



## ISSUES PAPER

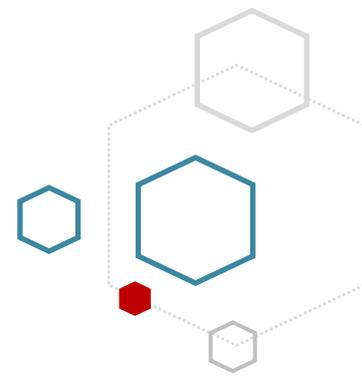
# Forced Marriage and Family Violence

### Facts

- ◆ The true extent of forced marriage in Australia is unknown as available data is not comprehensive. Since criminalisation it is understood that the Australian Federal Police have received over 230 reports [1] of forced marriage. A number which has gradually increased each year.
- ◆ The common trend concerning forced marriage in Australia involves Australian residents or citizens under the age of 18 being forced into marriage overseas, with the expectation that the individual will sponsor their spouse for migration to Australia. Often, relatives are alleged to have organised or be organising a marriage without free and full consent. [2]
- ◆ Anecdotal reports from civil society organisations responding to forced marriage show that those commonly affected include females aged between 16 and 21 years of age.
- ◆ There have been no prosecutions under the *Commonwealth Criminal Code 1995* (Cth) which criminalised the practice of forced marriage in 2013. A significant barrier to criminalisation is that victims are the foundational evidentiary base and are required to report and testify against their parent/relatives.

### The practice of forced marriage is complex and intersectional.

- ◆ The inclusion of forced marriage within the definition of modern slavery is unique to Australia's domestic legislative environment. Few, if any, other jurisdictions frame forced marriage within the distinct context of slavery and/or modern slavery.
- ◆ The international instrument that defines certain forms marriages as slavery is *The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and the Institutions and Practices Similar to Slavery 1956*. The Convention is limited to marriages which contain three particular pre-conditions detailed in Article 1 (c), [3] pre-conditions which are not always present in the occurrence of forced marriage within and outside of the Australian context.
- ◆ There are various different overlapping definitions of the practice. This multilayered status is reflected in several other international instruments which outline the rights associated with marriage. [4] As a result, a standalone definition of forced marriage is not possible.



## Forced Marriage is a form of family violence

Emerging evidence on how forced marriage manifests in Australia indicates a need to adapt current approaches to shift toward a response that is targeted, holistic and cross-sectoral.

The approach of criminalisation has presented a number of challenges, including limited participation in the framework by individuals at risk/forced into a marriage. Particularly pertinent is the reality that the primary offenders in situations of forced marriage are either an individual's parents or close family members, and as such individuals are reluctant to seek help or make a report which may lead to criminal proceedings.

GSANZ's research, policy and practice wisdom has shaped our view that forced marriage involves many of the elements that constitute the definition of family violence. These elements include: "violent or threatening behaviour, or any other form of behaviour that coerces or controls a family member or causes a family member to be fearful" [5]

Forcing a person to marry is a reflection of gender inequality and an imbalance of power.

Forced marriage is a practice that typically targets and disproportionately impacts women and girls. The UN Secretary General's Report on Violence against Women in 2006 illustrated a definition for family violence which can be applied directly to the experience of forced marriage:

...gender-based violence is a continuum of multiple, interrelated and sometimes recurring forms of physical, sexual and psychological/emotional violence and economic abuse in a range of settings, from private to public... [6]

Research completed in 2017 found that in many other jurisdictions around the world, family violence and gender-based violence frameworks are universally accepted as appropriate and necessary to address the issue of forced marriage. [7]

### Recommendations

1. Expand the definition of domestic and family violence nationally to include forced marriage. This will widen opportunities for multi-sectoral engagement and information and enable tailored and appropriate support services for individuals at risk.
  - ◆ This expanded definition presents an opportunity to embed forced marriage into national secondary education curricula on domestic and family violence, which would raise awareness among potential victims and their peers.
  - ◆ Work with state and territory child protection legislation and operational policies to ensure they have appropriate and efficient responses to forced marriage.

2. Resource a prevention and outreach program for local communities founded on partnership and inclusion, including but not limited to:
  - ◆ Engaging influential community stakeholders, including men and faith leaders, who hold and promote cultural and traditional norms. Leadership from within communities is an essential element to changing social norms.
  - ◆ Targeted community-led strategies in areas of high prevalence that focus on dialogue and localised action within communities.
3. Resource capacity building of mainstream and specialist workforces—including state and territory police and child protection agencies. This training should focus on the concepts of arranged and forced marriage, dowry and dowry abuse, and complex familial relations and practices within culturally and linguistically diverse communities.
4. Invest in an information development framework for data relating to forced marriage in order to identify gaps and determine priority information needs. This work should inform the collection of nationally consistent data which will establish the true nature and prevalence and support targeted interventions that show clear impact in preventing the practice and protecting individuals at risk.
5. Introduce Forced Marriage Protection Orders (FMPOs) as an amendment to the *Family Law Act (1975)* (Cth). This will improve the measures for people at risk and facilitate greater engagement with members of the community who practice forced marriage. Breaches of FMPOs should face criminal penalties (for breach of an order) under the *Family Law Act (1975)* (Cth).
6. De-link, in full, victim engagement and participation with law enforcement as a gateway to support. Support for victims should be based on need, not on their participation in or the status of a criminal justice process.
  - ◆ Introduce a Forced Marriage Unit as the lead agency responsible for coordinating assessment, referral and coordination of all forced marriage cases, including mandatory engagement where appropriate with state and territory child protection agencies.
  - ◆ Expand the number of ‘approved organisations’ with authority to provide crisis intervention and ongoing social and accommodation services as contracted by the Forced Marriage Unit.

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As a leader in Australia’s social research and policy arena, our Women’s Research, Advocacy and Policy (WRAP) Centre advocates for change to improve opportunities and outcomes for women and girls. We develop, share and promote policy analysis on social issues.

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Women’s Research, Advocacy and Policy Centre, “Forced Marriage and Family Violence”, Issues Paper, *Good Shepherd Australia New Zealand*, (2018)

## References

1. Commander Lesa Gale, "Public Address", *Prevention and Prosecution: Australia's Inaugural Conference on Forced Marriage*, University of Technology Sydney, 18 June 2018.
2. Interdepartmental Committee on Human Trafficking and Slavery, "Trafficking in Persons – The Australian Government Response 1 July 2015 – 30 June 2016", <https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Pages/Australias-response-tohuman-trafficking.aspx>.
3. *The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery 1956* Article 1 (c): "Any institution or practice whereby: (i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or (ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or (iii) A woman on the death of her husband is liable to be inherited by another person", <https://www.ohchr.org/EN/ProfessionalInterest/Pages/SupplementaryConventionAbolitionOfSlavery.aspx>.
4. See also: *Universal Declaration of Human Rights 1948* Article 16 (1) (2) (3), *International Covenant on Civil and Political Rights 1976* Article 23, *International Covenant on Economic, Social and Cultural Rights 1954* Article 10 (1), *Convention on the Elimination of All Forms of Discrimination Against Women 1981*, Article 16 (1), *Convention on the Rights of the Child 1990*, Article 6(2), Article 19 (1), Article 27 (1), Article 28 (1), Article 32 (1) , Articles 34, 25 and 26.
5. "Facts and Figures", Our Watch, accessed on July 9 2018, <https://www.ourwatch.org.au/Understanding-Violence/Facts-and-figures>.
6. Aisha Gill, and Anitha Sundari, *Forced Marriage: Introducing a Social Justice and Human Rights Perspective*, London, United Kingdom Zed Books (2014): 39.
7. Laura Vidal, "Innovative and Best Practice Solutions to Address Forced Marriage in Australia" *Winston Churchill Memorial Trust* (2017): 21-25, <https://www.churchilltrust.com.au/fellows/detail/4179/Laura+Vidal>.

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