

**SUBMISSION TO THE FEDERAL ATTORNEY-GENERAL'S DISCUSSION PAPER
CRIMINAL DIVISION:**

FORCED AND SERVILE MARRIAGE

Submission on behalf of the Asylum Seeker Resource Centre, InTouch Multicultural Centre Against Family Violence, Fitzroy Legal Service and Project Respect

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We are pleased to have the opportunity to comment on the Discussion Paper released by the Criminal Division of the Attorney General on Forced and Servile Marriage.

About the contributors:

Fitzroy Legal Service (“FLS”) is one of the oldest community legal centres in Australia. Located in the inner Melbourne suburb of Fitzroy, the FLS first opened in 1972 to provide casework to clients who live, study or work in a catchment area consisting of Fitzroy, Collingwood, Abbotsford, Brunswick, Richmond, Carlton, East Melbourne and Clifton Hill.

FLS’ service operates both day and night services to best meet the needs of clients and to take full advantage of the many highly experienced lawyers and willing legal students who provide their valuable skills on a pro bono basis.

The service also plays a significant role in the areas of law reform and community legal education, which is closely bound up with the practice of preventative law, demystification of the law, self-help and empowerment. Fitzroy Legal Service also has a long history of running public interest cases.

FLS’ experiences in the casework practice serve to inform its law reform and community legal education activities, and it is therefore hope that this submission will be given careful consideration during the review of these laws.

Project Respect is a non profit, community based organisation established in 1998 to work with, empower and support women in the sex industry. Project Respect is committed to addressing violence against women in the sex industry, and working to prevent exploitation and enslavement of women by the industry - including those who are trafficked for prostitution.

Project Respect led the 2003 national campaign on trafficking for prostitution that resulted in the Federal Government’s \$20 million package on trafficking. The Organisation is widely recognised as a leading support agency for women trafficked into the sex industry in Australia as PR continues to lobby, advocate and advise on issues related to trafficking, as informed by its direct, individual work with women who have been trafficked. Project Respect also established and continues to run the first shelter for women who have been trafficked into the sex industry in Australia.

In addition to its anti-trafficking work, Project Respect does direct work with other women in the sex industry, including outreach to brothels, information provision, support and referrals, and leadership training for women in the sex industry.

Project Respect conducts and publishes research on the sex industry and trafficking of women into the sex industry, undertakes community education, advocacy and policy development. More information about Project Respect can be found at www.projectrespect.org.au.

InTouch Multicultural Centre Against Family Violence (InTouch) is a state-wide organisation providing a range of culturally sensitive programs and services to

women and children from CALD backgrounds experiencing family violence. First founded in 1985 and initially known as the Refuge Ethnic Workers' Program, and until November 2010 as the Immigrant Women's Domestic Violence Service (IWDVS), InTouch is now the lead agency in Victoria providing the following services:

- a specialist response in the form of case and co-case management services to women and women with children from culturally and linguistically diverse (CALD) communities who are experiencing family/ domestic violence;
- community education and raising awareness of family violence issues within CALD communities;
- training in cultural sensitivity to family violence and homelessness sector agencies and workers;
- research and projects related to family violence issues in CALD communities;
- lobbying and advocacy.

The Asylum Seeker Resource Centre (ASRC) protects and upholds the human rights, wellbeing and dignity of asylum seekers. The ASRC is the largest provider of aid, advocacy and health services for asylum seekers in Australia. Most importantly, at times of despair and hopelessness, the ASRC offers comfort, friendship, hope and respite.

The ASRC is an independent, registered non-governmental agency and it does not receive any direct program funding from the Australian Government. The ASRC relies on community donations and philanthropy for 95 per cent of its funding. It employs just 24 full time staff and relies on 600 dedicated volunteers. The ASRC delivers services to over 1,000 asylum seekers at any one time.

In this submission, the views of the contributing organisations are represented as a whole except where expressly indicated.

Our views in this submission address the two questions raised the Attorney-General's discussion paper, namely,

Are additional legislative and non-legislative measures needed to provide

- a) Adequate deterrence against the practices of forced and servile marriage;*
and
- b) Appropriate protection for victims of forced and servile marriage?*

What is our experience of forced and servile marriage?

Whilst the Attorney-General's discussion paper mainly examines situations of families forcing young women into marriage in Australia, it is our experience that women have come (mainly from South East Asian countries, and also Russia) are *deceptively recruited* into servile marriages.¹

These can occur in a number of ways.

Women holding Spouse visas

We have had experience with women who meet Australian citizens (either from Anglo Saxon backgrounds, or their own cultural background) and after a period of courtship, the women agree to marry the Australian citizen. Upon the granting of a provisional spousal visa, the women arrive in Australia believing that they are married in a free and loving relationship. Unfortunately, they soon learn that the relationship they have found themselves in is not a genuine relationship, and the women soon becomes a domestic, and often, sexual servant of the husband.

Li's story

Li came from a South Asian country. She met her husband in her home-town and fell in love with him. They married, and he obtained a spouse visa for her. After living in Australia for a week, another woman, Sue, came to the home and claimed to be the husband's wife. It transpired that Sue was in fact the husband's de-facto wife and he had no intention of ceasing his relationship with Sue. In fact, Sue and the husband had a child together—something that he never told Li about. Whilst Sue did not live with them, the husband saw her on a regular basis and informed Li that due to their child, he intended to provide Sue with the proceeds of the sale of the home in which he and Li were currently living. The husband also sexually assaulted Li on numerous occasions, and she fell pregnant. Li was extremely distressed, humiliated and scared. Her husband told her that if she went to the Police, she would be deported. She spoke no English, had no social supports and was completely reliant on the husband for house-keeping money and the like.

Whilst Li suffered significantly in her situation, once she came to the attention of the authorities, she was assisted greatly. After coming into contact with the police due to the family violence occurring in the home, Li was immediately referred to social supports and placed in a refuge. She was able to obtain a permanent resident visa through the domestic violence provisions available in the Migration Act. Li was very frightened to testify against the husband in relation to the sexual and physical assaults he perpetrated against her, and therefore no charges were laid against the husband in this regard. Whilst it is possible for the police to have charged the husband with the assaults pursuant to the relevant Crimes Act, there was no

¹ The ASRC have a number of examples where women have been forced into marriage in their country of origin and then sought the assistance after they have fled their marriage. These examples are discussed further in this paper.

possibility for the police to charge him with the deceptive recruitment into a servile marriage.

Other visas

InTouch and Project Respect have encountered a number of other cases where women are deceptively recruited into servile relationships, and unfortunately, due to the visas that the women may be holding, it is difficult to either i) assist the woman to stay in Australia or ii) have available social services for her.

Lucy's story

Lucy came to Australia on a student visa. She entered into prostitution as a way to meet her financial needs in Australia. She formed a relationship with a client, Bill, but she had to return to her home country as she did not meet the conditions on her student visa (number of hours of study). She continued her relationship with Bill on a long-distance basis. As she came from a 'high risk' country Bill sponsored her to visit Australia on a tourist visa. She came to Australia again on the understanding that she was in a relationship with Bill. Bill then forced her to work in brothels and also forced her to provide him with the proceeds of her earnings. He also physically assaulted her on a number of occasions. Lucy sought assistance from InTouch who referred her to the Police. Unfortunately, Lucy's case was very difficult to prove as she came on a tourist visa, and had a limited ability to legally be allowed to work in Australia. By engaging in work in the brothel, she was in fact breaching the conditions of her visa. Furthermore, Bill did not have any prescribed responsibilities as a sponsor of Lucy except that she was to return to her country at the end of her visa period. Lucy eventually returned to her home country.

Mala's story

Mala came to Australia on a tourist visa and met Tom, an Australian citizen of the same cultural background as her. Tom and Mala entered into an intimate relationship and Mala gave birth to a child not long later. Tom was physically abusive to Mala and she was required to essentially become his domestic servant. Whilst pregnant with their second child, Mala found out that Tom has sponsored another woman on a spouse visa to come to Australia from the same country she came from. She sought initial assistance from InTouch but returned after Tom promised her that he would apply for a spouse visa for her. Mala believed that Tom had commenced the application for a spouse visa and paid the first fee. After giving birth to her second child, Mala fled due to the violence, and returned to InTouch for assistance whereupon InTouch commenced applying for a domestic violence visa. However, InTouch soon discovered that Tom *never* applied for a spouse visa on Mala's behalf and therefore, the domestic violence visa could not apply as it is a requirement that there be a spouse visa on foot before this provision can be utilised.

Mala has had no choice but to return to her home country.

It is our contention that the concept or definition of 'servile marriage' should include women who are deceptively recruited for servile marriage or relationships. Whilst it

is possible to amend the Marriage Act (as referred to in the Discussion Paper), we recommend that the Attorney-General positively consider the legislation to expressly include “servile marriages and intimate relationships.” It is our experience that if the proposed legislation only refers to married relationships, then cases such as the ones referred to in this submission will continue unchecked.

What do we recommend as non-legislative solutions?

In considering non-legislative solutions, it is imperative to look at ways to prevent the behaviour from occurring. This is possible in situations where a sponsor is involved, even those sponsoring on tourist visas.

The Department of Immigration and Citizenship (DIAC), embassies and relevant community organisations should be involved in this process. However, it is not sufficient for the DIAC to simply inform the woman of a sponsor’s history of sponsorship, as this can sometimes result in the woman being further victimised.

It is also important to ensure that women who are subsequently forced into servile relationships are not blamed for the violent and deceptive behaviour of the perpetrators who have caused them to be in these situations. The women in these situations have merely exercised their choice to come to Australia. In coming, they have not agreed to be subject to violence, intimidation and deception.

Mary’s story

Mary was sponsored on a spouse visa by an Australian citizen. She came to Australia with her young child. Both she and her child were subjected to severe family violence and sexual abuse at the hands of the sponsor. The sponsor had previously been involved in sponsoring six other women. When the matter came to the attention of DIAC (due to the lodging of a visa under family violence provisions), the DIAC originally contended that as Mary had known of the history of the sponsor prior to coming to Australia, she therefore may be required to return to her country. The DIAC maintained that as they had warned Mary about the sponsor’s history, that Mary should bear the full responsibility of her choice to continue to come to Australia.

It was only after Mary’s support services advocated fiercely on Mary’s behalf to her right to protection that her application for residence under the family violence provisions was successful.

We recommend that the DIAC should play a more proactive role in the protection of women who have been forced into marriage and servitude. Reprimanding victims for the violent actions of their sponsors (who are Australian citizens) excuses violent, illegal behaviour and works to further entrench family violence within society.

It is submitted that as the DIAC have records of serial sponsors, they should use this information in collaboration with embassies and appropriate Australian community organisations to engage with women who may be the victims of serial sponsors. It is suggested that the DIAC identify a number of risk factors or ‘red flags’ that can alert the DIAC to the possible risk of harm to a woman who is being sponsored by a serial sponsor.

In the country of origin, the embassy may firstly provide information to the woman about the sponsor's history of sponsoring a number of women in relation to the tourist (or other) visa and if there has been any negative repercussions for women who have been previously sponsored. If the woman chooses to continue her application, the DIAC could then work with community organisations who may contact the woman to provide information to her about the illegality of family violence in Australia. Upon her arrival, she could be linked in with a bi-lingual community organisation (such as InTouch) who could contact her periodically for support or information in the event that she needs it. In the event that a violent incident was to occur, the community organisation could link the woman directly to the police for any criminal interventions.

The ASRC has assisted a number of clients who have been forced to marry in their country of their origin- come to Australia to accompany their spouse (and family) and then have sought assistance with applying for protection visas to remain in Australia after leaving their marriage in Australia. The women in these circumstances require protection from the Australian government as they are at very high risk of persecution from their family and their husband's family if they were to return to their country of origin. In the event that they have children, there are additional risks to the children's safety if they are returned to their country of origin, bearing the stigma and shame of their mother's actions.

The adversarial nature of the Department's investigations is an unsuitable tool to assess the migration claims of women in these circumstances. The focus of the Department in assessing the 'credibility' of a case often results in a woman being interrogated and examined on matters that are not in fact the substance of the claim. A woman's credibility can then be considered questionable when in fact the reason why she might answer some questions incorrectly, or minimise her experience could be attributable to the abuse and trauma she has suffered a victim of family violence. It is very common for victims of family violence to fail to disclose the circumstances of their relationship, or to minimise the harm they are suffering. This is a common coping mechanism for victims who are forced to live with the terror of family violence. Often, victims do not disclose the full extent of their experiences until many years after they have left the relationship.² Additionally, a woman may not disclose certain information for fear that her family in her country of origin will be at risk of harm.

Eva's story

Eva was 18 years old, and came from a Middle-Eastern country. She accompanied her husband to Australia as he was enrolled to study here. They had a young child as well. Whilst in Australia, and in her country of origin, the husband subjected Eva to constant family violence in all its forms. Eva was unaware that she could contact the Police to intervene, and was extremely isolated due to her age, culture and language. When the husband

² See research conducted by the Australian Bureau of Statistics , 1996 *Women's Safety Survey*; Australian Bureau of Statistics 2005, *Personal Safety Survey*; numerous publications from the Australian Domestic and Family Violence Clearing House (www.austclearinghouse.unsw.edu.au), numerous publications for the Domestic Violence Resource Centre Victoria (www.dvrc.org.au)

wanted to return to their country of origin, Eva desisted and informed her husband that she wanted a divorce. Violence ensued and the police were called. Eva came in contact with InTouch who, with the assistance of the ASRC, made an application for protection so that she did not have to return to her country of origin.

Her case detailed the persecution she would receive as a divorced woman in her country of origin and the social stigma and discrimination that would ensue if she returned with her child to their country of origin.

During her migration application, the DIAC delegate expressed doubt about her allegations of persecution as there was a delay between the time she arrived and her subsequent report to the Police about the family violence. Furthermore, the delegate was concerned that she did not seek medical assistance in relation to her injuries. Her original application was rejected.

At the Refugee Review Tribunal, the decision was over-turned as it was acknowledged that due to the long history of violence, her age, culture and isolation were all contributing factors to the 'delay' in reporting. She was finally granted a protection application.

It is submitted that DIAC workers undergo a series of training specifically aimed at raising awareness within the Department of gender sensitivity and the long-term impact of family violence and sexual assault upon victims.

Furthermore, it is recommended that DIAC employees be trained extensively in cultural awareness and sensitivity, particularly when making assessments of claims that involve allegations of forced marriage and servitude.

We submit that the DIAC should be mindful to not victimise or humiliate applicants whilst undertaking its duties. The adversarial approach of the DIAC establishes an oppositional attitude that is unnecessary and even harmful to an applicant's health, particularly in circumstances such as those discussed in this submission. As the DIAC is not a prosecuting agency, it does not need to play an accusatory role in the assessment of migration applications.

Finally, it is recommended that the Government resource DIAC to provide funding to support women in these situations. We submit that the funding should be similar to the funding available to clients who fall within DIAC's current Complex Case Program.³ Women without permanent residence status who experience family violence are not eligible for any supports or resources, and they often have no income. Furthermore, it can be difficult to place them in the refuges as there is no exit plan for them (as due to their visa status, their ability to be resettled into the community is limited) and as such, they require more intense support for longer periods.

³ This program is accessible to refugees who have been in Australia for 5 years or less and are experiencing multiple issues that require support

Conclusion

On 16 February 2011, the Australian government launched *The People of Australia – Australia’s Multicultural Policy*. This new policy prioritises strengthening access and equity. The Australian Government has emphasised the need for Australian Government services to be responsive to clients disadvantaged by cultural or linguistic barriers⁴. A key DIAC objective is to “promote a society which values Australian citizenship, appreciates cultural diversity and enables migrants to participate equitably.” Mary, Lucy, Li, Mala and Eva’s stories illustrate that equitable participation means more than formal equality under the law. Arriving at equitable participation means creating a landscape where there is fair and just equality of outcomes for all.

Mary, Lucy, Li, Mala and Eva’s experiences demonstrate the huge hurdles that immigrants in forced and servile marriages have to accessing services and being able to ‘participate equitably’ in Australian society. These inspirational women have shared their experiences to assist us to work collaboratively to strengthen access to equity for people in forced and servile marriages. We suggest that as Australia implements *The People of Australia – Australia’s Multicultural Policy* we should take this opportunity to look to the experiences of women like Mary, Lucy, Li and Mala in implementing these new policies

⁴ *The People of Australia – Australia’s Multicultural Policy*, 8.