their spouse is a valuable asset. Research from the United Kingdom reports a similar trend: “Such marriages also enhance a women’s status within their natal families, open up routes for future migration of kin and may enable them to realise aspirations of social mobility”.<sup>77</sup> This can then be used negatively against them in the context of their migration, where in our experience women are told to feel ‘grateful’ that they have had an opportunity to come to Australia via marriage.

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<sup>74</sup> Samantha Lyneham and Samantha Bricknell, “When saying no is not an option: Forced marriage in Australia and New Zealand”, *Australian Institute of Criminology Research Report 11*, (2018): 38 <https://aic.gov.au/publications/rr/rr11>.

<sup>75</sup> Ibid, 38.

<sup>76</sup> Gillian Triggs and Laura Vidal, “Forced Marriage in Australia: Looking Beyond the Law”, *Women’s Policy Action Tank*, (2018), <http://www.powertopersuade.org.au/blog/forced-marriage-in-australia-looking-beyond-the-law/31/7/2018>.

<sup>77</sup> Sundari Anitha, Harshita Yalamarty and Anupama Roy, “Changing nature and emerging patterns of domestic violence in global contexts: Dowry abuse and the transnational abandonment of wives in India”, *Women’s Studies International Forum*, 69, (2018): 75.

A key challenge within Australia's migration program in relation to marriage is the prolonged period of time that women remain with 'temporary' migration status, which is dependent on their spouse for valid residency. In the research completed by inTouch and Monash University it was consistently found that:

Men utilise women's temporary and dependent visa status to invoke fear of deportation as a means of control and coercion . . . in at least 39 per cent of cases it was indicated that the perpetrator had specifically threatened to have the victim-survivor deported or reported to the DIBP in order to have her sent back to her country of origin. In at least 44 per cent of cases, the perpetrator had specifically articulated a threat to withdraw sponsorship of the victim-survivors visa.<sup>78</sup>

A second challenge within Australia's migration program is the use of visas outside of the spousal visa program to facilitate migration to Australia. In a case reported in the media in 2017, the woman's husband bought her to Australia on a visitor's visa and then proceeded to demand additional financial support (after securing a significant dowry) from her family to pay for the spousal visa. The woman experienced physical violence from both her husband and her husband's family—and in her view her husband's family "has colluded . . . to gouge as much as they could in dowry from her family".<sup>79</sup>

Anecdotal evidence from community service providers illustrates that there is also a pattern of repeat sponsorship of spouses when a marriage breaks down. Whilst the migration regulations in Australia involve limitations<sup>80</sup> to spousal sponsorship, we assert that individuals who have been involved in domestic and family violence, including dowry abuse should not be permitted to sponsor any further spouses to come to Australia.

## Recommendations

Given the prominent place the practice of dowry has in marriage in some CALD communities, we ask that the Committee consider recommendations in relation to forced marriage with the view that these enhanced provisions will have a positive impact on reducing dowry abuse.

12. Expand the definition of domestic and family violence nationally to include forced marriage—this will open up opportunities for wider multi-sectoral engagement and information and support services for individuals at risk.

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<sup>78</sup> Marie Seagrave, "Temporary Migration and Family Violence: An analysis of victimisation, vulnerability and support", *Border Crossing Observatory Monash University*, (2017):45.

<sup>79</sup> Debra Jopson, "The secret scourge of family violence and murder in Australian Hindu and Sikh communities", *ABC News*, (2017), <http://www.abc.net.au/news/2017-12-18/scourge-family-violence-in-hindu-and-sikh-communities/9257724>

<sup>80</sup> "A sponsor who has previously sponsored a partner or prospective marriage visa applicant cannot sponsor another partner or prospective marriage visa applicant until at least five years have passed since the first application was made.... A person may sponsor two partner or prospective marriage visa applicants in total". Department of Home Affairs, "Fact sheet-Family stream migration: partners", Australian Government, Accessed on 3/8/2018, <https://www.homeaffairs.gov.au/about/corporate/information/fact-sheets/30partners#i>

- This expanded definition also presents an opportunity to embed forced marriage into national secondary education curricula on domestic and family violence, which would raise awareness among potential victims and their peers.
- 13. Resource a prevention program for local communities founded on partnership and inclusion. Forced marriage is a complex social problem which requires multi-platform solutions, including but not limited to:
  - Engaging influential community stakeholders including men and faith leaders, who of hold and promote cultural and traditional norms. Leadership from within communities is an essential element to changing social norms.
  - Targeted community-led strategies in areas of high prevalence that focus on dialogue and localised action within communities.
- 14. Resource capacity building of mainstream and specialist workforces—including state and territory police—to understand and respond to diversity through cultural training. This training should place particular emphasis on the concepts of arranged and forced marriage, dowry and dowry abuse, and complex familial relations and practices within CALD communities.
- 15. Invest in an information development framework for data relating to forced marriage in order to identify gaps and determine priority information needs. This work should inform the collection of nationally consistent data which will establish the true nature and prevalence and support targeted interventions that show clear impact in preventing the practice and protecting individuals at risk.
- 16. De-link, in full, victim engagement and participation with law enforcement as a gateway to support.
- 17. Enhance the Australian migration program's efforts to ensure that women-not the husband who sponsors the visa- have information in language about their rights regarding migration, marriage and domestic and family violence, including Australia's law and support options.
  - Women must be provided with pre-departure and arrival information regarding Australia's position on domestic and family violence and the support available to them should they find themselves in this situation.
  - Women must also have access to ongoing information through a range of platforms and mediums which requires specific resourcing of services and supports that target CALD communities.
- 18. Strengthen the family violence provisions within the *Migration Act (1958)* (Cth) to include threats of deportation and withdrawal of visa as a component of domestic and family violence. This information should be disseminated in diverse languages via both print and electronic platforms.

- The *Migration Act (1958)* (Cth) should recognise that economic abuse, including that which stems from the practice of dowry, is a valid reason for relationship breakdown.
- 19. Extend the family violence provisions within the *Migration Act (1958)* (Cth) to visa subclasses other than spousal visas to ensure that women who are married or in de-facto relationships brought to Australia on alternative visas can access appropriate support and immigration relief.
- 20. Amend the *Migration Act (1958)* (Cth) to prohibit offenders of domestic and family violence, including dowry abuse, from sponsoring spouses to come to Australia.
  - Amend Migration Regulations (1994) Division 1.4B which places limitation on certain sponsorship and Division 1.5 pertaining to special provisions for family violence.

## 6. TERM OF REFERENCE F

Training and reporting regimes that apply to the Commonwealth, and state and territory police forces and family violence services in relation to dowry abuse.

The driving factor of dowry abuse as it applies to domestic and family violence is not defined within law or policy across Australia which would provide an explanation as to why there are no specific measures for police or service providers in identifying and responding effectively. This would also extend to limitations within the family law system. The Royal Commission into Family Violence in Victoria recognised dowry abuse as a specific form of family violence in their findings, and work is underway to amend the *Family Violence Act (2008) (Vic)* which is anticipated to see a change in recognition and response.

As noted in section 2.2 of this submission, in the Standing Committee on Social Policy and Legal Affairs' inquiry on "A better family law system to support and protect those affected by family violence"<sup>81</sup> the definition of economic abuse alone was found to be widely misunderstood; adding cultural dimensions creates further complexity.

To our knowledge there are no specific measures in Commonwealth, state or territory legislation which address capacity building and/or training in relation to dowry abuse. It is also not something which features amongst mainstream education on domestic and family violence.

It is our experience that organisations engaged in supporting women who have experienced abuse and violence where dowry abuse is a factor are small, grassroots, independently funded organisations with limited to no scope for capacity building.<sup>82</sup> This is a significant issue as expertise in both identifying this specific form of violence, and employing strategies for working with communities, is not being shared and embedded across service systems.

Embedding dowry abuse as a form of abuse and violence within the framework of domestic and family violence provides an opportunity to build on existing expertise and refine the broader sectors visibility and response toward this issue. With legislative and policy measures in place agencies such as the police can activate protective measures. Implementing any change to law and policy requires a robust strategy for community and stakeholder capacity building—that must stretch beyond awareness. As such, we recommend that resources be allocated in this area.

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<sup>81</sup> House of Representatives Standing Committee on Social Policy and Legal Affairs, "A better family law system to support and protect those affected by family violence. Recommendations for an accessible, equitable and responsive family law system which better prioritises safety of those affected by family violence", *Commonwealth of Australia*, (2017), [https://www.aph.gov.au/Parliamentary\\_Business/Committees/House/Social\\_Policy\\_and\\_Legal\\_Affairs/FVlawreform/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/FVlawreform/Report).

<sup>82</sup> Brisbane social worker Jatinder Kaur, has done some cultural sensitivity training of police and members of the judiciary but believes much more is needed. Debra Jopson, "The secret scourge of family violence and murder in Australian Hindu and Sikh communities", *ABC News*, (2017), <http://www.abc.net.au/news/2017-12-18/scourge-family-violence-in-hindu-and-sikh-communities/9257724>.



Capacity building and training should target all layers of society—partnering and working with communities on social norm change,<sup>83</sup> educating service providers on identification and response, and empowering law enforcement with tools to support women in these situations.

### **Recommendation**

21. Commonwealth, state and territory governments to allocate resources for community capacity building and training, including:
  - Partnering and working with communities on social norm change.
  - Educating service providers on awareness and response.
  - Empowering law enforcement with tools to support women facing violence and exploitation as a result of dowry abuse.

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<sup>83</sup> The “Advancing Learning and Innovation on Gender Norms (ALIGN) Platform” provides a useful model for engaging in social norm change related to gender. It emphasises the importance of understanding the underlying gender norms that often drive oppressive, exploitative or violent behaviour and presents a number of tools for communities to engage with in their work to change social norms. <https://www.alignplatform.org/>.

## 7. TERM OF REFERENCE H

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

## TERM OF REFERENCE 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.

### 7.1 International jurisdictions definition and response

#### CASE STUDY ONE- INDIA

India is one of very few countries that has legislated against dowry.<sup>84</sup> The payment of dowry is prohibited in India under the *Dowry Prohibition Act (1961)*, sections 304B and 498A of the *Indian Penal Code (1971)* and The *Dowry Prohibition (Maintenance of lists of presents to the bride and bridegroom) Rules (1985)*. These legal provisions include a mix of civil and criminal measures.

India's *Dowry Prohibition Act (1961)* prohibits both the giving and the taking of dowry. Breaches of sections of this act are punishable by prison. Likewise the *Indian Penal Code (1971)* also includes specific provisions in relation to death or cruel treatment that arise out of dowry demands.

Despite a strong criminal provision, India remains to be a country with one of the highest prevalence rates for the practice of dowry, and dowry-related abuse.<sup>85</sup> There is poor implementation of the law and as cited in section 3.4 of this submission the criminalisation of dowry has not addressed the wider spectrum of abuse and violence that arises from dowry demands. The criminalisation of dowry ultimately gave rise to the alternative practice of 'Stridhan', the Hindu term for women's property, defined in the introduction, emphasises that the practice of Stridhan is used as a means of getting around the laws.

The law has also been critiqued<sup>86</sup> for the inclusion of both 'giving' and 'receiving' of dowry as it would also penalise the woman's family, who may be facing undue pressure to comply with dowry demands.

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<sup>84</sup> Other countries include Bangladesh, Pakistan, Nepal, Kenya and Greece.

<sup>85</sup> India's National Crime Bureau reported that there were approximately 8,233 dowry related murders in 2012. This is believed to be a conservative estimate as it only refers to the number of cases that were reported. Families remain reluctant to report abuse for fear of retaliation. Leigh Seeger, "India's Dowry Culture", *International Policy Digest*, (2013), <https://intpolicydigest.org/2013/07/30/india-s-dowry-culture/>.

<sup>86</sup> Pragna Patel, Radhika Handa, Sundari Anitha, Sulema Jahangir, "Emerging issues for international family law: Part 3: Transnational marriage abandonment and the dowry question", *Family Law Journal*, 46 (12), (2016): 1445.

The approach taken by India to criminalise the practice of dowry has seen very little impact; it serves as an example of the difficulties in relying solely upon a criminal justice approach in changing a deeply entrenched social and cultural norm.

The *Dowry Prohibition (Maintenance of lists of presents to the bride and bridegroom) Rules (1985)*, does however stand to be an example of a positive civil mechanism that can protect a woman's assets including dowry in her marriage, and in the case of marriage dissolution. This measure legislates for a register of gifts to be developed and signed at the time of the marriage. We recommend a similar provision be considered within Section 90B of the *Family Law Act 1975 (Cth)*. In the absence of compliance with creating a register of gifts exchanged, flexible evidentiary provisions to prove the exchange of dowry should also be introduced. Including, but not limited to, photos, videos, and statements from family members, receipts from gifts purchased, written negotiations over text message, email or social media. This recommendation would also stand to have benefit for marriages outside of CALD communities, particularly when high net-worth unions dissolve.

#### CASE STUDY TWO- UNITED KINGDOM

The practice of dowry and the presence of dowry abuse in the United Kingdom is similar to that of Australia. Migrant diaspora communities continue to engage in the practice of dowry as a central marriage custom. Migration status is also used as a lever to demand higher dowries which when not fulfilled result in abuse and violence.<sup>87</sup>

Charity organisations in the United Kingdom are reported to have worked with "hundreds of cases in Britain . . . and these are only the tip of the iceberg".<sup>88</sup> Police in the United Kingdom launched their first-ever investigation into dowry related violence in 2014.

Like Australia, the United Kingdom makes no specific provision for dowry in either their criminal or civil law and practice. Case law<sup>89</sup> within the family law jurisdiction has however provided precedent for the recuperation of dowry when a marriage dissolves.<sup>90</sup> The ability to recoup a dowry is considered to be a key factor in an individual having the means to leave an abusive and violent relationship.

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<sup>87</sup> Transnational marriages in the United Kingdom context are discussed in detail here: Sundari Anitha, Harshita Yalamarty and Anupama Roy, "Changing nature and emerging patterns of domestic violence in global contexts: Dowry abuse and the transnational abandonment of wives in India", *Women's Studies International Forum*, 69, (2018):75.

<sup>88</sup> Pavan Amara, "Shunned, beaten, burnt, raped: The dowry violence that shames Britain", *The Independent*, (2014), <https://www.independent.co.uk/news/uk/crime/shunned-beaten-burnt-raped-the-dowry-violence-that-shames-britain-9803009.html>.

<sup>89</sup> See: *Shahnaz v Rizwan* [1965] 1 QB 390, *Uddin v Choudhury* [2009] EWCA Civ 1205, *Otobo v Otobo* [2002] EWCA Civ 949, *A v T (Ancillary Relief: Cultural Factors)* [2004] EWHC 471 (fam), [2004] 1 FLR 977; see also Appendix A.

<sup>90</sup> *Dwinderjit Kaur* was the first British woman to successfully sue for the return of her dowry through the civil court. *Ibid*.

## 7.2 Commonwealth, state and territory laws

Victoria is the only state in Australia which has recognised dowry abuse as a specific form of economic abuse. As a result of the Royal Commission into Family Violence<sup>91</sup> Victoria has begun the process of implementing this definition within the *Family Violence Protection Act (2008)* (Vic).<sup>92</sup> This approach does not duplicate legislation, but rather recognises specific forms of abuse and violence which in turn will create greater awareness and response. We recommend the Committee put forward the approach adopted in Victoria as a result of the Royal Commission into Family Violence as a nationally consistent response. We caution against the duplication of legislation, and the creation of new legislation in that it often creates additional barriers to help-seeking. Expanding existing provisions and complementing this with sector wide and community capacity building will result in an efficient and cost effective response.

Australia has the opportunity to be a global leader in developing a nuanced understanding of the practice of dowry and dowry abuse. We encourage the Committee to consider their recommendations with the best interests of the vulnerable women impacted by dowry abuse at the centre. This includes carefully designed reforms which provide access to justice for those who need it most. Any law reform must be accompanied by a suite of service sector and community capacity building measures to achieve positive outcomes and drive cultural change over time.

## Recommendations

22. Amend Section 90B of the *Family Law Act 1975* (Cth) to include a listing of gifts exchanged between both parties to a marriage so as to ensure that in the case of a marriage dissolution, this would form evidentiary grounds for the return of property, including dowry. In the absence of compliance with creating a register of gifts exchanged, flexible evidentiary provisions to prove the exchange of dowry should also be introduced. Including, but not limited to, photos, videos, and statements from family members, receipts from gifts purchased, written negotiations over text message, email or social media.
  - Add 'dowry as property' to Section 4 of the *Family Law Act (1975)* (Cth).
23. Review the case law<sup>93</sup> in the United Kingdom that has led to successful outcomes for the recuperation of dowry. This review should include considerations to amend the *Family Law Act (1975)* (Cth) and corresponding guidelines to consider the following issues in separation and divorce:
  - Mechanism to sue for the return of dowry

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<sup>91</sup> Cited in section 2.2, point 3 of this submission

<sup>92</sup> The Justice Legislation Amendment (Family Violence Protection and Other Matters) Bill 2018, has been passed by the Legislative Assembly with absolute majority, and was read for a second time in the Legislative Council on 27 July 2018. It is anticipated that this Bill will pass before the end of 2018.

<sup>93</sup> See: *Shahnaz v Rizwan* [1965] 1 QB 390, *Uddin v Choudhury* [2009] EWCA Civ 1205, *Otobo v Otobo* [2002] EWCA Civ 949, *A v T (Ancillary Relief: Cultural Factors)* [2004] EWHC 471 (fam), [2004] 1 FLR 977.; Also Appendix A

- Consideration of cultural factors that impact on divorce and financial settlements
- Determination that dowry is the sole property of the person who brought it into the marriage.

24. Consistent with the approach adopted in Victoria following the Royal Commission into Family Violence<sup>94</sup> expand the definition of family violence to include forced marriage and dowry related abuse.

- Complement this change with sector wide and community capacity building for an effective and efficient response.

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<sup>94</sup> Recommendation 156: "The Victorian Government amend section 6 of the Family Violence Protection Act (2008) (Vic) to expand the statutory examples of family violence to include forced marriage and dowry related abuse [within 12 months]" Neave, M. Faulkner, P. Nicholson, T. "Royal Commission into Family Violence: Summary and recommendations", *Victorian Government Printers*, (2016): 87. This recommendation was adopted in full, and the legislation received royal assent on 14 August 2018. See: [http://www.legislation.vic.gov.au/domino/Web\\_Notes/LDMS/PubPDocs.nsf/ee665e366dcb6cb0ca256da400837f6b/e510bf2e1aa1a1c4ca2582a30077cb80!OpenDocument](http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/PubPDocs.nsf/ee665e366dcb6cb0ca256da400837f6b/e510bf2e1aa1a1c4ca2582a30077cb80!OpenDocument)

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**SUBJECT** Legal Treatment of Dowry Abuse in England and Wales

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## Summary

In England and Wales, dowry-related abuse falls within the scope of family law and criminal law, although there is currently no legislation which focusses specifically on acts of violence or harassment associated with giving or receiving dowry. There is also no authoritative case law on dowry-related abuse, and a very limited number of cases have been reported. However, certain cases stand as authority for the premise that payments of dowry are, in general, the property of the spouse on whose behalf the dowry is gifted. This principle has enabled some women to claim back their dowries in or subsequent to divorce proceedings, whether or not abuse is alleged. Furthermore, in 1997, an unreported judgment awarded a woman damages for the harassment she claimed to have endured from her former husband's family, who had allegedly sought to extort increasingly large dowry payments from her parents. A 2006 case similarly awarded compensatory damages to a Sikh woman for the months of abuse she claimed to have suffered when living with her former husband's parents, although there was no evidence in that case that dowry had been the motive.

## Legislation

In English and Welsh law, dowry-related abuse is referred to in the definition of *domestic abuse* as set out in *Practice Direction 12J CHILD ARRANGEMENTS & CONTACT ORDERS: DOMESTIC ABUSE AND HARM* of the Family Procedure Rules 2010:

*“domestic abuse” includes any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass, but is not limited to, psychological, physical, sexual, financial, or emotional abuse. Domestic abuse also includes culturally specific forms of abuse including, but not limited to, forced marriage, honour-based violence, dowry-related abuse and transnational marriage abandonment.*

Domestic abuse is criminalised in various Acts of Parliament, including the Serious Crime Act 2015, which outlaws controlling or coercive behaviour, and the Domestic Violence, Crime and Victims Act 2004, as amended by the Domestic Violence, Crime and Victims (Amendment) Act 2012.

## Case Law

The Court of Appeal case of *Samson v Samson* [1960] 1 All ER 653 confirms that there exists no principle of English law that wedding gifts are joint gifts to both spouses; evidence of the intention of the donor may be conclusive, but otherwise it may be inferred that presents from relatives or friends of a spouse were gifts to that spouse. Property gifted to one spouse may become the

property of both by subsequent conduct. This case has been relied on by women seeking to have dowries returned once their marriage has broken down.

In 1991, the Court of Appeal upheld a Bradford County Court financial adjustment order following the divorce of a Sikh couple, in which the husband was ordered to return a £5,000 dowry paid by his former brother-in-law to his wife (*Mohinder Kaur Sulh v Balwinder Singh Sulh* [1991] WL 11780433). The Court found that the wife's brother had provided the sum of money for the benefit of the couple, to be used in due course when they set up their home. Since the marriage broke down after only a few months, the return of the whole dowry was deemed a "reasonable solution to the untying of financial affairs", having regard to section 25 of the Matrimonial Causes Act 1973, as amended.

In the case of *Singh v Bhakar* [2006] Fam. Law 1026, a Sikh claimant successfully sued her former mother-in-law (the defendant) for damages, including quasi-aggravated damages, under the Protection from Harassment Act 1997. The claimant asserted that she had suffered months of abuse during her short marriage to the defendant's son. Although there was no indication that the defendant's conduct had been intended to procure more dowry payments, the case centred on the abuse instigated by the wife's new family, rather than her husband, whose actions were largely exonerated by the Court.

In 1997, in an unreported case, Dwinderjit Kaur successfully sued her former husband and his family through the civil courts for the return of her dowry. Ms Kaur claimed to have suffered abuse at the hands of her ex-husband's family during her 18-month marriage, which included demands that her own family provide more dowry. The judgment was never made publicly available, though the case was reported by *The BBC* and *The Independent*.