

## GETT-RECALCITRANCE, JEWISH DIVORCE AND FAMILY VIOLENCE: A SUBMISSION TO THE ROYAL COMMISSION INTO FAMILY VIOLENCE

*Prepared by Talya Faigenbaum and Ann Wollner\**

### Executive Summary

1. Australian Jewish couples usually marry according to Australian and Jewish Law. When their marriages breakdown, they similarly have to divorce according to Australian and Jewish Law<sup>1</sup>.
2. Parties to a failed marriage cannot move on with their lives unless they obtain a divorce under both Australian and Jewish Law.
3. Unless the parties obtain a divorce under Jewish Law, they cannot remarry under Jewish Law. Any child of a woman who has not been divorced according to Jewish Law is classified as a 'Mamzer' (usually incorrectly translated as 'a bastard') and is subject to severe stigma and a compromised social status.
4. Under Australian Law, marriage and divorce is governed by legislation of the Commonwealth of Australia, which confers the relevant status on the parties.
5. Under Australian Law, divorce is gender neutral and procedural. Neither party can control or manipulate the process. Once the conditions for divorce are satisfied, the divorce is granted by the Commonwealth of Australia.
6. Under Jewish Law, a Rabbinical Court generally cannot confer a divorce or order that a divorce be granted. The power of the Rabbinical Court is limited to ensuring that the procedural requirements of the Jewish divorce are satisfied.
7. Under Jewish Law, divorce is a contractual arrangement, which generally requires the voluntary agreement of the parties to the marriage. Once the agreement to divorce is reached, the husband delivers the Bill of Divorce to the wife who accepts it.

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<sup>1</sup> Jewish Law throughout this submission refers to Orthodox Jewish Law

8. The Jewish Bill of Divorce is known in the Jewish Community by its Aramaic name, "*the Gett*".
9. The process of a Jewish Divorce is generally simple and procedural. Parenting and property matters are determined separately according to Australian Family Law. Only the Australian Family Courts can make enforceable orders regarding property and parenting arrangements.
10. Although many Jewish divorces are resolved procedurally, there are a growing number in which the process is controlled or manipulated by one party, mainly the husband, to extract property or parenting concessions or to torment and harass the other party.
11. In these cases, the husband controls or manipulates the divorce process by refusing to give his wife a Gett and thereby preventing her from remarrying according to Jewish Law and from having children who can fully participate in the Jewish community.
12. This act of control or manipulation is called 'Gett refusal' or 'Gett recalcitrance'.
13. Wives affected by Gett refusal are known in the Jewish community as '*Agunot*' (plural) or '*Agunah*' (singular). '*Agunah*' means chained or anchored in Hebrew. An *Agunah* is chained to an unwanted marriage because her husband refuses to relinquish his control over her. These women complain of feeling powerless, manipulated and coerced.
14. Traditional Jewish Law has attempted to resolve Gett refusal through mediation and social pressure. In extreme cases of recalcitrance, a Jewish Rabbinical Court can issue a contempt order or '*Seruv*'. In these cases, the Victorian and Australian Courts can assist to persuade a recalcitrant husband to act.
15. The Government of Victoria has recognised that non-violence is a fundamental social value that must be promoted.
16. The Government of Victoria has recognised that family violence is a fundamental violation of human rights and is unacceptable in any form, in any community and in any culture.

17. Gett refusal is an example of family violence which operates within the Jewish community of Victoria.
18. Gett refusal may be described as emotionally or psychologically abusive; economically abusive; threatening; coercive; controlling or dominating in a way that it affects the wellbeing of the spouse and any future children.
19. The Government of Victoria has enacted the *Family Violence Protection Act 2008* (the Act) to maximise safety for children and adults who have experienced family violence, to prevent and reduce family violence to the greatest extent possible and to promote the accountability of perpetrators of family violence for their actions.
20. Gett refusal falls within the definition of “family violence” in sections 5 to 7 of the Act.
21. In order to implement the Government’s desire to rid all communities and cultures of family violence, it is recommended that:
  - 21.1. the following amendments be made to the Act:
    - 21.1.1. the following example be added to the examples of ‘family violence’ in section 5 of the Act or to the examples of ‘emotional or psychological abuse’ in section 7 of the Act.
 

*“refusing to give a Jewish Bill of Divorce, otherwise known as a Gett”.*
    - 21.1.2. Part 3, Division 5, Section 81(2) of the Act be amended to include the following specific condition relating to religious divorce refusal:
      - (i) *in circumstances of a religious divorce and in the case of a respondent who married according to the tenets of a religious faith, requiring the respondent to comply with any reasonable order, direction or recommendation of a religious court that is recognised by people of that religious faith as having authority in matters of religious divorce. For the purposes of this*

*paragraph, the expression "religious faith" may mean a denomination, branch or stream of a religious faith.*

21.1.3. Part 3, Division 5, Section 81(2)(e) of the Act be amended to include a further specified place from which the respondent can be excluded,

*including ..... and the place of worship that the protected person usually attends or is known to attend, for religious or ceremonial services*

21.2. the Victorian Government direct Victoria Police to prosecute Gett refusal as a contravention of Family Violence Intervention Orders.

## 1. Jewish Divorce - An Introduction

- 1.1. A major issue confronting Australian Jewish families today is that of coercive, manipulative and abuse behaviour, perpetuated primarily by men against women and which occurs after the marriage has in reality come to an end.
- 1.2. Under Jewish Law, the final dissolution of a marriage is brought about either through the death of a spouse or in the formal delivery by a husband to a wife of a divorce document, known by its Aramaic name as a 'Gett'. To be valid, the document must be given freely by the husband and willingly accepted by the wife, under the supervision of a Jewish Rabbinical Court (also known in Hebrew as a '*Beth Din*').
- 1.3. According to Jewish Law, a civil divorce document cannot dissolve the marriage.
- 1.4. In the event that a Jewish divorce is not finalised in the above manner, the wife may not re-marry and any children born to another partner will be classified as '*Mamzarim*'. They are the offspring of an adulterous union and subject to severe stigma and a compromised social status under Jewish law.
- 1.5. A husband's ability to re-marry according to Jewish law is similarly curtailed, although not to the same extent. The husband's future children are not classified as '*Mamzarim*' and they will not suffer similar same social stigma within the Jewish Community.
- 1.6. Gett refusal is often used by husbands to coerce, control and manipulate their spouses. As a result, women who are not living with their husbands, but whose husbands refuse to give them a Gett and release them from their marriage are known in the Jewish Community as '*Agunot*' (plural) or '*Agunah*' (singular). '*Agunah*' means chained or anchored in Hebrew. An Agunah is chained to an unwanted marriage because her husband refuses to relinquish his control over her.

## **2. The Jewish Divorce Process**

- 2.1 Jewish divorce is a contractual arrangement between the parties to the marriage. The consent of both parties to the divorce is nearly always required.
- 2.2 Although the Jewish Rabbinical Court can make recommendations or directions regarding a divorce, it cannot order either party to grant a divorce.
- 2.3 This is unlike divorce under Australian Law, where the Commonwealth of Australia determines the matrimonial status of the parties (*Family Law Act 1975 (Cth)*).
- 2.4 In a Jewish divorce, the role of the Jewish Rabbinical Court is to supervise the proceedings of the divorce ceremony and to ensure that all the religious elements are complied with.
- 2.5 The main element of the Jewish divorce ceremony is the Bill of Divorce or 'Gett'.
- 2.6 The Gett itself is a relatively short document written in Aramaic which severs the matrimonial bond between the couple and permits each spouse to remarry according to Jewish Law.
- 2.7 The Jewish Divorce ceremony involves the Gett being reviewed and signed by two authorised witnesses.
- 2.8 The ceremony takes place under the supervision of a Jewish Rabbinical Court, with the Gett being physically given by the husband to the wife.
- 2.9 After receipt of the Gett, the wife exits the room with it in her hand and then returns, displaying the Gett to those present. This act symbolizes the severance of the relationship between the couple and demonstrates that the wife is no longer constrained by her former marriage.
- 2.10 In instances of impracticality, such as when the parties reside in different locations, or undesirability, such as the existence of a Family Violence Intervention Order, the ceremony can be performed through a proxy with a power of attorney.

2.11 The Jewish divorce ceremony is simple and usually takes about 15 minutes to complete.

2.12 Generally the Jewish Divorce process runs smoothly, as there are no parenting or property issues to be resolved.

2.13 Problems arise when one of the spouses refuses to cooperate in the divorce proceedings.

### **3. Gett Recalcitrance and the Role of a Rabbinical Court**

3.1. Throughout Jewish history, Rabbinical Courts have had varying degrees of authority to resolve end of marriage conflicts. Their power and influence have depended on a range of factors including location, the level of autonomy granted by the governing authority and the degree of insularity or assimilation of the Jewish community at the time.

3.2. These factors remain relevant today in explaining the diversity in modern Rabbinical Courts, particularly the differences between Rabbinical Courts operating in Israel and those operating in Jewish communities throughout the world.

### **4. The Melbourne Beth Din**

4.1. The sole religious-judicial body of the Victorian Orthodox Jewish Community is the Melbourne Beth Din. It is currently comprised of three judges and a registrar, each of whom is a senior and experienced rabbi.

4.2. The Melbourne Beth Din ensures that a Gett is properly executed and that all formalities and technical religious requirements relating to the Jewish Divorce ceremony are complied with. It cannot order the parties to divorce.

4.3. The Melbourne Beth Din has jurisdiction in Victoria and in other states with small Jewish communities. New South Wales is under the auspices of the Sydney Beth Din.

4.4. Although some Rabbinical Courts arbitrate on commercial, communal and financial conflicts, the Melbourne Beth Din currently presides only over issues of conversion and divorce. It does not resolve property or parenting issues, when parties are separating.

## **5. Gett Recalcitrance and the Melbourne Beth Din**

- 5.1. Gett recalcitrance or refusal is generally abhorred in the Jewish community. It is seen as vindictive, coercive and exploitative.
- 5.2. As the Melbourne Beth Din does not have the power to order the parties to divorce, it adopts other methods to persuade the recalcitrant spouse to divorce.
- 5.3. Initially these methods include mediation by the Melbourne Beth Din, community rabbis or spiritual leaders.
- 5.4. Where these attempts of persuasion prove unsuccessful, the Melbourne Beth Din may issue a summons or a series of summonses (in Hebrew '*a hazmanah*' (single) or '*hazmanot*' (plural)), requiring the recalcitrant party to attend at the Beth Din.
- 5.5. Persistent failure to attend enables the Beth Din to make a contempt order or in Hebrew a '*seruv*', against the recalcitrant spouse.
- 5.6. The contempt order indicates the seriousness with which Gett refusal is viewed by the Melbourne Beth Din. However, the contempt order is unenforceable and no disciplinary consequences flow from it.
- 5.7. The contempt order enables further and more robust efforts to persuade recalcitrant husbands to attend at the Beth Din. These efforts may include withholding privileges associated with performing religious ceremonial rites, ostracism by the community and the use of Australian and Victorian courts.
- 5.8. Such efforts will not be seen as abrogating the recalcitrant party's religious autonomy.
- 5.9. Historically, the methods of persuasion, which did not involve State courts were more successful than they are today.

## **6. Gett Refusal in Victoria**

- 6.1. The Melbourne Beth Din indicates that though the rate of divorce has been steady over the past few years, divorce applications received this year suggest that the rate will be almost double in 2015.



- 6.2. While many of the divorce applications are resolved procedurally, there are a growing number of cases in which Gett refusal features.
- 6.3. It is difficult to ascertain numbers of Gett refusals because a Gett refusal may last for a few days or multiple decades and is often not reported.
- 6.4. The period of Gett refusal might be short, if the spouse is prepared to forego her rights and yield to demands for additional property or more favourable parenting arrangements.
- 6.5. It may be indefinite, if the motivation of the recalcitrant husband is perpetual control. A woman currently living in Victoria has endured Gett refusal for 37 years.

## **7. Examples of Gett Refusal**

7.1. Described below are two cases of Gett refusal that have come before the Melbourne Beth Din in recent times.

### **7.1.1. ██████████ and ██████████**

7.1.1.1. ██████████ and ██████████ were married for over ten years and had two children.

7.1.1.2. The marriage was characterised by acts of family violence. ██████████ would constantly check ██████████'s phone messages and emails, interrogate her as to her whereabouts and threaten to take the children away from her if she ever left.

7.1.1.3. ██████████ made minimal contributions to the family's finances, but would make use of ██████████'s earnings in a manner that excluded her and would repeatedly tell her that she was lazy and needed to work harder.

7.1.1.4. On several occasions, ██████████ was physically violent and would repeatedly lock ██████████ out of the house at night where she would have to wait until the morning or seek shelter at a friend's home.

7.1.1.5. When ██████████ finally left, ██████████ found her and urged her to return home, promising to change. However, when his behaviour

continued, [REDACTED] fled the house and obtained a Family Violence Intervention Order against him.

7.1.1.6. Over the next three years, [REDACTED] attended at least six Family Violence Intervention Order hearings and multiple Family Court hearings, as [REDACTED] repeatedly abused the legal process by seeking adjournments and using other procedural tactics to force delays.

7.1.1.7. [REDACTED] has been charged with multiple contraventions of the Family Violence Intervention Order and has been found guilty of three contraventions, resulting in the imposition of fines of around \$2,000.

7.1.1.8. It has now been more than one year since the Family Court made its final parenting and property orders, over 18 months since the civil divorce decree issued and almost three and a half years since final separation of the parties.

7.1.1.9. [REDACTED] has promised and then retracted his promise to give [REDACTED] a Gett. He has still not given [REDACTED] a Gett.

7.1.1.10. [REDACTED]'s refusal to release [REDACTED] from the failed marriage is a clear extension of the abuse and control that he exerted over her during the relationship.

#### **7.1.2. [REDACTED] and [REDACTED]**

7.1.2.1. [REDACTED] and [REDACTED] were married overseas before moving to Australia 25 years ago. The couple has three children.

7.1.2.2. After about ten years, the marriage ran into trouble and for the next four years [REDACTED] made various attempts to repair the relationship and seek the assistance of marriage counsellors. [REDACTED] rebuffed these attempts and continued to verbally abuse [REDACTED] calling her 'stupid' and 'crazy'.

7.1.2.3. Finally, [REDACTED] felt that she had no choice but to end the marriage and relocate with her children to a different state. This she did.

7.1.2.4. [REDACTED] has obtained a civil divorce from [REDACTED] but she has not been able to obtain her Jewish Divorce from him.

7.1.2.5. Even though eight years has elapsed since separation and there has been no contact between [REDACTED] and [REDACTED] in that time, [REDACTED] still refuses to give [REDACTED] a Gett. [REDACTED] has told those who have attempted to intercede on [REDACTED]'s behalf, including their children, that ' [REDACTED] will get her Jewish divorce over my dead body'.

7.1.2.6. [REDACTED]'s refusal is his final attempt to assert power over [REDACTED] in the wake of her decision to break free. He is clearly motivated by a desire to control, humiliate and hurt her.

## **8 Gett Recalcitrance as a Form of Family Violence**

- 8.1 The examples above reveal how some Jewish men use Gett refusal as a tool to inflict punishment, retribution and emotional pain on their wives.
- 8.2 Jewish men can use Gett refusal to dominate and perpetuate control over their spouses' lives, by preventing them from remarrying under Jewish Law and from having children who can fully participate in the Jewish community.
- 8.3 They can also use Gett refusal during separation as leverage to extract property or parenting concessions in Australian Family Law proceedings.
- 8.4 Women affected by Gett refusal feel powerless, manipulated and coerced. Their wellbeing is compromised by their inability to move forward and seek new relationships within the Jewish community.
- 8.5 Women interviewed for the purpose of this submission have described their lives while being unable to get a Gett as 'being in a prison without the bars', 'being in limbo' and as 'being forced to remain connected to a person that only wants to hurt me'.
- 8.6 One woman, when asked why she continued to adhere to her faith replied that she did so, 'because he took everything else from me...my faith is the last thing I have left'.
- 8.7 It is submitted that Gett refusal falls within the definition of 'family violence' under the *Family Violence Protection Act 2008 (Vic)* (the Act) in that:

- 8.7.3 it involves the overt or subtle exploitation of power imbalances within the meaning of paragraph (e) of the Preamble.
- 8.7.4 it is designed to torment, intimidate, harass or be offensive and is therefore emotionally and psychologically abusive: Sections 5(1)(a)(ii) and 7;
- 8.7.5 it is designed to coerce the other party to relinquish or forego financial assets associated with the marriage and is therefore economically abusive: Section s5(1)(a)(iii) and 6;
- 8.7.6 it is motivated by attempts to extract concessions in end of marriage proceedings and is therefore coercive: Section 5(1)(a)(v);
- 8.7.7 it is controlling or dominating in a way that it affects the wellbeing of the spouse and any future children: Section 5(1)(a)(vi).
- 8.8 Gett refusal is an example of family violence which operates within the Jewish community of Victoria.
- 8.9 A Gett was never intended under Jewish Law to be wielded as a tool by the husband to torment his wife and/or extract property or parenting concessions from her.
- 8.10 The controlling, coercive and manipulating behaviour expressed as Gett refusal is abhorrent to the Jewish community and to the wider Victorian and Australian communities.
- 8.11 The Government of Victoria has recognised that family violence is a fundamental violation of human rights and is unacceptable in any form, in any community and in any culture (The Act, Preamble (b) and (c)) .
- 8.12 The Government of Victoria is determined to prevent and reduce family violence to the greatest extent possible and to promote the accountability of perpetrators of family violence for their actions (The Act, Section 1).
- 8.13 To achieve these goals the Government of Victoria enacted the Act.

## 9 Recommendations

9.1 In order to implement the Victorian Government's desire to rid all communities and cultures of family violence, it is recommended that

9.1.1 the following example be added to the examples of '*family violence*' in section 5 of the Act or to the examples of '*emotional or psychological abuse*' in section 7 of the Act.

*refusing to give a Jewish Bill of Divorce, otherwise known as a Gett.*

9.1.2 Part 3, Division 5, Section 81(2) of the Act be amended to include the following specific condition relating to religious divorce refusal:

(i) *in circumstances of a religious divorce and in the case of a respondent who married according to the tenets of a religious faith, requiring the respondent to comply with any reasonable order, direction or recommendation of a religious court that is recognised by people of that religious faith as having authority in matters of religious divorce. For the purposes of this paragraph, the expression "religious faith" may mean a denomination, branch or stream of a religious faith.*

9.1.3 Part 3, Division 5, Section 81(2)(e) of the Act be amended to include a further specified place from which the respondent is excluded:

*including ..... and the place of worship that the protected person usually attends or is known to attend, for religious or ceremonial services*

We look forward to assisting the Commission in relation to the matters set out in this submission as may be required.

**29 May 2015**

## ENDORSEMENTS

This submission has been approved and endorsed by the following organisations:

**1. NATIONAL COUNCIL OF JEWISH WOMEN OF AUSTRALIA (Vic)**

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**2. JEWISH COMMUNITY COUNCIL OF VICTORIA**

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