



Australian Government

Domestic, Family and
Sexual Violence Commission

Office of the NSW Anti-slavery Commissioner

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Ms Laura Comensoli
Director, Modern Slavery and Human Trafficking Branch
Attorney General's Department

Dear Ms Comensoli

Moving towards a common national approach to forced marriage

Thank you for the opportunity to provide input to the Australian Attorney-General's Department's *Enhancing Civil Protections and Remedies for Forced Marriage Consultation Paper*. We write to share our combined views.

Forced marriage has been a focus of Commonwealth efforts to tackle modern slavery for more than a decade. Over that time, forced marriage has also consistently been one of the forms of modern slavery most often reported to the Australian Federal Police. As is acknowledged in the *Consultation Paper* forced marriage is often hidden, under-reported and under-detected. Despite this under-reporting, the number of reported cases has continued to rise. This clearly demonstrates the need for effective whole-of-government prevention and response strategies to forced marriage.

Forced marriage is a form of domestic, family and sexual violence

Our understanding of the complexity of domestic family and sexual violence (DFSV) has evolved significantly over time, most recently in the recognition of coercive and controlling behaviours as a form of family violence. The *National Plan to End Violence against Women and Children 2022-2032*¹ (National Plan) describes coercive control as being "characterised by a pattern of behaviours used by a perpetrator over time that has the effect of creating and maintaining power and dominance over another person or persons". Coercive control is a form of non-physical violence that often co-occurs with physical violence.

Forced marriage, at its core, is about coercive control. While forced marriage most frequently occurs in a familial context, it can also occur in other high-control contexts, such as high-control religious and cultic settings, and in disability settings. As noted in the National Plan, coercive control can occur over a long period of time. Interviews with survivors reveal that forced marriage is best understood as a 'process' rather than an event, "involving complex and varied forms of coercion that occur over a prolonged period of time"². Forced marriage can intersect and overlap with other forms of abuse involving coercion, including dowry abuse, servitude and human trafficking.

Recognising forced marriage in the context of DFSV not only leverages the existing specialist DFSV sector, but can also activate a broader network of responders who, with adequate training (not yet available), can supplement a small and under resourced specialist workforce. Noting, however, that there is a need for a national workforce strategy to address funding and skills shortages in both the specialist and the non-specialist DFSV workforce (see below).

¹ Australian Government, 2022, *National Plan to End Violence against Women and Children 2022-2032: Ending Gender-based violence in one generation*, p. 37, Department of Social Services accessed 23 September 2024 from https://dfsvc.gov.au/sites/default/files/2024-08/DFSVC0011-YearlyReport2024%28A4%29_FA4%28Digital%29.pdf

² Simons and Wong, 2021 'Learning from Lived Experience: Australia's Legal Response to Forced Marriage', UNSW Law Journal, Vol. 44(4), access 25 September 2024 from <https://www.unswlawjournal.unsw.edu.au/wp-content/uploads/2021/11/Issue-444-Simmons-and-Wong.pdf>

Beyond a legal response to forced marriage

As the Consultation paper notes “civil protection mechanisms for people in or at risk of forced marriage are limited, not tailored to forced marriage contexts, and vary across jurisdictions” (p. 14). We, therefore, welcome the efforts of the Australian Government to strengthen forced marriage survivors’ access to remedy, in particular the Forced Marriage Specialist Support Program pilot. Too many survivors of forced marriage, however, continue to lack access to specialist, culturally appropriate services, accommodation, counselling and financial support.

States and territories have adopted some related laws, and in NSW the *Modern Slavery Act 2018* (NSW) envisages the creation of a system of support for victims³ of forced under-age marriage (section 19(3)(c)). It should also be noted that states and territories are not part of the National Roundtable on Modern Slavery and Human Trafficking. Frontline police, healthcare workers, and education sector personnel – many of whom are state and territory employees – continue to lack training in identifying modern slavery and knowledge of appropriate responses and referral pathways, as do many in the broader DFSV workforce.

Reform of civil remedies to address forced marriage should be seen as part of a larger effort to ensure survivors have access to legal, health, accommodation, financial and other key aspects of remedy – and to a DFSV workforce that includes appropriate specialist expertise and response capabilities. Addressing these gaps will require close cooperation amongst the Commonwealth, states and territories to develop a common national approach to forced marriage, and to integrate effective forced marriage responses into existing Commonwealth, state and territory systems.

We fully support the Consultation paper’s proposal to build “a shared understanding of forced marriage as a form of family and domestic violence to improve victims’ access to family and domestic violence services”. However, we want to highlight that the specialist domestic family and sexual violence services represent less than 10% of the overall service system of responders to DFSV, which includes police workers, medical professionals and allied health workers, among others⁴. Both the specialist workforce and the broader workforce of non-specialist workers needs to be better equipped with the skills, knowledge and resources to respond to, and prevent, all forms of DFSV, including forced marriage and other forms of coercive control.

The DFSV Commission has called for a national approach to capacity building of the specialist DFSV workforce to respond to all forms of domestic, family and sexual violence. The NSW Anti-slavery Commissioner has previously corresponded with the NSW Government about the importance of addressing the needs of victims of modern slavery, notably forced marriage, in its efforts to tackle DFSV. We call on all governments to leverage broader workforces to help prevent and respond to DFSV.

Building on what exists

Those most at risk of forced marriage are young people and children under the age of 18. A criminal justice response to forced marriage is a key barrier to seeking help for young people, particularly in familial contexts⁵. Criminal justice approaches to tackling forced marriage should be complemented by suitable civil remedies, public health interventions and other family intervention methodologies including, where appropriate, family group conferencing.

Rather than designing reforms of civil remedies in isolation from these other aspects of interventions, we encourage the Australian Government to consider how existing mechanisms and processes that address coercive control and family violence could be better harnessed to prevent and respond to forced marriage. We believe state and territory governments are more likely to support meaningful efforts to develop and implement a common national approach to forced marriage if that effort is seen as complementary to, rather

³ While other terms may be used for those who have experienced domestic, family, and sexual violence, ‘victim’ is the term used by this Act. It has been used throughout this submission.

⁴ Domestic, Family and Sexual Violence Commission, 2024, *Yearly Report to Parliament*, Domestic, Family and Sexual Violence Commission, Australian Government, accessed 25 September 2024 from https://dfsvc.gov.au/sites/default/files/2024-08/DFSVC0011-YearlyReport2024%28A4%29_FA4%28Digital%29.pdf

⁵ Simons and Wong, 2021 ‘*Learning from Lived Experience: Australia’s Legal Response to Forced Marriage*’, UNSW Law Journal, Vol. 44(4), access 25 September 2024 from <https://www.unswlawjournal.unsw.edu.au/wp-content/uploads/2021/11/Issue-444-Simmons-and-Wong.pdf>

than entirely distinct from, current efforts to strengthen legislation and capabilities to tackle coercive control and domestic, family and sexual violence.

To develop a common national approach, the Commonwealth should work closely with state and territory governments to conduct a strengths and gap analysis to map how existing coercive control and family violence legislation, and child protection and family violence response capabilities, intersect with and respond to the phenomenon of forced marriage. The Commonwealth Government could also look at how existing federal institutions, such as the Federal Circuit and Family Court of Australia, provide capabilities that could underpin a common national approach to forced marriage.

Reform of civil remedies should be seen as one element of a larger effort to ensure a more joined-up, truly national – and not purely Commonwealth – effort to tackle forced marriage. We encourage the Australian Government to work with the state and territory governments, through the Standing Committee of Attorney-Generals, to develop a common approach. The Government should aim to have this approach agreed ahead of the development of the next National Action Plan on Modern Slavery and Human Trafficking, so that this National Action Plan can help mobilise a joined-up response to forced marriage across Australia.

The need for co-design and co-delivery with those who have lived experience of forced marriage

We strongly encourage the Australian Government to engage those who have lived experience of forced marriage in a process of co-design of this common national approach, and in co-delivery.

Lived experience engagement and representation must be embedded in all stages of policy and program development. Genuine co-design should go beyond simply ‘consulting’ victims of forced marriage, as has been too often the norm in government responses to modern slavery in Australia. Survivors should be afforded meaningful opportunities to participate as co-equal decision makers in the design and development of the common national approach. Survivors also have a key role to play in delivering solutions by, for example, serving as peer supports in a system of assisted decision-making.

We are committed to supporting the Australian Government in its endeavours to prevent and respond to forced marriage. Please do not hesitate to contact us if you would like to discuss our views at more length.

Equipping decision-makers with access to suitable expertise and social capital

To be effective, any strengths and gap analysis will need clear benchmarks against which existing frameworks and systems can be assessed. We believe two questions should be at the heart of this analysis:

1. Do decision-makers, including the victim, marriage celebrants, police, courts, and other governmental bodies involved, have timely access to appropriate specialist expertise and support?

Depending on the circumstances, relevant specialist expertise and support could include expertise on:

- the ‘best interests of the child’ (see Article 3(1) of the UN Convention on the Rights of the Child) in forced marriage situations
- cultural competence
- high-control and cultic settings
- disability settings
- modern slavery
- visa and immigration matters.

In the context of civil remedies, ensuring access to such expertise could involve, for example, creation of an expert roster to which nominated decision-makers (such as Federal Circuit and Family Court of Australia magistrates) could have recourse at short notice to seek expert advice or testimony.

Survivors and targets of forced marriage should also be given access to suitable expertise, to support them through the challenging process of determining whether or not to proceed with the marriage or contest it at the risk of a rupture with their parents, family and/or community. Given their young age and background, many survivors and targets do not have significant experience making decisions for themselves with such significant implications.

Supported decision-making involves providing vulnerable people with supports to help them make decisions, including the decision to marry or the decision to dissolve a ‘marriage’. Supported decision-making can take

many forms, including the availability of support people, peer support, individual advocacy, communication assistance, and interpreters. Supported decision-making helps people to exercise their legal capacity and constitutes a safeguarding mechanism⁶.

2. Is there a safe balance achieved between supporting the safety and agency of victim-survivors, and community and/or family repair?

Effective remedy will look different for different survivors of modern slavery. Some will wish to remove themselves from the family or community context in which the abuse occurred. Others, however, will want to remain engaged with their community and family, as they seek to realise their human right to a family life.

In each situation, civil remedies and other interventions should be designed and implemented to ensure survivor agency. Survivors should have options, and those options should be co-designed and delivered by survivors of modern slavery and forced marriage.

One of those options should be to repair ruptured family and community relationships. Civil remedies could be designed to allow decision-makers to work with community representatives to explore effective solutions. Such an approach could draw on existing restorative justice methodologies such as family group conferencing and circle sentencing. These approaches can help ensure that remedy harnesses available social capital and cultural competence, while protecting the rights of victims.

⁶ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 2023, *Final Report, Vol 6 - Enabling Autonomy and Access*, p. 118, Australian Government, access 25 September 2024 from <https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%206%2C%20Enabling%20autonomy%20and%20access.pdf>