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Submission to Senate Standing Committees on Legal & Constitutional Affairs

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

Thank you for this opportunity to provide a submission in response to the Senate Parliamentary inquiry into the practice of dowry and the incidence of dowry abuse. This submission has been prepared by members of the Monash Family Violence Prevention Centre (MFVPC), the Monash Migration and Inclusion Centre (MMIC) and Monash Gender, Peace and Security (GPS). More details about these three research programs and our current related research are provided in the introduction and as an appendix to this submission. Please find our submission attached to this letter. In our submission, we have drawn on our extensive research findings across multiple projects to focus specifically on the intersections of family violence, culturally and linguistically diverse communities, migration and criminal law. We would welcome the opportunity to discuss any aspects of this submission or our wider research further with the Committee.

Kind regards,
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Submission to Senate Standing Committees on Legal and Constitutional Affairs: The practice of dowry and the incidence of dowry abuse in Australia

This Inquiry represents an important opportunity to address dowry abuse and the broader frame of reference in which it must be understood and responded to.

Our submission is structured into four key sections: an outline of our research expertise and capacity, our recommendations, our response to the Terms of Reference, and our appendices, as detailed in the Table of Contents below.

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Our research expertise

Monash University School of Social Sciences

The School of Social Sciences hosts a team of experts across disciplines who work within dedicated Centres and collaboratively on key issues, particularly the intersection of family violence and migration issues. Their research strength in gender and social policy crosses all forms of data collection and analysis. These social science scholars have extensive experience in working with Government and non-government organisations in collaboration on key social and policy issues.

Monash Family Violence Prevention Centre

The Monash Family Violence Prevention Centre focuses on research examining the intersection of gender and the long-term prevention of family violence. Centre researchers work collaboratively with partners in government, social services, legal services, health and policing working to contribute to changing family violence patterns and outcomes. We identify family violence as a catastrophic and preventable social problem. The Centre draws on expertise from across the University, including social science, law, and medicine with a focus on providing an evidence base to inform primary, secondary and tertiary prevention.

Monash Migration and Inclusion Centre

The Monash Migration and Inclusion Centre at Monash University focuses on examining the experiences and attitudes of new and existing, temporary and longer-term resident populations in terms of cultural diversity, social issues, and social inclusion. This Centre of research extends to the examination of existing policy and is oriented towards creating future policy opportunities of benefit to the whole community. The exploration is driven by a network of expert academics in this field of research who seek to engage in a cross-disciplinary approach to research using a variety of research methods.

Monash Gender Peace and Security

Monash Gender, Peace & Security is a group of policy and community engaged scholars from the disciplines of politics and international relations whose research is focused in the field of gender, peace and security. Their collective research is focused on informing scholarly debate, policy development and implementation, and public understanding about the gendered politics of armed conflict and the search for peace.

Our position and recommendations

We address each of the Terms of Reference further in our submission. However, there are some important issues and specific recommendations that inform our submission and which we outline below as our key contribution to the Inquiry.

1. Women's safety must be the priority

Consistent across the significant research we have undertaken in the area of family violence, and the intersections of gendered violence and issues pertaining to migration, is that women's safety first and foremost must be the priority. It is essential that *all* women, regardless of age, visa status, nationality, culture, religion, ability, sexuality, and socio-economic status have access to support mechanisms that can respond immediately and without hesitation to their safety concerns.

We are concerned that attempting to single out specific forms of abuse, such as dowry abuse, focuses attention on the specific act (which, as we note below is poorly defined) and a defined response to that act. Such efforts divert attention from the broader circumstances of violence and coercive control that occur in the context of family and intimate partner violence. We urge the Commonwealth to recognise the importance of ensuring all forms of family abuse and economic abuse are the focus of sustained attention, investigation and effective response. It is important that we as a society not lose sight of the big picture: which is to pursue the safety of all women via working towards ending gendered violence in all its forms.

2. Clarity in terminology and scope of key definitions

We note that there is no definition for 'dowry' or 'dowry abuse' within the terms of reference, nor is there any definition of 'brideprice'. We are concerned to ensure that there is no slippage between dowry, dower, brideprice, brideservice, dowry abuse, arranged or forced marriage. We note that there are variations on practices in relation to dowry and to brideprice (which is not specified in the Terms of Reference) and that these reflect diverse cultural, faith and regional practices. We also note that dowries and brideprices do vary in size globally, but average prices are very significant (Johnston 2018). All forms of these practices can include or be connected to violence against women and girls, however we cannot presume this is always present.

3. Evidence base

Consistent through our submission is an acknowledgement of the absence of a robust evidence base in relation to specific aspects of risk for women, that reflect the diverse Australian community. We urge careful attention to robust evidence-based submissions to this Inquiry, and the importance of supporting significant and nuanced research that can enable better understanding of the ways in which women experience family violence in the community and the identification of risk, to develop informed and well-targeted strategies to enable women to access support and to live safe from violence.

4. Dowry abuse with the context of economic abuse

Economic abuse has been recognised as a key form of family violence for more than a decade (see for example Victorian Family Violence Protection Act, s. 5 (2008)). Most forms of family violence entail economic abuse and/or coercion (Ulbrick 2017): economic abuse affects all women and may take many varied and complex forms. We urge that dowry abuse be recognised more broadly within the suite of economic abuses documented in recent research findings affecting all women, including those who may face more intense or greater risks in terms of economic abuse such as women with disability (Maher et al 2018) or women from immigrant and refugee communities (Segrave 2017).

5. Role of law: migration

We draw attention to the proposed and recent changes to the Migration Act and the Migration Legislation Amendment (2016 Measures No. 3) Regulation 2016. Our research has demonstrated that recent measures, while intended to enhance women's protection, are in fact more likely to discourage and/or prevent partner and family visa applications, with the impact of ensuring migrant women who are potentially or currently in violent and abusive relationships remain outside the current framework of support measures including access to the Family Violence provisions (Segrave 2017, Maher and Segrave 2018). We are particularly concerned for women whose families have paid a substantial dowry or a brideprice, to secure a marriage who cannot return to their country of origin following their marriage or promise of marriage to an Australian permanent resident or citizen. We are also concerned that there are demonstrable practices of women being told they must repay significant debts to be 'released' from a marriage and/or secure more funds from their families to remain in Australia (Segrave 2017). In cases of brideprice, some traditions require women's families to repay brideprice upon divorce or domestic violence, while other traditions do not (Johnston 2018).

These examples point to the complexity of visa status and migration law and policy in the context of family violence. We urge the Commonwealth to interrogate the role of migration law and regulation in contributing to sustaining conditions within which victim survivors of family violence are discouraged or reluctant to come forward.

6. Role of law: criminal

We urge careful consideration in relation to the introduction of legislation in relation to dowry abuse. We reiterate the importance of careful attention and review of the existing evidence to ensure we are not determining that cultural and religious practices are abusive *prima facie*, rather than focusing on broader patterns of coercion, control and economic abuse that inform all instances of family violence. It is important that any future response clearly identifies abusive conduct in relation to dowry, and as a form of economic abuse, as the issue rather than the entire practice *per se*.

We note that the Victorian Parliament took this approach when they recently passed amendments to the Family Violence Act, which included the addition of dowry abuse and forced marriage in the suite of practices identified in the definition of family violence. This came about in response to

Recommendation 156 of the Victorian Royal Commission into Family Violence. Importantly, in the Second Reading, it was stated that:

“The Royal Commission heard that in addition to forms of family violence experience in all communities, women in some culturally and linguistically diverse communities experience specific forms of family violence, among them dowry-associated violence and forced marriage. The Royal Commission also heard that these forms of abuse may not be readily recognised as family violence by some within these communities.

Accordingly, the Royal Commission recommended expanding the statutory examples of family violence in the Family Violence Protection Act (recommendation 156) and this Bill responds to that recommendation. It is important to note that the Bill does not make the practice of taking and giving dowry illegal, but merely illustrates, by use of a statutory example, that where certain abusive behaviours are used to demand or receive dowry, this can constitute family violence.” (Parliament of Victoria 2018: [1773](#))

This approach locates dowry abuse within statutory examples of economic abuse in the context of family violence. It does not actually or symbolically criminalise cultural practices: an outcome which may have the effect of creating an additional barrier of fear for those women seeking to report family violence. In such cases legislation may have the unintended consequence of implying to women that they are complicit in the abuse.

Further, evaluation of new and specific family violence offences in Australia and overseas, such as non-fatal strangulation (Fitz-Gibbon et al 2018), and coercive and controlling behaviour (Walklate et al 2018), suggests that additional criminal law offences do not always result in better outcomes for women (Douglas 2015; Walklate et al 2018). To this end, we argue that more law is not always the answer in seeking to improve women’s safety from intimate partner violence (Walklate et al 2018).

Terms of Reference

1. The practice of dowry and the incidence of dowry abuse in Australia, with particular reference to:

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

There is no way to quantify this practice. Economic exchanges at the point of marriage are commonplace across our society and within all communities: these occur in complex ways. Dowry and brideprice are practiced in various ways by different cultural and faith groups. We urge the Committee to be clear that the cultural and faith practices that include dowry are not always exploitative. We urge careful attention to and respect for the various dowry practices between different faith and ethnic contexts. It is important that any resulting legislation or responses at the state and Commonwealth level do not assume there is only one form of transaction and that assumptions that this is a practice that is a singular cause or enabler for family violence.

Payments for marriage are pervasive internationally, practised in approximately 75 percent of human societies today (Hudson and Matfess 2017, Hudson 2016). Globally, brideprices are substantial. Anderson (2007) estimated the global average brideprice at around four times the annual income of a family, and dowries at around six times the family's annual income. We do not know the average prices for dowry and brideprice, or bridetoken, in Australia.

There are six forms of marriage payments (see Table: Types of Marriage Payments below) (Johnston 2018). The most widely practiced of these is brideprice. Brideprice is a payment of assets from the groom's family to the bride's family (Anderson 2007). Dowry is a payment of assets from the bride's family to the groom's family. Brideservice is where a groom owes a debt of labour, not assets, to the bride's family. In comparison, dowry is a payment of assets from the bride's family to the groom or the groom's family. Dower, as distinct from dowry, also comprises the groom's family paying assets, but these should go to the bride. Dower can thus insure a wife against widowhood, abandonment or remarriage (Rapoport 2005). Bridetoken is a small payment from the groom's family to the bride's family. Finally, reciprocal gift exchanges or sister exchanges exist, usually among people with little property, and are rarer (Fishburne-Collier 1988).

Marriage payment	Direction & volume of valuables
Brideprice (also termed Bridewealth)	Net assets move from groom's family to the bride's family
Dowry (also termed Marriage Portion)	Net assets move from bride's parents to the groom/ or groom's family. Sometimes this is considered the bride's property, but it most often passes into the practical control of the groom or the groom's family
Dower (also termed Bride Gift)	Net assets move from the groom and his kin to the bride. The payment is to insure her against divorce, or the death or incapacity of her husband. When dower payments are made to, or are controlled by, the bride's family, they are brideprice
Brideservice	A groom labours for a given period for the bride's family in exchange for his wife

Bride Token	Marriage payments are relatively small, but still move from the groom's family to the bride's family
Gift Exchange/ Sister Exchange	Marriage payments are reciprocal or involve the exchange of sisters and valuables

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

We are of the view that this question should not be the focus of the Inquiry, as it risks creating confusion around all forms of dowry practice. Australia should continue to encourage and support various faith and cultural practices that celebrate and empower positive familial and community relations, including dowry where it is practiced in this way. The government's focus should be on the safety of all women. This should be the foremost commitment of the Commonwealth, and all legislative, enforcement and support approaches: we should be committed to the safety and security of all women in Australia at any time, without exception. We believe that a discussion of the appropriateness and impacts of dowry as a cultural practice in Australia distract from the key goal of improving women's safety by better understanding, responding to and preventing family violence.

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

The evidence-base is inadequate in this area. It cannot be assumed that 'dowry abuse' is a 'pretext' for family violence or financial abuse. Rather it should be recognised that where dowry abuse or brideprice related violence against women and girls does occur it is specifically a form of economic abuse, and an aspect of family violence. These are intimately connected practices that form part of the control and violation that characterises family violence. It is not useful to specify that one practice is a pretext for the other, rather they occur in contexts where coercive and controlling behaviour is present, where there are unequal power relations, gendered economic inequality and where women's safety is compromised.

In Segrave's 2017 research in relation to temporary migration and family violence, dowry-related abuse was evident in relation to economic abuse, but also in relation to the ways in which visa status was utilised as a form of leverage and power in the context of family violence. Segrave's report pointed to the need for expanded risk identification practices, better systems of referral, significant national funding to support specialised services, and the critical need for investment in support infrastructure to ensure that all women, regardless of migration status, can access the support services they require to ensure their safety. Currently understandings of risk, supports and the resourcing of service provision in this area is largely inadequate.

In Segrave's research (2017) it was also clear that in some cases, there are practices that involve 'payment' for women, most often, but where these cases occur, and where there is potential deception or coercion in the migration process, we urge the utilisation of the

existing *Criminal Code* (s270 and s271) in relation to trafficking in persons and slavery-like offences. This is a preferable approach to suggesting that these practices are preceded or enabled via dowry-abuse practices. We know very little about the relationship of brideprice to slavery and trafficking in Australia, nor indeed globally. However, the conflation of dowry or brideprice with practices of slavery and trafficking offences in Australia is not a constructive development, given the known difficulty of gathering evidence and achieving successful prosecutions in such offences (Segrave, Milivojevic and Pickering 2018).

There is currently minimal evidence as to the extent to which women presenting to family violence services and/or women who are killed by a male intimate partner in Australia have histories of economic abuse, including specifically dowry-related abuse. As several Australian state and territory jurisdictions move towards collecting systematic data on women's risk profiles and as family violence coronial investigation processes are introduced across Australia there is a need to ensure that information pertaining to this form of family violence is captured and documented. It is only through the identification of relevant cases and an understanding of women's experiences in these relationships that we can move to create the evidence base necessary to develop informed responses to economic abuse, including specifically dowry-related abuse.

We know that all forms of family violence significantly and negatively impact on women's mental health, in addition to their physical health and their overall welfare (including career progression and financial stability). We also know that economic insecurity and as a result homelessness are very often outcomes of family violence for all women. These needs and negative impacts affect all women who experience family violence: they are challenges for Governments, prevention agencies, generalist and specialist service providers. We would not suggest that dowry practices or dowry-abuse practices are specifically producing distinct consequences; rather, where abuse exists it is connected to a complex range of practices that are all a part of control and coercion. As such it is better and more informed to more broadly identify and respond to the full suite of public health impacts on women and their children.

- (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;

For all women who negotiate the family law system in the context of family violence, there are known risks. In our recent research (McCulloch et al 2016), women considered that family court access orders in relation to children, granted through the Australian Family Law system, appeared to ignore, or fail to take sufficient account of, intervention orders around family violence, creating a new and critical area of risk for women and their children. In addition, prior criminal histories of violence and imprisonment were not linked with initial and ongoing family violence risk assessments, resulting in extremely risky situations for women and their children engaged in family court proceedings.

Effectively addressing forms of economic abuse, including the potential for dowry abuse, in the context of family law presents a critical opportunity to recognise the ways in which the traditional boundaries between the *Federal* family court system and state-based criminal justice and civil systems create critical safety issues for women and children experiencing family violence. These jurisdictions hold responsibilities for responding to cases occurring in the context

of family violence. This complex system results in a situation where a person experiencing family violence may be required to move between several courts and jurisdictions to have their matters heard, including a state magistrate's court, a district (County) court, a state supreme court, state children's court and/or federal family court (ALRC/NSWLRC 2010: 132). These women may also be facing visa and migration issues with all of the additional complexities and fears, including separation from children (McCulloch *et al* 2016; Segrave 2017) that can arise. As noted in Fitz-Gibbon's (2016: 27) Churchill Fellowship report 'for most persons the court environment is a foreign and confusing setting, complexities which are further exacerbated when a person is required to navigate multiple jurisdictions and courtrooms'. We note, and welcome, the current inquiry into the Australian Family Law System being undertaken by the Australian Law Reform Commission (2018).

The limited data on this issue suggests that dowry abuse can be identified effectively within this context in a nuanced way. Dowry abuse has been alleged in a small number of published family law proceedings in relation to parenting matters. The evidence of dowry abuse in these cases provided significant background, and formed part of the broader context of family violence, with the outcome being that the judge dispensed the presumption of shared parental responsibility. In at least one of these cases a protection visa was issued. Further, judicial officers do have discretion to make injunctions to prevent dowry-related abuse while family law proceedings are in place.

In recognition of the need to minimise complexities and fragmentation in legal processes, internationally specialist domestic and family violence court approaches have been developed which bring together multiple areas of law within the one court setting. For example, in the United States, the integrated domestic violence court model allows for criminal, civil and family law matters to be dealt with in the one courtroom (for further details on this model, see Fitz-Gibbon 2016). The 'one court' model was considered by the ALRC/NSWLRC (2010: 145) which concluded that it would be plausible in the Australian context albeit that implementation would give rise to 'significant' challenges in terms of the constitutional division of power between the Commonwealth and the states, and the cost of establishing a national specialist family violence court framework. This was also a key recommendation in the Coroner's report into the death of Luke Batty (Gray 2015: 105).

Working towards the integration of family law attention to family violence offers a clear pathway to create a system that better serves our objectives of keeping women and children safe and secure. Such integration could capture the multiple forms of economic abuse that occur in the context of family law, including the (ab)use of the system by perpetrators, who use the family law process for the purposes of furthering their abuse and control and also the utilisation of migration law and policy and visa status as leverage for control over women and their children. All specific forms of economic abuse, including abusive practices around dowry payments, could be addressed in this context.

Although rarely applied, family violence can be relevant to property settlement proceedings, pursuant to the Full Court decision in *Kennon v Kennon* [1997] 22 Fam LR 1 (hereinafter *Kennon*). The formulation of the *Kennon* test, however, remains problematic and dealing with family violence in the context of property settlement is vexed for various reasons (chief among them, it is prohibitively expensive to pursue). Perhaps as a result, the issue of dowry has seldom featured in the reported judgments. Despite the limited case law on dowry and the difficulties in recognising the impact of family violence in property proceedings, the recent decision in *Singh & Dala* [2017] FCCA 2945 (29 November 2017, hereinafter '*Singh & Dala* [2017]') demonstrates that the existing legislative framework is capable of adequately dealing with dowry.

The case of *Singh & Dala* [2017] is significant for a number of reasons: (1) a substantial dowry (AUD\$100,000.00 equivalent) was paid by the wife's parents to the husband and his parents; (2) it was an arranged marriage whereby both parties were unknown to each other prior to marriage; (3) it was a relatively short marriage characterised by violence from the outset; and (4) both parties were unrepresented by legal counsel, even at trial. While there was no suggestion of dowry abuse in this case, the wife alleged very serious family violence, including: coercive control, emotional, verbal and psychological abuse, and physical and sexual violence. On two separate occasions, the violence perpetrated by the husband against the wife resulted in miscarriage, the latter incident resulting in significant blood loss, requiring hospitalisation, which the husband initially refused. Then while the wife was in hospital recovering from the miscarriage, the husband struck her. Intervention orders were obtained, which the husband ignored and resumed his assaults upon the wife, including rape.

The wife was also subjected to financial abuse, and during the marriage was not permitted to obtain gainful employment 'despite her significant education at a higher level [than the husband]' [60]. The wife was 'relegated to performing mundane tasks such as cooking, cleaning and homemaking' and 'when ill with morning sickness ... the husband demanded [the wife] get off her sick bed [and] go to the kitchen and wash dishes' [22f]. Judge Wilson accepted that 'by reason ... of the ongoing presence of a dominating influence of the husband that disapproved of her pursuing her own career, [the wife] was practically unable to advance her own interests' [21]. In taking this into account, Judge Wilson considered these circumstances and the domestic labour to be significant non-financial contributions performed by the wife. This was contrasted against the husband's non-financial contributions, which Judge Wilson considered 'were positively destructive' [61]. Relying on *Kennon*, Judge Wilson deemed the wife's non-financial contributions were 'rendered all the more difficult' by reason of the family violence and an adjustment was made increasing her non-financial contributions [63]. The wife's future needs were also taken into account.

Importantly, while the matrimonial property was acquired by the husband and held solely in his name, Judge Wilson took into account the wife's contribution of dowry as 'a very significant direct financial contribution to the marriage' and remarked that 'overwhelmingly the wife's contributions exceeded those of the husband's prior to marriage' – in this way, the payment of dowry was not treated by Judge Wilson as a gift, but rather a joint asset of the property pool, resulting in a more equitable settlement in which financial justice was achieved [59]. Although dealing with family violence in the context of property proceedings is in general less than adequate, this judgment is an encouraging example of how family violence – including where dowry is a factor – can be taken into account.

In terms of dowry-related property held overseas, the Federal Circuit Court of Australia does not have jurisdiction to make enforceable orders in relation to real property under the jurisdiction of a foreign sovereign (pursuant to the principles of private international law, which has been in force unchallenged for more than a century).

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

We urge caution of slippage between forced and arranged marriage, and dowry and dowry abuse in this context. These terms are distinct and refer to distinct practices that should not be conflated. Arranged marriages can involve dowry and these cannot be assumed to be exploitive and/or abusive.

Forced marriage is a specific offence at the Commonwealth level: it sits within the remit of the Criminal Code under the Trafficking and Slavery-like offences (s270 and s271). Segrave has made a submission previously to the Committee in relation to the Modern Slavery Bill. This submission recommended that the location of Forced Marriage within this aspect of the Criminal Code should be reconsidered (Submission 93). We will not address this issue further here, other than to note that there are concerns in relation to the existing legislation and the consequences this has for the trafficking and slavery response, which is predominantly targeting the majority of its resources towards preventing forced marriage (see Interdepartmental Committee On Human Trafficking; Slavery 2016: 20) which is a reflection of the original focus of the response.

We note that in Victoria as of August 2018 (under the Justice Legislation Amendment (Family Violence Protection and Other Matters) Act 2018, Forced Marriage (and dowry-abuse) are now recognised within the remit of family violence (as an example, under 5(1)(b) of the Family Violence Act), which creates an avenue for Victorian services (police, family violence services, other welfare, health and support services) to respond to forced marriage as part of their family violence response. We would argue there are significant benefits for this framework, not least the fact that forced marriage in Australia most commonly involves the *prevention* of a crime occurring, rather than responding to a crime after it has occurred. This requires a specific skill set for practitioners, raises particular issues in relation to working with victims and utilises a specialist suite of support services not least because the victims are often young adults. We recommend that national alignment with the Victorian approach be considered to achieve consistency across Australian state and territory jurisdictions.

It is not clear how these practices are connected specifically to Australia's migration program. We address the migration law system below.

- (f) the adequacy of Australia's migration law system in terms of addressing dowry and dowry abuse, including:
 - (i) the extent to which the requirements for spouse and family visas may enable or prevent dowry abuse,

As per Segrave's (2017) research findings in relation to temporary migration and family violence: migration law and regulations contribute to heightening women's risk. It is essential that the limitations of the system, and the demonstrated ways in which women's visa status is utilised as leverage by perpetrators (who include intimate partners and extended family in Australia and overseas) is examined holistically. We are of the view that a piecemeal approach to attending to the ways in which the system currently creates and sustains risk will not result in ensuring women's safety in the short or long term. Segrave's research demonstrated that the spousal visa system, and the management of temporary migration, provides an inadequate system of support to all women who experience family violence in all its forms - including but not limited to physical, sexual, economic, and psychological forms of abuse.

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

As noted above, Segrave's (2017) research findings pointed clearly to the limitations of the Migration Act and the various disincentives for women to seek protection and support, as well as the ways in which the Act enables perpetrators to leverage migration status within the context of coercion and abuse. A singular focus which attempts to link dowry abuse, migration status and the limits of the system is not a productive or useful way to gain a sense of the inadequacies of the existing support framework in its totality. There is no avenue to reporting 'dowry abuse' but there is recognition that economic abuse is a form of family violence and should be addressed and recognised as such. Segrave details substantive reforms that would enable the broader system to better support women and argues that:

"It is critical that we respond to family violence first and foremost, in its various manifestations across Australia, and that we recognise and support all victims equally, regardless of migration status or any other point of difference. The report offers recommendations that speak to the opportunities we have as a community to ensure that migration status does not impact on how we respond to family violence and how we support victim survivors of family violence who seek assistance" (Segrave 2017: 3).

(iii) recommendations for change if necessary;

Our key recommendation is to remove migration from the equation in relation to support and to put women's safety- all women- first. If family violence is truly a national emergency, and responding to it a national priority, as was stated by the current Prime Minister when he took office, then a legislative and response framework that prioritises and ensures the safety of all women is essential.

Segrave's report provides detailed recommendations relating to information provision and data monitoring, risk assessment, risk management and service provision, and legislative response (2017: 1-7). The full list recommendations are provided in Appendix One.

- (g) training and reporting regimes that apply to Commonwealth, and State and Territory police forces and family violence services in relation to dowry and dowry abuse;

Recognition of economic abuse in all its forms is relatively recent, but current Australian research is recognising its central role in all forms of family violence (Cortis & Bullen 2016). Building capacity and training in enforcement, general and specialist service agencies for the recognition of, and response to, economic forms of family violence abuse are significant and pressing challenges. Again, we caution against an approach singling out dowry abuse. This would be short sighted and would fail to recognise the range of ways in which economic abuse can be carried out in the context of an abusive intimate partner and familial relationship.

There is no specific offence, and training should be more broadly focused on circumstances of economic abuse and its role in family violence impacts for all women, role of migration status, role of various cultural factors in contributing to and sustaining abuse. We do not advocate for attempting to train significant numbers of operational police on the details of these practices. Rather we recommend that there is an immediate need for specialisation and responsive, informed referral.

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

Governments globally have generally been reluctant to challenge male dominance in areas of “personal law” like brideprice (Goetz 2007). A few governments have tried to regulate or ban marriage payments, including India (1961), Pakistan (1976) and Bangladesh (1980), Kenya (2012) Uganda (2015) but these have been relatively unsuccessful (Anderson 2007, 161). We note that nations where dowry or similar practices have been criminalized, for example in India (498A of the Indian Penal Code), that it is well documented that these practices continue to occur (see for example, Banerjee 2013).

- (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;

We are of the view that law and further legislation is not the answer.

With regards to community norms, the key priority should be the norm and expectation of gendered violence being an unacceptable part of Australian life. Family violence will not cease via more law: rather, we need law that recognises the breadth of family violence, we need a language and risk sensitive response model that is national and evidence-led. We need Commonwealth funded services that enable all women across Australia to be safe at all times regardless of culture, ethnicity, and spiritual practice.

- (j) any other related matters.

N/A

References

- Anderson S (2007) The Economics of Dowry and Brideprice, *The Journal of Economic Perspectives* 21 (4):151-174.
- Australian Law Reform Commission and New South Wales Law Reform Commission (2010) *Family Violence – A National Legal Response*, Volume 1. Commonwealth of Australia, Canberra.
- Banerjee P (2013) Dowry in 21st-Century India: The Sociocultural Face of Exploitation, *Trauma, Violence and Abuse* 15(1): pp. 34-40.
- Cortis N, Bullen J (2016) *Domestic violence and women's economic security: Building Australia's capacity for prevention and redress: Key findings and future directions* Sydney: ANROWS, c2016. Pages; 30 cm. (ANROWS Compass, Issue 06/2016)
- Douglas H (2015) Do we need a specific domestic violence offence. *Melb. UL Rev.*, 39, p.434.
- Fishburne-Collier, J (1988) *Marriage and Inequality in Classless Societies*. Palo Alto, California: Stanford University Press.
- Fitz-Gibbon K (2016) *The Peter Mitchell Churchill Fellowship to examine innovative legal responses to intimate partner homicide*. Winston Churchill Memorial Trust: Canberra.
- Fitz-Gibbon K, McCulloch J, Maher J & Walklate S (2018) Victorian government should be wary of introducing a stand-alone offence of non-fatal strangulation *The Conversation*, 3 August. Access at: <https://theconversation.com/victorian-government-should-be-wary-of-introducing-a-stand-alone-offence-of-non-fatal-strangulation-100517>
- Gray I (2015) Finding – Inquest into the Death of Luke Geoffrey Batty. 28 September. Coroners Court of Victoria: Victoria.
- Gray I (2016) Finding – Inquest into the Death of Kelly Ann Thompson. 21 April. Coroners Court of Victoria: Victoria.
- Hudson VM (2016) WomanStats Project Database: Marriage Scale 3 (MARR-SCALE-3) Brideprice/Dowry/Wedding Costs (Type and Prevalence) <http://www.womanstats.org>.
- Hudson VM & Matfess H (2017) In Plain Sight: The Neglected Linkage between Brideprice and Violent Conflict *International Security* 42 (1):7-40.
- Johnston M (2018) The Political Economy of Gender Interventions: Social Forces, Kinship, Violence, and Finance in Post-Conflict Timor-Leste. PhD Thesis, Murdoch University.
- McCulloch J, Maher J, Fitz-Gibbon K, Segrave & Roffee J (2016) *Review of the Common Risk Assessment and Management Framework (CRAF): Final Report*. Department of Health and Human Services, Victoria. Available online: http://artsonline.monash.edu.au/gender-and-family-violence/files/2016/10/SOSS_CRAF_Final_Report_links.pdf

- Maier J, Spivakovsky C, McCulloch J, McGowan J, Beavis K, Lea M, Cadwallader J & Sands T (2018) *Women, disability and violence: Barriers to accessing justice. Final report*. Sydney: ANROWS.
- Parliament of Victoria (2018) Parliamentary Debates (Hansard) Legislative Assembly Fifty-Eighth Parliament First Session Wednesday, 6 June 2018. PDF: https://www.parliament.vic.gov.au/images/stories/daily-hansard/Assembly_2018/Assembly_Daily_Extract_Wednesday_6_June_2018_from_Book_7.pdf
- Rapoport Y (2005) *Marriage, Money and Divorce in Medieval Islamic Society*. Cambridge: Cambridge University Press.
- Segrave M, Maier J, McCulloch J, Pickering S, Fitz-Gibbon K, Avdibegovic M, Byrne R & Tanveski L (2016) *Submission to the Senate Legal and Constitutional Affairs Committee- Migration Amendment (Family Violence and Other Measures) Bill*. Department of the Senate, Canberra.
- Segrave M (2017) *Temporary Migration and Family Violence- An analysis of victimisation, vulnerability and support*. Melbourne: School of Social Sciences, Monash University.
- Ulbrick M (2017) 'Economic Abuse', Research Brief, Gender and Family Violence, Monash Arts Focus Group, <https://arts.monash.edu/music-archive/wp-content/uploads/sites/16/2017/12/RB-EconomicAbuse.pdf>.
- Walklate S, Fitz-Gibbon K & McCulloch J (2018) 'Is more law the answer? Seeking justice for victims of intimate partner violence through the reform of legal categories' *Criminology and Criminal Justice*. 18(1): 115-131.

Appendix One: Relevant research publications

Fitz-Gibbon, K. (2016) *The Peter Mitchell Churchill Fellowship to examine innovative legal responses to intimate partner homicide*. Winston Churchill Memorial Trust: Canberra.

Segrave, M. (2017) *Temporary Migration and Family Violence- An analysis of victimisation, vulnerability and support*. Melbourne: School of Social Sciences, Monash University.

McCulloch, J., Maher, J., Fitz-Gibbon, K., Segrave, M. and Roffee, J. (2016) Review of the Family Violence Risk Assessment and Risk Management Framework (CRAF) - Final Report. Prepared for the Department of Health and Human Services by the School of Social Sciences, Focus Program on Gender and Family Violence: New Frameworks in Prevention, Monash University, Clayton, Victoria, Australia. (Word-accessible version of the Final Report)

Walklate, S., Fitz-Gibbon, K. and McCulloch, J. (2018) 'Is more law the answer? Seeking justice for victims of intimate partner violence through the reform of legal categories' *Criminology and Criminal Justice*. 18(1): 115-131.

Walklate, S., McCulloch, J., Fitz-Gibbon, K. and Maher, J. (2017). Criminology, gender and security in the Australian context: Making women's lives matter. *Theoretical Criminology* (online first).

Segrave, M., Maher, J., McCulloch, J., Pickering, S., Fitz-Gibbon, K., Avdibegovic, M., Byrne, R. and Tanveski, L. (2016) Submission to the Senate Legal and Constitutional Affairs Committee- Migration Amendment (Family Violence and Other Measures) Bill. Department of the Senate, Canberra.

Ulbrick, M (2017) 'Economic Abuse', Research Brief, Gender and Family Violence, Monash Arts Focus Group, <https://arts.monash.edu/music-archive/wp-content/uploads/sites/16/2017/12/RB-EconomicAbuse.pdf>.

Appendix Two: Detailed recommendations from report on temporary migration and family

Recommendations from Segrave (2017: 4-7).

4

Recommendations

The recommendations arising from this report do not stand alone as there have been major reports released and commitments made in relation to family violence within Australia in recent years (in particular, the Council of Australian Governments [COAG] National Plan, the Victorian Royal Commission into Family Violence, and the Queensland Special Taskforce on Domestic and Family Violence Not Now, Not Ever report). This is acknowledged where relevant in the recommendations below and throughout the report. The four recommendations presented below are organised thematically, drawn from specific recommendations provided throughout the report which are consolidated here into broader recommendations for clarity and focus. They are intended to offer a clear indication of the next steps that need to be taken towards achieving a better outcome in relation to the response to family violence broadly, and for temporary non-citizens specifically.

Recommendation 1: Information provision and data monitoring

a. Information provision: Women need to be empowered via increasing their confidence and knowledge regarding rights pertaining to migration status and family violence law and support provisions. Information and communication strategies must include the following:

- i. Pre-departure and arrival information must be provided for all new arrivals regarding Australia's definition of, and stance on, family violence.
- ii. Ongoing information must be provided that targets immigrant and refugee women, and temporary migrants, via diverse media and communication platforms. Beyond printed materials, this should include digital social media, television and radio, and community awareness raising (i.e. a comprehensive text/verbal/visual communication strategy).
- iii. All information provision strategies must make clear that the definition of family violence is broad and inclusive.
- iv. All information should provide direct contacts to specialist family violence services with migration expertise in each state and territory.

b. Data monitoring and information sharing: As Victoria moves towards implementing Recommendation 143 of the VRCFV, focused on ensuring the Victorian Family Violence Index measures the extent of and response to family violence in different communities, and Recommendation 5 of the VRCFV, focused on the development of a family violence information-sharing legislative scheme (to be contained within Part 5A of the Family Violence Protection Act 2008), it is recommended that the database include:

- i. data regarding demographics, including the migration status of victim-survivors and their dependants
- ii. data regarding the family violence context, including multiple perpetrators and their relationship to the victim-survivor
- iii. data regarding the nature of family violence, including the use of deportation or other migration-related threats
- iv. immigration data regarding family violence provision applications and outcomes, and regarding partner sponsorship refusals.

Extending the information sharing across family violence service providers and agencies, to include the Department of Immigration and Border Protection, would require further legislative arrangements. It is recommended that the Victorian Government pursue this via COAG, to support a future comprehensive national monitoring database.

In addition to enabling trends to be monitored, this will enable accountability and measurement of the impact of legislative (and, in the case of migration, regulatory) change.

Recommendation 2: Risk assessment

This recommendation identifies specific risk assessment and management in relation to initial screening for victim-survivors, screening for children, and specialised risk assessment and management for immigrant and migrant women, and temporary migrants.

a. Generalist risk assessment and management: This report evidences the need for baseline questions in risk assessment and management that may have specific ramifications for women whose migration status is temporary, but that can also impact all women in situations of family violence. These questions should relate to:

- i. *Technology:* including the utilisation of technology to enact (or threaten) abuse, but also control over women's use/access to technology.
- ii. *Employment and financial security/control:* assessment should include canvassing control over and access to finances, sharing of household and other financial responsibilities, and limitations or control related to accessing employment, and the type or nature of that employment.
- iii. *Multiple perpetrators:* questions pertaining to who is enacting violence/harm/threats/control should be gathered to ensure specificity of legal response (for example, IVOs against all relevant parties) and to understand the cultural and familial context of family living arrangements.
- iv. *Counter/cross claim IVOs and other mechanisms to undermine victim accounts:* It is important for risk assessment purposes to capture where IVOs and/or other intervention mechanisms (such as mental health reports) have been used against the victim-survivor to undermine/challenge the veracity of her account of family violence.
- v. *Migration status:* if migration status is temporary, this should be a screening question to enable referral to a specialised service, where further, more specialised risk assessment and management should take place. This should be a routine assessment question, as migration status is not directly aligned with language or cultural difference per se.

b. Risk assessment for children and young people: For risk assessment related to children, information should be gathered pertaining to the:

- i. child's migration status
- ii. parent/guardian's migration status
- iii. use of migration status and/or deportation of child/parent as a threat.

c. Specialist risk assessment for immigrant and refugee, and temporary migrant women: Where migration status is temporary (regardless of whether migration status is connected to the partner), additional questions should be asked by specialised services in relation to:

- i. threats regarding migration status/deportation/withdrawal of sponsorship
- ii. threats pertaining to child/ren and separation or deportation as a result of temporary migration status
- iii. the identification of who is perpetrating violence/control/abuse, and this should extend to the nature of these practices and the location of these perpetrators (including whether they are exerting abusive and controlling behaviour from an overseas location)
- iv. the identification of indicators pertaining to potential slavery or trafficking offences, with a referral model to direct cases to the AFP and to determine the support and management model for this group of victim-survivors as their cases are reviewed and investigated in relation to these offences.

Recommendation 3: Risk management and service provision

There are two parts to this recommendation: the first focuses on the model of service provision, while the second focuses on funding gaps and creating a more comprehensive system of support for women, regardless of their migration status.⁶

a. Service provision model: The ideal risk management and service provision model should include:

- a specialist service model whereby case work, migration agents and family law experts work collaboratively to support victim-survivors.

⁶ Across Australia there are dedicated CALD family violence services in nearly all states and territories; however, they do not all have the resourcing to provide comprehensive migration, law and case management services.

This would ensure:

- efficiency of service delivery and appropriate levels of specialisation; more generalist services are not expected or able to be experts in the complexities of the intersections of migration law, family law and criminal law. Further, given the noted challenges for generalist organisations to be attuned to the specificity of needs of key populations (see VRCFV 2016), and to resource the provision of the support that may be required, specialisation (alongside consistency of referral) will ensure efficiency across the sector.
- specificity of risk assessment and management that can attend to the complexity of cultural, faith and other migration-related contexts, including knowledge and training to direct cases to the AFP as required where potential slavery or trafficking offences may be indicated. This will ensure tailored, targeted and impactful case management and service responses.
- empower women to identify preferred service provision and risk management, recognising that for some women support that is external to their community will be preferred, whereas others may opt for a management model that is inclusive of their faith community, for example.

To achieve this:

- i. The Victorian Government should consider fully funding a comprehensive model that can provide support across the state.
- ii. The Victorian Government should work with COAG to fund service provision, towards a nationally consistent approach and national funding for migration-related services that sit within the CALD/immigrant and refugee service provision sector.

b. Service and risk management funding gaps: There are noted gaps related to accommodation and income that particularly impact women whose migration status is temporary. These gaps are evidenced in this report. It is recommended that the Victorian Government develop a model of funding that will fill these gaps and request COAG to share some of these funding responsibilities in the long term. Specifically, the gaps that must be addressed are:

- i. Specific funding for accommodation (crisis and shelter) to enable services to accept women whose migration status is temporary and/or whose long-term future in Australia is uncertain, to ensure that uncertainty regarding long-term status in Australia (and the ability to rehouse in longer term accommodation) does not impact women and their children's ability to access housing to escape situations of family violence.
- ii. Immediate access to financial support for temporary partner visa holders: The Victorian Government should lead a discussion at COAG to urgently review current limitations regarding access to welfare support, to enable women to access immediate (short term) and ongoing (medium to long-term) financial support, rather than awaiting finalisation of their FVP application. Recognising that in many cases women are dependent on their partners financially, there is an opportunity for women and their children to be supported by the government, particularly as financial independence is critical in the context of family violence. This should be provided based on evidence that the majority, by far, of those who apply for FVP are successful. The cost to the community will be limited, and the benefit to women and their children substantial.
- iii. As per the VRCFV Recommendation 162, the Victorian Government should also encourage COAG to support changes to the Migration Regulations to ensure that all people seeking to escape family violence are eligible for crisis payments, regardless of their visa status.

Recommendation 4: Legislative responses

The evidence in this report has relevance primarily to the Migration Act 1958 and Migration Regulations 1994, and the Commonwealth Criminal Code Act 1995 and the Family Violence Protection Act 2008 (Vic), and the recommendations pertain to these.

a. Migration Act 1958 and Migration Regulations 1994: COAG should consider the following amendments or inclusions:

- i. *An appeal process:* potentially on the basis of evidence of family violence, to enable relevant migration processes (such as passport applications) where one parent (the perpetrator) is refusing to sign the relevant documentation as an act of control.

- ii. *Criminal law consequences for sponsors who enact family violence*: COAG should consider criminal law consequences for sponsors who enact family violence, recognising that currently a sponsor's failure to meet their obligations is a civil and administrative offence.
- iii. *Review of the family violence provision application process*: this should include more specific articulation/recognition that a genuine relationship can be difficult to prove in the context of family violence and clearer provisions need to be made regarding evidentiary requirements and when these may not be necessary, as in the case of forced marriage.
- iv. Recognition across workplaces, education services and the DIBP of the impact of family violence on visa obligations, to ensure the impact of family violence (which may include disruption to work attendance and to education attendance or completion) is recognized and visa cancellation does not occur in this context.
- v. As per the VRCFV Recommendation 162, COAG and the Commonwealth Government should review and broaden the definition of family violence in the Migration Regulations 1994 (Cth) to ensure consistency with the Family Violence Protection Act 2008 (Vic).

b. Divisions 270 and 271 of the Commonwealth Criminal Code Act and the Family Violence Protection Act 2008 (Vic): The intention, provisions and clarity of the law at both the state and federal level require careful consideration, as do the implications of different systems of support including funding models and responsibilities for family violence and trafficking and slavery victim support.

- i. In light of VRCFV Recommendation 156, for Victoria to include new offences of forced marriage and dowry-related abuse in the Family Violence Protection Act (2008), the Victorian Government should review the consistency and relationship of these laws to existing Commonwealth legislation, as well as the potential benefits to supporting the pursuit of these offences at the Commonwealth level. Specific consideration should be given to the following:
 - Policing, specialisation and jurisdiction: currently the AFP undertakes investigation related to forced marriage and the Commonwealth Government sponsors a national victim support service (contracted to Red Cross), but there needs to be clarity regarding whether the intention is to separate the Victorian and national response. There are important consequences for Victoria Police, as well as other agencies, in relation to training and specialisation with regards to these offences. There are also important considerations regarding which offences are pursued (state or Commonwealth) and which require the input of the Commonwealth Department of Public Prosecutions and the Victorian Department of Public Prosecutions.
 - The extent to which other trafficking and slavery offences (such as human trafficking, forced labour and domestic servitude) should also be considered within the suite of proposed new offences.
 - The consequences of creating specific legislation for the broader response to slavery and trafficking offences, including consideration of whether this will dilute the national response to human trafficking and modern slavery.
- ii. The Victorian Government should urge COAG to undertake a review of the existing slavery and trafficking legislation in relation to family violence and partner migration. Specific consideration should be given to the following:
 - The limited identification and referral of trafficking and slavery offences when they occur within a domestic setting/familial relationship: this should include recognition that, in addition to forced marriage, situations akin to human trafficking, forced labour, domestic servitude and other offences under the Commonwealth legislation occur within the context of partner migration but have rarely been pursued as such.
 - The implications for the existing national response to trafficking and modern slavery if states and territories begin to pursue selected offences, such as forced marriage, under relevant family violence legislation.