

# Michael O'Connell



Consulting Victimologist

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Committee Secretary Senate Legal and Constitutional Affairs Committee  
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Dear Secretary,

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

By way of brief introduction, I received the invitation to make a submission while serving as the Commissioner for Victims' Rights, South Australia. My term as that commissioner ended on 16 July 2018. Since then I have continued my voluntary work in the field of Victimology as a Consulting Victimologist. I, for example, am a member of the international guest faculty that lectures across the globe on Victimology, victims' rights and victim assistance. I am also the Secretary-General for the World Society of Victimology, a member of the International Network of Services for Victims of Terrorism and a member of Victim Support Asia, as well as a White Ribbon Ambassador, Patron of Love Hope & Gratitude Foundation, which I mention only to illustrate the scope of my voluntary work. Importantly, I do not speak for these non-government organisations, rather the pointers made in this letter are mine.

I concur with the United Nations' General Assembly that "child, early and forced marriage is a harmful practice that violates, abuses and impairs human rights and is linked to and perpetuates other harmful practices, including female genital mutilation, and human rights violations, and that such violations have a disproportionately negative impact on women and girls"<sup>1</sup> Dowries are a manifestation of coercive control<sup>2</sup>, which is a violation of the human rights<sup>3</sup>. Dowries are often disproportionate to income of the 'giver' who may be compelled to pay up to six times their annual income (Bloch and Rao 2003). Furthermore, Victimological literature confirms the mental health impact of coercive practice of dowry demands, and the potential association with domestic violence<sup>4</sup>.

Although I have not encountered a 'proven case' of coercive demand for dowry in a marriage I am aware of the practice and its prevalence in south Asia (that is countries such as India, Pakistan, Bangladesh, Nepal, Bhutan and Sri Lanka). The practice is not, however, confined to south Asia. In other countries, including Australia, it a veiled 'cultural' practice. There is in many countries, including Australia, a paucity of sound research on dowry abuse.

Such said, I have encountered a case that in brief involved a young Bangladesh woman who became a 'victim' of an arranged (arguably forced from the point of view of the woman) marriage after an 'exchange' between the woman's family and the man. The man promised to 'love' the woman; instead she became the victim of 'suspected' sexual servitude. After the man travelled to Bangladesh to meet the woman, I was told, the woman's family made a 'payment' (which might be likened to a 'dowry') then the man and woman married. The man with his wife returned to Sydney, Australia; however, after a short time he and his wife moved to Melbourne, Victoria. The man stopped the woman communicating with her mother. He would not reveal his wife's whereabouts. Desperate the woman's mother wrote to authorities in Australia, including me while I was serving as the Commissioner for Victims' Rights. My inquiry suggested that the

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<sup>1</sup> A/HRC/RES/35/16, UN GA Resolution adopted 22 June 2017, 35/16. Child, early and forced marriage in humanitarian settings.

<sup>2</sup> According to Stark (2012, p201) coercive control is "...a pattern of sexual mastery that includes tactics to isolate, degrade, exploit, and control [women] as well as to frighten them or hurt them physically.... These tactics include forms of constraint and the monitoring and/or regulation of commonplace activities of daily living, particularly those associated with women's default roles as mothers, homemakers, and sexual partners, and run the gamut from their access to money, food, and transport to how they dress, clean, cook, or perform sexually". Stark, E. 2012. Looking Beyond Domestic Violence: Policing Coercive Control, *Journal of Police Crisis Negotiations*, 12 (2), pp.199-217. DOI: 10.1080/15332586.2012.725016.

<sup>3</sup> Stark, E. 2009. Rethinking Coercive Control, *Violence Against Women*, 15 (12), pp.1509-1525. DOI: 10.1177/1077801209347452.

<sup>4</sup> See, for example, Abramsky T, Watts C, Garcia-Moreno C, Devries K, Kiss L (2011) What factors are associated with recent intimate partner violence? Findings from the WHO multi-country study on women's health and domestic violence. *BMC Public Health* 11(109). O'Connor M (2017) Dowry-related domestic violence and complex-post-traumatic stress disorder: a case report. *Australasian Psychiatry* 25(4): 351-353.

woman was 'forced' into sexual servitude. I am also led to believe that a joint police and NGO operation resulted in the woman being 'rescued'. My inquiry in addition revealed that there was, and I suspect still is, a lack knowledge of the cultural practice of arranged marriages for reasons that amount to abuse, even criminal victimisation.

Cultural competence is a necessary and important element of victim-centric responses. As the police are likely to be a 'first responder' to victims of dowry abuse, they should be trained in cultural competency. Likewise, cultural competence should be integral in legal education, but also offered as professional development for prosecutors, magistrates and judges. I also urge the development and implementation of training for other service providers, such as health professionals and family law professionals to enhance their cultural competence. I concur with the RANZPC that "Without an understanding of the cultural factors at play, some professionals may find it difficult to engage with those who have suffered or perpetuated dowry abuse."<sup>5</sup>

Australia is highly regarded for its anti-trafficking law and programmes, but it is still a place of destination for victims such as that mentioned.

Although in the case example the source of the violence was the husband, this is not always the case as perpetrators can also be the perpetrator's parents and extended family, and even the victim's family. In some cultures, the wife is expected to live with the husband and his family, which can magnify her vulnerability and reinforce the husband's sense of impunity.

More recent, authorities asked me to assist two mid-teenage Australian girls who under the impression they were travelling to the middle east for a holiday; however, discovered on arrival that the purpose was arranged marriages. The girls asked for help to avoid becoming married. Immediate help was forth-coming from Australian authorities, but the girls were financially dependent on the 'others', so did not have the means to fund their return airfares. Fortunately, South Australia law allows for grants from the Victims of Crime Fund to be paid in such circumstances<sup>6</sup>, so the girls return was able to be paid to ensure their safety. Their safety was a paramount consideration.

The South Australia law is unique. Other jurisdictions have schemes to assist victims of crime, however, to be eligible the crime must happen in that jurisdiction. Australia's federal authorities are not supported by a like law. Furthermore, there is no federal charter or declaration on victims' rights.

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<sup>5</sup> Royal Australian and New Zealand College of Psychiatrists (RANZCP), Submission 9.

<sup>6</sup> Section 31(1)&(2) of the Victims of Crime Act 2001, which is a unique authority given to the Attorney-General of South Australia and his or her delegate, such as the Commissioner for Victims' Rights.

To clarify, Australia has nine criminal codes – six state, two territory and one federal. It also has nine different financial assistance schemes predominantly for victims of violent crime. All states, except South Australia, and both mainland territories require that the violent crime happen in the respective jurisdiction. A federal scheme is available to Australian residents who become victims of terrorism overseas. Thus, should an Australian become the victim of non-terrorist violent crime overseas they would not be eligible for state-funded financial assistance, unless they were ordinarily resident of South Australia.

I recommend that either a dedicate fund, like the South Australia Victims of Crime Fund, be established or a clearly defined budget allocation be made so the Department of Foreign Affairs can readily assist Australians who become victims of crime overseas. The fund or budget allocation should be paid from a percentage of money paid as federal fines. A similar funding model exists in the United States for the federal Victims of Crime Fund.

I am aware of a 'case' involving a married couple from Africa who came to Australia; the husband on an employment visa and the wife on a partner visa. Their marriage was grounded in custom as well as law. The husband 'allegedly' had an affair and resorted to violence against his wife. A domestic violence service, with some financial assistance from me then as Commissioner for Victims' Rights, provided emergency housing for the wife. Support services, however, are not always available and/or accessible by victims thus leaving them vulnerable. Despite best efforts, authorities refused her a visa independent of her husband and she had to return to Africa. Prior to her return, however, the husband 'allegedly' told his family and the wife's family that his wife had been a 'bad wife' and blamed her for the failed marriage. His victim-blaming placed his wife in a personally precarious position. She returned to Africa, for instance, fearful for her personal safety. Conversely, the husband apparently suffered no adverse consequences as a result of his behaviour.

This is not the only 'case' where Australia's visa law resulted in the victim of domestic violence either leaving the country or returning to their violent partner. In another case of domestic violence, the victim encounter so many obstacles that she elected to return to her violent husband then move to another Australian state that advance her husband's impunity. In other words, the law can be a source of secondary victimisation (that is in practice the law causes a 'second injury').

Similarly, on occasion of arranged marriages there have been cases where on the wife's arrival in Australia the husband has demanded extra dowry. When his demand is not satisfied, the husband might withdraw sponsorship of his wife that can result in her deportation, if she fails to return to her country of origin, which she might not be able to afford.

Dowry abuse is as said above coercive control through financial abuse that it is prevalent in some communities. As per my example and others I am aware of, there are cases where a person, usually a woman, enters Australia under a dependent visa. She often does not have financial independence – that is she is dependent on her spouse. She is socially isolated in a foreign place and her spouse might also confine her social network thus ‘trapping’ her into a near total dependence. Australia’s law forbids her working, even if she is skilled. As per my example, there might also be young children involved.

Consistent with the Legal Services Commission submission<sup>7</sup>, I note that legal advice suggested “women sponsored on a partner visa can access the family violence provisions under the Migration Regulations”, yet also as then Commissioner I funded ‘legal aid’ for a several women who had entered Australia on visas to enhance their access to justice.

My knowledge and experiences suggest that too many victims of domestic violence who entered Australia on a visa face the threat of visa cancellation and deportation. As mentioned, the ‘sponsor’ appears to suffer no adverse impact despite (often it seems to me) his behaviour, which raises the question of whether there should be sanctions for the sponsor in such cases. Perhaps, fines could be paid into a fund, as recommended, to assist victims.

I also join the Legal Services Commission call for “the definition of ‘relevant family violence’ in the Migration Act (Cth) 1958 be expanded to encompass acts of coercion and control.

The Australian Government has international obligations in relation to victims of crime in general and victims of specific crime such as human trafficking. It is also committed to the elimination of violence against women; for example, the Government of Australia and UN Women agreed a four-year Partnership Framework in which they reaffirm their shared commitment to eliminate discrimination against women, advance women’s empowerment and gender equality, and eliminating violence against women in the Asia-Pacific region as well as throughout the world.

Mindful of such, it seems to me and others that Australia’s family law system neither adequately addresses dowry nor related abuse in divorce cases (including property settlement proceedings). As pointed out by the South Australia Legal Services Commission, “the family law only considers assets and properties that are held in Australia but not those overseas. This has a huge impact on a wife whose family may have parted with their life savings only for the marriage to end within a short time. The

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<sup>7</sup> Legal Services Commission of South Australia, Submission 12

husband benefits from the dowry leaving the wife penniless". Instead, the sum of the dowry should be considered as part of a marital property settlement, no matter where the exchange happened.

In a legal-politico sense, Australia has an obligation to tackle this omission in order to preventing those who illegally seek and pay dowries as well as those who benefit in countries such as India. To do so, would be consistent with Australia's stance against all forms of violence against women.

Against the backdrop of the pointers made above, I recommend that:

- The definition of family violence in the Family Law Act 1975 be amended to include dowry abuse.
- The collection and analysis of data on dowry abuse be improved.
- Cultural competence training and education programmes be developed and implemented for all service providers, including emergency service such as police, victim assistance workers, medical practitioners and psychologists as well as psychiatrists
- The Migration Act 1958 and associated regulations be amended to include dowry abuse, and such amendment be applicable to relevant visa categories, such as the dependent visa and international student visa.
- Victims' rights and other information pertinent to Australia's strong opposition to violence in any form, in particulate violence (including dowry abuse) and discrimination against women be readily available, especially whenever DFAT / Immigration & Border Control interact with people, such as those applying for visas to enter Australia.
- Information on where victims of violence, including victims of dowry abuse, be included in pre-arrival stages of entry, on arrival and in any post-entry dealings.
- A fund, like the Victims of Crime Fund in South Australia, be established (funded from among other sources a proportion of money collected as fines and a surcharge on federal offenders) and readily available to authorities to timely assist victims of violence under federal law.

Yours faithfully,

Michael O'Connell AM APM