

SUBMISSION

Review of the NSW legal protections for victim-survivors of forced marriage

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TERMINOLOGY

Forced marriage

For clarity and consistency, the term forced marriage has been used across the submission as a collective term. It encapsulates what may otherwise be termed as ‘child marriage’ ‘underage marriage’ or similar.

Individuals with lived experience

This term has been adopted to reflect any person who has been impacted by forced marriage - including those who have been threatened with a marriage, those who are married and those who have left a marriage they no longer wish to be in.

ACRONYMNS

ADVO	Apprehended Domestic Violence Order
AFP	Australian Federal Police
AGD	Attorney-General’s Department
AVO	Apprehended Violence Order
DCJ	Department of Communities and Justice
DSS	Department of Social Services
IDC	Interdepartmental Committee on Human Trafficking and Slavery
ODPP	Office of the Director of Public Prosecutions
MSRO	Modern Slavery Risk Order
PINOP	Person in need of protection
STPP	Support for Trafficked People Program
UK	United Kingdom

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1. INTRODUCTION & RECOMMENDATIONS

Thank you for the opportunity to contribute to the considerations the Department of Communities and Justice (DCJ) is making about protections for individuals with an experience of forced marriage.

Our submission draws on empirical research and the insights and observations the authors have from their practice in the community providing support to individuals with lived experience of forced marriage. This support has spanned both psycho-social and legal services. We acknowledge that this review is technical in nature and ultimately requires an understanding of the ways in which various legislative schemes operate or can operate in response to forced marriage. However, it is necessary that individuals with lived experience of forced marriage are specifically consulted around the utility of the proposed measures in NSW. This includes a consideration of experiences accessing state, territory, and Commonwealth schemes to understand both the intersection of these systems and the strengths and limitations of available remedies.

Whilst we acknowledge that the scope of the review is limited to the Apprehended Violence Order (AVO) scheme and the *Crimes (Domestic and Personal Violence) Act 2007 (NSW)* it is our view that considerations under these provisions cannot be made without broader consideration of the context of forced marriage and the necessary support required to access the proposed provisions adequately and safely under this legislation. As such, our submission both answers the questions in the Discussion Paper (DCJ, 2023) and provides additional considerations that we advocate are made alongside the focus of the review.

Recommendations

We recommend that the NSW Government through the course of this review and beyond:

1. Invest in understanding the context and extent of forced marriage in NSW to empirically inform the specific measures required to respond across a range of state-based legislative mechanisms.
2. Refrain from isolating considerations of support from the design and implementation of criminal and civil legal provisions under the *Modern Slavery Act 2018 (NSW)*. Specifically, we recommend:
 - 2.1 Engaging in mapping the current support frameworks available in NSW for those experiencing forced marriage – including developing an understanding about how support is set up to service different cohorts is being extended to individuals in situations of forced marriage (e.g. homelessness services).
 - 2.2 Considering how support frameworks made available to individuals accessing AVOs in the state of NSW can be leveraged to bolster support in situations of forced marriage.

2.3 Making representations to the Commonwealth via the Councils of Attorney's General about the need to ensure coordinated support services and clarification of roles and responsibilities across jurisdictions.

- 3.** Give due consideration to the federal provisions which may already be leveraged when developing the specifics of the AVO scheme in NSW. Specifically:

3.1 Consider the development of an AVO scheme in NSW which operates in a complementary manner to fill the gaps which exist within existing schemes.

- 4.** Make representations to the Commonwealth that in the expansion of the STPP – individuals pursuing civil legal remedies in the state of NSW (or elsewhere) be considered as eligible for support under this program. We further recommend:

4.1 In the absence of this pathway of support, the NSW government considers the way in which existing supports in NSW can be extended to individuals experiencing forced marriage and/or the development and resourcing of a standalone support service.

- 5.** Dedicate a review of the victim's support provisions as they relate to modern slavery is undertaken by the NSW government. Specifically:

5.1 The NSW government identifies and releases the figures in relation to how many applications for 'acts of modern slavery' have been made, and the amount and type of victims support that has been awarded to applicants, under the modern slavery provisions of the *Victims Rights and Support Act 2013* (NSW) for 'acts of modern slavery' since commencement of the provisions from 1 January 2022.

5.2 As part of the current statutory review into the *Victims Rights and Support Act 2013* (NSW), any under-utilisation of the modern slavery provisions of the *Victims Rights and Support Act 2013* (NSW) be considered, and amendments made to provide accessibility and appropriate support under the victims support scheme to victim-survivors of modern slavery.

- 6.** Examine the exceptions under section 16(2) of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) that apply for a person seeking protection under an ADVO and consider extending them to section 19(2) of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) for a person seeking protection under an APVO for a forced marriage – i.e. outside a domestic relationship. This removes the requirement that a person seeking an APVO in a situation of a forced marriage faces the higher threshold of 'in fact fearing' the conduct or offence.
- 7.** Review relevant provisions of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) to ensure protections available to those under 16 years are available to the greatest possible extent to those over 16 years and under 18 years.

8. Include a broad and non-exhaustive set of behaviours in the development of a AVO scheme to respond to forced marriage. In addition, we recommend:

8.1 These provisions should be complemented by education and capacity building amongst practitioners, law enforcement and the judiciary to ensure effective implementation.

9. Consider the utility of an FMPO outside of and/or in addition to the AVO scheme being developed in NSW. Specifically:

9.1 Consider what an FMPO may offer in the prevention and intervention of forced marriage in certain circumstances.

We assert that this is not a tool that can operate in isolation. Therefore, it should be considered for its strengths as part of a suite of both federal and state-based tools which are coordinated and can meet the diverse needs of individuals impacted by forced marriage.

9.2 Build in a mechanism for review following implementation of the AVO scheme to ensure that considerations made in operationalising the model remain fit-for-purpose and best practice.

10. That an AVO should not be considered an 'obligation' but rather part of a suite of tools that provide options for those experiencing forced marriage. Specifically:

10.1 Where police are obliged to apply for a provisional AVO under section 27 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) in a forced marriage situation, police should also be able to utilise the general provision at section 35(2)(f) or the forced marriage provision at section 35(2A) to prohibit specific conduct of the perpetrator in relation to forced marriage behaviours not captured by section 35(2)(a)-(e) to which police are currently restricted (by section 35(3)).

11. That AVOs should not be mandated in any other circumstances than those set out in sections 40 and 39 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) where a person has been charged with a serious offence including forced marriage or convicted of a serious offence including forced marriage.

12. Expand section 48 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) so that interested parties may have standing to apply for AVOs in situations of forced marriage. In addition:

12.1 Give separate standing to the Australian Federal Police (AFP) to apply for an AVO to protect a person from forced marriage.

12.2 Be guided by the common features of the FMPO models under the UK Act and the Scottish Act, particularly in relation to the considerations of the court in deciding whether to grant leave to interested parties to appear.

12.3 Any changes are consistent with whatever is being proposed at the Commonwealth level in relation to a forced marriage protection order scheme.

12.4 Include a condition that an interested party should only be able to make such an application with the consent of the person in need of protection.

13. Explore the benefits of increasing the specificity of the existing prohibitions and restrictions that may be imposed under an AVO to irrefutably include relevant behaviours and conduct relevant to forced marriage and support the uplift in the judiciary to recognise and respond to the specificities of a forced marriage and ensure orders are comprehensive. Specifically:

13.1 Review the provisions of the *Family Law Act 1975* (Cth) to consider how those orders and injunctions may be applied within a state based AVO scheme, and that the current child-related provisions be extended to those over 18 years where circumstances call for it.

13.2 Make orders available under the AVO scheme that specifically prevent travel of a person – child or adult – at risk of a forced marriage.

14. Produce ‘live’ and ‘working’ guidance for responding to forced marriage in the state. This should include clear pathways of intersection, roles and responsibilities between the state and the Commonwealth - including legislative and non-legislative provisions, statutory and non-statutory actors. Specifically:

14.1 The guidance should be complemented by training that extends beyond ‘identification’ and targets judiciary, the legal profession and broader civil society organisations in a position to identify and respond to forced marriage.

15. Commission research into a viable model of support which includes the involvement of family members in circumstances which lend themselves to this mode of intervention - this includes specific consideration of the ways in which such intervention can realistically operate in the face of an AVO or similar civil intervention.

16. Undertake a review that extends beyond the two provisions subject to this discussion paper. Focused specifically on:

16.1 What other legislation is relevant to responding to forced marriage?

16.2 What is the uptake (if any) of such legislative provisions in cases that are identified?

16.3 Identifying gaps as to the limitations of legislative provisions and their implementation and use these to inform future reform in response to forced marriage.

2. UNDERSTANDING FORCED MARRIAGE

Much of what is understood about forced marriage is grounded in the definition of forced marriage contained within the *Criminal Code Act 1995* (Cth). There has been critique of the limitations of this framing and definition, including that the context of forced marriage is not well understood - and the behaviours and conduct that occur outside of the specific event of marriage are not captured. This has implications for the ways in which responses to forced marriage are developed. This submission begins with a review of what is known about forced marriage including canvassing new research (Vidal, 2023) which documents the experiences of young women impacted by forced marriage. By doing this we offer an understanding about how forced marriage happens and the complex dynamics at play – an understanding which is necessary for ensuring a comprehensive and needs-based response to forced marriage in New South Wales (NSW). In canvassing Vidal’s (2023) which focuses specifically on young women - we acknowledge that forced marriage is not only isolated to the experiences of young women. However, we also assert that both available data in Australia (see for example, Lyneham & Bricknell, 2018) and internationally argues that forced marriage is an inherently gendered practice (Vidal, 2023; Idriss, 2017; Gill, 2004, 2006; Kingston, 2006; Anitha & Gill, 2011).

2.1 Conceptualising and defining forced marriage.

By way of brief history Australia first formally recognised the issue of forced marriage in 2010. Through a consultation Discussion Paper (Australian Government, 2010) led by the Attorney General’s Department (AGD) consideration was made about Australia’s response to forced marriage. What is key to these considerations is that very little was understood about what was meant by forced marriage both in law and in practice. The Discussion Paper (Australian Government, 2010) used the terms ‘forced’ and ‘servile’ marriage interchangeably and there was significant reliance on international jurisdictions framing of the issue - notably the United Kingdom (UK). The submissions to the AGD consultation were not made public - however some organisations submitting to the inquiry released their submissions (see for example, Anti-Slavery Project, 2011; National Legal Aid and Legal Aid Commissions, 2011; ASRC, InTouch, Fitzroy Legal Service & Project Respect, 2011). It is observed across these publicly available submissions that there too was not a shared definition of forced marriage. Whilst there were some similar features including absence of consent and the presence of coercion - empirical evidence of what individuals impacted by forced marriage were experiencing was largely absent (Vidal, 2023). Nevertheless, Australia moved to criminalise forced marriage as part of the suite of human trafficking, slavery, and slavery-like offences of the *Criminal Code Act 1995* (Cth) defined as:

A marriage entered without full and free consent of one or both parties because of the use of coercion, threat, or deception, or because the victim was incapable of understanding the nature and effect of the marriage ceremony. The definition applied to legally recognised marriages as well as cultural, religious ceremonies and registered relationships, regardless of age, gendered and sexual orientation. (S. 270.7A *Criminal Code Act 1995* [Cth])

This definition has some inherent limitations – including that the conduct is understood only at the point in which the marriage is to take place. The behaviours in and around a forced marriage are largely unaccounted for. This includes the clear line of distinction that the law seeks to make between an ‘arranged’ and ‘forced’ marriage – based on consent. In a study of 12 young women’s lived experiences of forced marriage Vidal (2023) notes:

Most of the young women ... spoke of the standard, expected way in which marriage takes place, is arranged. Arranged marriage was described as a cultural practice in which young women were prepared from a young age for their marriage – a marriage for which others, typically immediate or extended family members, would identify a suitable spouse, facilitate meetings, and eventually make all the arrangements. It was not obvious from [the interviews with young women] that there was always a clear distinction between an arranged marriage and a forced marriage. For some, the point at which they expressed their resistance to the normative expectation of arranged marriage was when the idea of forced marriage. However, ... young women’s experiences do not sit neatly within a dichotomous paradigm that views marriage as either arranged or forced: indeed, in some instances a marriage can be described as both arranged and forced. This finding conflicts with the ways in which law and policy have sought to define forced marriage in Australia and elsewhere, which include specific differences between an arranged marriage and a forced marriage (p.99)

Over the last decade much has been learnt about the nature and context of forced marriage in Australia - despite this the picture remains incomplete. This is because of challenges in both capturing data but also in terms of how forced marriage has been understood. As Vidal (2023) further highlights:

How forced marriage is defined and how individuals impacted by forced marriage relate to that definition may also influence what is forced marriage for the purposes of measurement. For example, if young women do not identify with the elements included in the legal definition of forced marriage - they are less likely to engage in reporting or research which utilises such a definition as the basis of describing the experience (p.25)

Research carried out by both government and civil society organisations has contributed to developing deeper understandings. Some of the key insights are summarised as:

Forced marriage ‘may involve **conduct that occurs in two jurisdictions** - for example, when a young woman is sent abroad to marry and sometimes it may occur in Australia’ (Simmons & Burn, 2013, p.970).

Forced marriage often **involves residents or citizens of Australia** - being sent overseas to marry - through the involvement of family members including parents, siblings, and extended family members (Vidal, 2023; Simmons & Wong, 2021; Lyneham & Bricknell, 2018; The Salvation Army & RMIT, 2018; Prattis & El Matrah, 2017).

Pressure can be both subtle and overt and can include physical violence and/or abuse, psychological manipulation and threats, isolation, deprivation of necessities (like food) and withdrawal from education (Prattis & El Matrah, 2017; The Salvation Army & RMIT, 2018; Lyneham & Bricknell, 2018).

Research has also shown that forced marriage can be **considered a distinctly gendered practice** - where expectations linked to gender and gender roles is a leading driver of forced marriage (Vidal, 2023; Lyneham & Bricknell, 2018).

The **age of those impacted** by forced marriage is largely unavailable through reported statistics. The information provided by The Australian Red Cross (Table 2) shows that 36% of individuals seeking support are over the age of 18 years. The IDC reports (2016, 2020a) report a general trend of those reporting to be under the age of 18 years old. The discrepancy in data here shows a gap in understanding the age demographic of those impacted.

There is **no available data which reports on socio-cultural demographics**. Media portrayal as analysed by Patton (2018) indicates that this is an issue among Islamic communities - without demographic information reported this is a problematic narrative which has the potential to isolate understandings and target resources disproportionately.

Contextually and most relevant to considering the provisions proposed by NSW is emerging research that details the way in which a forced marriage may come to be. Simmons and Wong (2021) identify through interviews with victim-survivors (N=8) that **forced marriage often occurs because of pressure over a period of time**, involving 'disorientating effects of coercive and controlling behaviours' (p.1640). Simmons and Wong's (2021) findings support those which have been reported internationally, specifically in the UK (See: Anitha & Gill, 2009; 2017; Gill & Anitha, 2011), which conceptualise **forced marriage as a process rather than a single moment in time**. Research by Vidal (2023) makes similar conclusions emphasising that forced marriage can occur as a '**non-linear sequence of events - some which may be readily connected to the 'conventional' ideas of and expectation around marriage, and others not**' (p.131). Vidal's research (2023) shows that it is often not always clear 'what events may or may not lead to a forced marriage ... Young women's narratives did include elements of marriage without free and full consent, and the use of coercion; however, direct correlations between their experiences and the legal definition of forced marriage were [also] incomplete' (p.131).

Young women with lived experience of forced marriage who were interviewed in Vidal's (2023) study discussed the relationship between marriage, gender expectations and forced marriage. Here, it was found that young women discuss the experience of forced marriage within a much broader setting – 'a setting in which expectations relating to gender, gender, relationships with family and community are central and inextricably interconnected' (Vidal, 2023, p.86). Some of which are noted¹ here in summary as an opportunity to inform future law and policy decisions in NSW with deeper contextual underpinnings.

¹ Names have been changed to protect confidentiality.

<p>Experiences of gender roles</p>	<p><i>“...women were not equal to men at all. I would remember little things, like women would have to eat after men ... we would always just be in the kitchen constantly doing everything, especially when a guest came over...” (Sam – 21 years old)</i></p> <p><i>“My first memories have been like what [age] four or five and onwards, of, you know, it is your role to look after other people, like it's your role to be perfect, it's your role to kind of like be the perfect person for somebody to want to marry...” (Rania – 26 years old)</i></p>
<p>Experiences of familial and community socialisation</p>	<p><i>“...in my mind [when the family I was staying with was proposing marriage] I was going, ‘This is wrong’, but another bit [of my mind] is going, ‘I need to stop arguing back, these people are older than me, they’re my elders, I need to respect them, they know better than I do ... I’m just being a child; these people have lived through more than I have’...” (Jane – 27 years old)</i></p> <p><i>“My entire community ... and my aunty ... was [sic] calling my mum and saying, ‘Your daughter is 26, she needs to get married’. And my cousin would come over and say, like, ‘Oh my god, you’re 24 ... you can’t keep living with your mum, you have to go out and get married’ ... they [my wider family] have this expectation that you need to get married, everyone called my mum and told my mum I need to be married ... there’s a lot of pressure on my mum”. (Ella – 26 years old)</i></p>
<p>Intergenerational norms</p>	<p><i>“Another factor is the fact that it's intergenerational. It's a cycle. So, your mother gets married, the whole family does the same thing too, your siblings before you, and then comes your turn. For me, all my three sisters had essentially gone through it before me”. (Layla – 26 years old)</i></p> <p><i>“My sisters they got married at the same age [17 years old], and our cousins, so the expectation for me was the same ... I believe most families do this [arrange marriages] for their girls”. (Zahra – 30 years old)</i></p> <p><i>“It’s kind of like asking me to tell my whole life story, because one thing that I’ve always, you know, said to people about how it [arranged marriage] happens is that it doesn’t happen overnight ... we were essentially born into a family and community, like traditions, that enables such practices to take place ... along with the misogynistic environment is the fact that women are brought up ... not in a very supportive manner”. (Layla – 26 years old)</i></p>
<p>Marriage as a collective pursuit</p>	<p><i>“Marriage is between not just two people, it’s between two families...” (Aisha – 27 years old)</i></p> <p><i>“Marriage also happens between cousins to keep the family land, you know, if my dad has a big land and his brother also has a big land, and that land is divided amongst the children ... So my dad and his brother decide for me to marry my cousin, all of the land will remain in the family ... for me</i></p>

to get married to someone else outside the family, then that person will be into the land as well ... they don't want that, they just want to keep everything in the family". (Maya – 22 years old)

Marriage as a key to preserving culture and identity

"It [cultural norms and beliefs about marriage] doesn't [sic] change no matter even if people migrate ... for my parents, essentially a big factor as to why they ... are still holding onto their culture ... is fear. They fear change, and they fear their children not surviving properly ... in this foreign country that they have little control over what happens to them and everything". (Layla – 26 years old)

These findings are key for the ways in which current legal conceptualisations of forced marriage are reliant on the centralisation of or reliance on consent and coercion. Looking to consent and coercion as defining features of forced marriage requires careful consideration. Whilst NSW has recently criminalised coercive control and it can be argued that some of the behaviours in association with forced marriage can fit this remit – we urge caution over the grouping of forced marriage unproblematically into this framework as there are some distinct differences.

Drawing on the international scholarship which has examined consent in the context of forced marriage there have been some key problems identified. Work by UK scholars Gangoli et al (2011) have argued that defining forced marriage due to the absence of free and full consent does not recognise the slippage between arranged and forced marriage. Gangoli et al (2011) suggest that coercion is a critical factor to be considered. Whilst the Australian definition recognises coercion it remains ambiguous and somewhat subjective as to what constitutes as such. Anitha and Gill (2017) in their examination of coercion and consent in the context of forced marriage argue that 'little attention is given to the many ways in which all women located within a matrix of structural inequalities can face social expectations, pressure and constraint in matters of marriage' (p.134). Earlier work of Gill and Anitha (2011) points out the nuanced and complex relationships that intersect and influence decisions about marriage:

Feminists have long recognised the variety of pressures on women to marry, including issues related to poverty, pregnancy, sexuality, as well as social norms and expectations underpinned by patriarchal structures and institutions. Indeed, research on marriage practices of black and minority ethnic women in the UK indicates that the sanctions that uphold moral codes of minority communities influence how individuals in these communities exercise agency. (p.52)

As such context becomes a matter of significance when considering how consent operates and what coercion may look like in a situation of forced marriage. Acknowledging the limited knowledge of scope and context in relation to forced marriage is a critical consideration when responding to the question of appropriateness of the proposed remedies in NSW. It is our view that steps are taken to engage with these matters in depth and with specificity before continuing to design and implement the measures contained within the *Modern Slavery Act 2018 (NSW)*.

Recommendation 1: Invest in understanding the context and extent of forced marriage in NSW to empirically inform the specific measures required to respond across a range of state-based legislative mechanisms.

2.2 What is known about forced marriage in Australia?

Given the limitations in how forced marriage is defined and the ways in which data is collected – primarily through reporting to law enforcement agencies – available data in Australia about forced marriage is incomplete. What is known cannot be seen to be a measure of extent and/or prevalence. Nevertheless, data collected by the Commonwealth and documented in both academic and civil society research will be outlined here to offer some insights into what is known. It should also be highlighted that it is not clear that systematic data is collected in NSW about forced marriage (see section 3.2)– therefore the data presented here is largely at a national level.

The Interdepartmental Committee on Human Trafficking and Slavery (IDC) (Australian Government, 2020a, 2021) combined with Australian Federal Police data (2022) reported that since the time of criminalisation in 2013 until year end in 2021, 551 reports of forced marriage had been received by the Australian Federal Police (AFP). This is broken down by year at **Table 1**.

Table 1: Reports of forced marriage to the AFP (Australian Government, 2020& 2021; Australian Federal Police, 2022)

Year	No. of Reports	Year	No. of Reports
2013-2014	11	2017-2018	61
2014-2015	33	2018-2019	95
2015-2016	69	2019-2020	92
2016-2017	70	2020-2021	84
		TOTAL	551

In addition to this in a presentation by the AFP in October 2022 at a webinar hosted by the NSW Anti-Slavery Commissioner, the AFP noted that 29 of the 84 reports received between 21-22 financial year came from NSW accounting for just under 35% of total reports during the reporting period.

The IDC reports are limited to high-level summary detail - information about age, gender and socio-cultural background is not included in these reports. Service-level data recorded by The Australian Red Cross, the Australian Government contracted provided for the Support for Trafficked People Program (STPP), provides an insight into the age, gender and location of individuals who have sought assistance through the STPP, detailed at **Table 2**. It is noted that not all individuals who report to the AFP go on to receive support from the STPP.

Table 2: Demographic information of individuals seeking support from the STPP (2009-2019) (Australian Red Cross, 2019)

Gender	106 (F) 2 (M)	State	Vic- 55 NSW - 31 South Australia -13 All other States/Territories - <5
Age	61 adults 47 minors		

2.3 Support needs of individuals impacted by forced marriage.

Whilst we note that the consideration of support is outside of the scope of this review, we contest that the points raised by the Discussion Paper (DCJ, 2023) cannot be viewed in isolation of support. **That is, for individuals at risk of or experiencing forced marriage to access the legislative mechanisms proposed by the *Modern Slavery Act 2018 (NSW)*, support cannot be an isolated consideration.** Therefore, in this section we provide an overview of what is known about the support needs of individuals facing forced marriage.

Data on support needs for those impacted by forced marriage remains scarce and largely anecdotal. Our discussion about the limitations of what is understood about forced marriage in Australia can be carried over to the ways in which support has been made available. With incomplete understandings of forced marriage, we again urge caution around the ways in which support needs are understood and consequently designed and implemented. This is an area where direct consultation with individuals with lived experience would make a significant contribution. Nevertheless, there is some documented evidence of support needs and experiences of accessing this support. We are not providing a comprehensive overview here, rather, present this information as a starting point in which to consider the ways support could and should be coupled with the mechanisms proposed by the *Modern Slavery Act 2018 (NSW)*.

In the first instance arguments against the conditionality of support which have been made for over a decade at the federal level are reiterated here (Vidal, 2017; Lester, 2020; Zeweri & Shinkfield, 2021). **That is, support should be offered in an unequivocal manner - not contingent on participation in any other legislative process: criminal, civil or otherwise. Individuals impacted by forced marriage disclosing a desire for support should be offered that support as a matter of course and the support should be targeted and tailored to the presenting needs.**

The nature of help-seeking for individuals impacted by forced marriage in Australia is an emerging field of inquiry. Vidal (2023) documents that for the young women engage in varied ways of help-seeking, ‘some engaged with support before a marriage took place, whereas others did not engage with support until after they were married and were looking for opportunities to leave the marriage’ (p.113). In this same research irrespective of the timing at which help-seeking was engaged with, accommodation or support with housing was a key aspect of assistance being sought out. In an evaluation of the support provided to individuals impacted by forced marriage on the Australian Government’s STPP (see section 4 for detail on this program) the support provided by the program was considered appropriate - this included:

- financial support.
- referrals to organisations that provide legal advice.

- information and referrals to address their health and well-being.
- emotional and social support (Stacey & Boniface, 2019, p.18).

Stacey and Boniface (2019) identify that individuals accessing the STPP 'placed highest priority on gaining financial support, information and referrals and emotional and social support' (p.18). Alongside this support, which is provided, those accessing the program indicated that they would also be 'interested in the STPP providing more assistance with preparing for and securing employment ... [and where applicable] more assistance in resolving visa status so they could make clearer plans for their future' (p.18). There is also increasing recognition that engaging with families as part of intervention and support is worthy of consideration (See for example: Vidal, 2023; Zeweri & Shinkfield, 2021; Stacey & Boniface, 2019). This is discussed further detail in Section 6 of this submission.

We support the assertions made by The Salvation Army (2017) to the *Select Committee on human trafficking New South Wales* that advocates for a coordinated approach when considering support and more broadly responses to forced marriage:

The multiple frameworks that have been designed to ultimately assist individuals at risk are falling short due to the lack of mandated state and federal government coordination. [It remains that] various front-line responders such as state police, schools and health care providers are positioned in the community to receive referrals of individuals at risk. They remain largely unaware of the framework in place and do not have any accessible resources or mechanisms to provide support. The current approach places excess burden on the individual at risk to initiate these processes.

Often, this has been at the good-will of youth, homelessness or domestic and family violence services stretching their own service criteria to provide support and intervention. Whilst reports can be made to the Commonwealth, often the hesitance of the individual at -risk to engage with law enforcement provides a significant limitation to being able to access the full scope of the Commonwealth response. The emphasis on coordinated approaches is further elaborated on in Section 4 of this submission - where experiences from international jurisdictions (namely, the UK) is highlighted following a review of how civil mechanisms in response to forced marriage are operating.

In the following section a case study will be provided of a young woman engaging in seeking orders under the *Family Law Act 1975* (Cth) and her experience of support by way of illustrating that when considering legislative intervention - support is a key consideration.

Recommendation 2: Refrain from isolating considerations of support from the design and implementation of criminal and civil legal provisions under the Modern Slavery Act 2018 (NSW). Specifically, we recommend:

2.1 Engaging in mapping the current support frameworks available in NSW for those experiencing forced marriage – including developing an understanding about how support is set up to service different cohorts is being extended to individuals in situations of forced marriage (e.g. homelessness services).

2.2 Considering how support frameworks made available to individuals accessing AVOs in the state of NSW can be leveraged to bolster support in situations of forced marriage.

2.3 Making representations to the Commonwealth via the Councils of Attorney’s General about the need to ensure coordinated support services and clarification of roles and responsibilities across jurisdictions.

3. RESPONSES TO FORCED MARRIAGE IN AUSTRALIA

Before discussing the specific parameters of the response to forced marriage both at the Commonwealth and state level, we highlight assertions made in Section 2.3 about the nature of help-seeking. That is, that individuals with lived experience of forced marriage have varied patterns of help-seeking behaviour including that many seek assistance before a marriage has taken place. We add to this our shared sentiment as practitioners that it is most common for individuals with lived experience to express ‘I don’t want anybody to get into trouble, I just don’t want to get married’. It is necessary that our focus shifts to the ways in which individuals can be supported through a framework of ‘early intervention’ or ‘prevention’ and to consider the proposals under the *Modern Slavery Act 2018* (NSW) in this light. Adopting this framework, the limits of both the criminal legal definition and framework are illuminated. Whilst the proposals in the *Modern Slavery Act 2018* (NSW) are arguably a shift away from the criminal justice framework – they will not operate in isolation, and it is important to offer a consideration about the ways in which the current criminal justice framework is something on which we have become reliant including in NSW. There is a distinct opportunity for state-based legislation and frameworks to play both a leading and complementary role, not least for the ways in which support pathways can be leveraged and invested in to support individuals identifying the risk of forced marriage adequately and efficiently.

3.1 Commonwealth Response

Criminalising forced marriage at the Commonwealth level can be seen to have provided significant impetus for a wide range of responses to the issue. The response has included both legislative and non-legislative initiatives focusing on prevention and support. There is no need nor scope to detail these responses in their entirety in this submission – rather we refer DCJ to the *National Action Plan to Combat Modern Slavery 2020-2025* (Australian Government, 2020b) for a review of the national strategic approach to the response to forced marriage. For the purposes of this submission, we identify the broad scope of responses and provisions for the ways in which they offer both opportunity and highlight limitations for holistic and comprehensive responses to forced marriage.

3.1.1 Criminal Offence – Forced Marriage

As established in the previous section of this submission, Australia criminalised forced marriage as an offence of human trafficking, slavery, and slavery-like practices in 2013 – under Section 270.7A of the *Criminal Code Act 1995* (Cth). The detail of this offence is not included here – rather we refer to Section 6 of this submission that contends with the interaction of federal and state-based offences in response to forced marriage. The point of note in this section is the way in which the federal criminal offence has become the leading response to forced marriage – including at the time of writing – the single pathway into access to support.

3.1.2 Civil and Criminal Offences – Non-specific

The introduction of the criminal offence was the first formal recognition in law of forced marriage in Australia. Part of this recognition was that existing provisions under the *Family Law Act 1975* (Cth), the *Marriage Act 1961* (Cth) and the *Australian Passports Act 2005* (Cth) were inadequate to fully address the issue of forced marriage. Whilst this may be so – the strength and applicability of these predominantly civil mechanisms cannot be understated. Including the utility that they offer in both the prevention and support for those facing forced marriage – the summary of which we provide at

Table 3.

Table 3: Civil and Criminal Offences – Non-specific

Family Law Act 1975 (Cth)	
Section 52	Divorce and nullity of marriage- an application under this Act for a decree of nullity of a marriage shall be based on the ground that the marriage is void. (A marriage can be made void under the Marriage act if consent was obtained by duress or fraud).
Section 68B	Injunction—which can include Airport Watch List Orders prohibiting an individual from leaving Australia.
Section 60CC	Determining a child’s best interests, including the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect, or family violence.
Section 60B	Protecting children from physical and psychological harm or from being subjected to, or exposed to, abuse, neglect, or family violence.
Note: Limitation applies in cases of forced marriage—family law remedies only apply to individuals under the age of 18.	
Marriage Act 1961 (Cth)	
By definition, the victim of a forced marriage has not consented to the marriage, and therefore the marriage (if performed in Australia) would be void under the Act.	
Section 23B	A marriage may be void if the consent of either of the parties was not real i.e. consent was obtained by duress or fraud, the party was mistaken about the identity of the other party or the nature of the ceremony performed, or the party was mentally incapable of understanding the nature and effect of the marriage ceremony. The marriage will also be void if either of the parties was not of marriageable age.
Section 100	It is an offence for a marriage celebrant to solemnise a marriage if the celebrant has reason to believe there is a legal impediment to the marriage, or if the celebrant has reason to believe that marriage would be void
Section 95	It is a criminal offence for a person to go through a marriage ceremony with a person who is not of marriageable age (that is 18 years of age), unless there is an exceptional circumstance as defined in the Act.

Note: The Act only has application to marriages under Australian Law (i.e. marriages that take place within Australia). The Act has no application when an Australian is married overseas. However, a marriage that takes place overseas may be recognised when a couple move to Australia. If one of the parties to the marriage was of unmarriageable age or did not consent freely, the marriage would not be recognised under Australian law.

Australian Passports Act 2005 (Cth)

Subdivision B

The court can enforce provisions for the withholding of a passport to protect the welfare and wellbeing of a child, including restricting the issue of a passport, until the child is 18 years old.

Case law (specifically in relation to NSW residents) which predates criminalisation shows how such provisions have been utilised – at this time in absence of other measures – but we argue, are provisions which offer nuanced and practical responses to the parties involved.

Table 4: Case law examples of civil remedies in response to forced marriage.

Madley & Madley and Anor [2011] FMCAfam 1007

Orders sought

Ex parte application made by child (16 years) for orders placing herself on the Airport Watchlist to prevent an arranged marriage taking place in a non - Hague Convention Country – arranged marriage planned by parents

Points of significance in judgement

[18] The young person does not wish to proceed with the marriage. The marriage is to a person who is, to all intents and purposes, a stranger to this young person, she having met him only once.

[21] It is not the right of any parent to cause their child to be married against their will, whether in accordance with Australian law or otherwise.

[27] The court is required to consider the need to protect the child from physical or psychological harm in circumstances whereby this young woman does not wish to proceed with a wedding or be married, and accordingly, is being forced to do so – a principle that is contrary to all our legal processes hold dear and which would indeed, under Australian law, render the marriage void, as it is absent genuine consent.

Orders made

- Restrained from removing, attempting, or causing Ms Madley's removal from the Commonwealth of Australia
- Any passport for the young person ... is to be surrendered ... to the registrar of this court and thereafter held by the Registrar pending further order

Orders sought

Application by husband for a decree of nullity on the ground his consent was obtained under duress – Finding that the husband’s consent not a true full and informed consent, it was unduly influenced by matters of cultural, religion, family loyalty and financial dependence – Application and decree absolute issued.

Points of significance in judgement

[5] The Applicant’s uncle disclosed to the Applicant that he (the uncle) had found a girl who he thought the applicant should marry ... the uncle and the Applicant’s mother reached a decision that a marriage would occur between the Applicant and the Respondent ...the Applicant tried to tell his uncle that he did not wish to be married to the Respondent and that he was in love with somebody else ... his uncle told him at that stage it would be impossible that the marriage should not occur. His Uncle said the marriage must proceed.

[27] I am satisfied that in this case, because of the relationship between the Applicant and his uncle, the Applicant was, at the time of the marriage, the subject of strong feelings of family loyalty.

[29] I am satisfied that the Applicant acted under, and was subject to, duress imposed upon him at the time of the ceremony of marriage. Thus, his consent to the marriage was not a true full and informed consent.

Orders made

An application under the *Family Law Act 1975* (Cth) for a decree of nullity of marriage shall be based on the ground that the marriage is void. A marriage is void under the *Marriage Act 1961* (Cth) where the consent of either of the parties is not a real consent because it was obtained by duress or fraud.

The following case study (extracted from Vidal, 2023) illustrates the lived experience of a young woman applying for and having an Airport Watch List Order under the *Family Law Act 1975* (Cth) put in place. Whilst the scope of the current inquiry is not about the federal mechanisms - the operation of an intervention order of sorts - is similar in principle and practice, therefore the insights provided by this case study are worthy of consideration when looking to not only the specifics of the proposed measures under the *Modern Slavery Act 2018* (NSW) but what is necessary to ensure the intentions of the measures can be achieved - i.e. safety and protection.

Case Study – Sam - 21 years old

Sam, a 21-year-old young woman, was introduced to the idea of marriage by her mother when she was 17 years of age. Her mother showed her a photograph of a young man living overseas and suggested that it could be somebody she could marry. Sam did not take her mother seriously. On a routine trip overseas to visit family Sam participated in several events which she learned after the fact to be her engagement and preparations for marriage. On return to Australia, she disclosed this to her school counsellor who rereferred her to Legal Aid NSW.

“My [school] counsellor called a lawyer from Legal Aid and she [the lawyer] goe[sic], ‘Well, if she is really worried about it [getting married] we can assign a watch list, so that you don’t leave the country until you’re 18 years old’ ...

Sam shared that after she had the Airport Watchlist Order put in place she was unable to remain living at home, however this was not always achievable in that eligibility and access to support meant that she spent periods of time away from her family home and periods of time where she had no other choice but to return.

I first left home after going to [family]court for an Airport Watchlist Order ... I actually stayed with my friend for a while ... then I got in contact with an emergency refuge, and I lived there...

... It was really, really, really hard; like that [leaving home] was really hard to do. But I knew it was the best thing for my safety ... I couldn't stay with them...

... I went back home after being out for about eight months ... because the government, there was no funding for refuges and homelessness and I didn’t have Centrelink: I wasn’t eligible for social security payments [because of my residency status] ... I was not mentally stable enough to have a job... so I had to go back home, I had no choice...

... They [my parents] were a bit better than before, but I just didn’t enjoy it. It wasn’t cool. When you come out of that ... What happened ... the aftermath ... was so hard, I knew I couldn’t stay with them ... I moved again and have been out of home for about four years now ... with no contact with them [my parents] ...

The purpose of putting this order in place was for the protection of Sam and the prevention of a forced marriage from taking place. This however did not equate to support - or the end of the need for Sam to access support. Sam went on to say that the impacts of applying for the Airport Watchlist Order were profound, emphasising the need for this to be an act which needs to be coupled with support.

[Going through the process of obtaining a Watchlist Order] was very scary. It was terrifying ... I kind of find it really kind of weird, that to actually keep yourself safe from your parents you have to take them to court, and they have to sort of approve of it and sign off to it ... I think without having to go through that process, it might have been a better transition for me to eventually move out of home and not have to completely cut off my parents at a very young age...

...it didn't feel like I had any choice ... there was no early sort of counselling and just knowing what to do and solutions that you could do earlier and ways you can deal [with the proposed marriage] early on. And it felt like when everything was going down ... I had to be in fight or flight ... which made it even worse. It was already hard enough ... I was obviously really torn about it, because it's a very hard decision ... but I was like, I have to do it, I can't get married ... I went with the lawyer and got a Watchlist Order..."

Recommendation 3: Give due consideration to the federal provisions which may already be leveraged when developing the specifics of the AVO scheme in NSW. Specifically:

3.1 Consider the development of an AVO scheme in NSW which operates in a complementary manner to fill the gaps which exist within existing schemes.

3.1.3 Support for Trafficked People Program (STPP)

The Australian Red Cross has been funded by the Commonwealth Department of Social Services (DSS) to deliver the STPP. This is the central support pathway for individuals at risk of or who have experienced forced marriage. The program aims to provide a case management service and as explained by The Australian Red Cross (2019) includes assistance with healthcare, reconnecting with family, accommodation, emotional support, employment, financial support, education and training, essential items, community connection and legal and migration advice. DSS describe the program as being delivered along two streams:

Intensive support for up to 200 days for clients who are in or at risk of a forced marriage. This includes 90 days of support provided under the 'Assessment and Intensive Support' stream and 'Extended Intensive Support' stream ... assistance includes: accessing income support, and a health care card if eligible; securing longer-term accommodation; purchase of essential furniture and household furniture; access to Medicare and the Pharmaceuticals benefits scheme; legal services and interpreters; assistance to obtain employment and training if desired and links to social support. (DSS, 2020)

The program at the time of writing this submission is limited to those individuals who report to the Australian Federal Police – as they remain the single referral pathway onto the program. There has however been a recent funding announcement and call for tenders made by the Commonwealth to expand the STPP. This funding is to make eligible victim-survivors of human trafficking, slavery and slavery-like practices who do not wish to engage with the criminal justice system to access the STPP; and to expand the overall provision of support to both victim-survivors and their dependents. DSS indicates on their website (DSS, 2023) that from 1 July 2023 there are five streams of support which now includes up to 12 months of 'post-exit' check in support. This is a welcome move, however, what needs to be carefully considered are the pathways of access to the STPP - including eligibility of victim-survivors who may be seeking to access state criminal or civil remedy. At present, under the existing model, the STPP remains limited to those who are engaged with the criminal justice system at the Commonwealth level. As a result, there has been limited engagement with provisions within NSW as it would be without tailored support options. Whilst contending with support has been noted in the

Discussion Paper (DCJ, 2023) to be outside of the scope of the review, we highlight that engaging with either criminal or civil legal mechanisms cannot be considered without appropriate complementary support frameworks. Therefore, we recommend:

Recommendation 4: Make representations to the Commonwealth that in the expansion of the STPP – individuals pursuing civil legal remedies in the state of NSW (or elsewhere) be considered as eligible for support under this program. We further recommend:

4.1 In the absence of this pathway of support, the NSW government considers the way in which existing supports in NSW can be extended to individuals experiencing forced marriage and/or the development and resourcing of a standalone support service.

3.1.4 National Action Plan to End Violence against Women and Children 2022-2032

The framing of forced marriage as a matter of human trafficking, slavery and slavery-like practices has been one of debate. There is not scope within this review to address the contentions in the conceptualisation of forced marriage – only to note that the placement in law has led to the response being somewhat outside of broader responses to domestic and family violence. It has been argued (Vidal, 2018). that considering forced marriage within this framework would create greater opportunities for response and open-up the mechanisms available to victim-survivors of family and domestic violence to individuals with an experience of forced marriage. The *National Action Plan to End Violence against Women and Children 2022-2032* (Commonwealth of Australia, 2022) builds on the *National Plan to Reduce Violence against Women and their Children (Fourth Plan) 2019-2022* (Commonwealth of Australia, 2019) which for the first-time policy in Australia recognised forced marriage within the broader framework of family and domestic violence. The *National Action Plan to End Violence against Women and Children 2022-2032* recognises forced marriage in the following ways:

- Inclusion in the definition of:
 - gender-based violence
 - family violence
 - sexual violence, and;
 - the definition/description of consent.

- Through a dedicated action in the plan:

Action 5: Build sector and community capacity to identify and support women and children at increased risk of experiencing gender-based violence and to intervene early to stop violence from escalating.

- **Increase support for children and young people experiencing or at risk of using violence including dating violence, online harassment and image-based abuse, trafficking in persons and forced marriage.**

We suggest that there could be scope to engage in a more targeted way with the issue of forced marriage and the opportunities that exist under this framework to adequately and appropriately

respond. As the *National Action Plan to End Violence against Women and Children 2022-2032* (Commonwealth of Australia, 2022) is used as an overarching framework for the development of state-based plans we are of the view that there has been a missed opportunity for states and territories to recognise and action explicit responses to forced marriage within existing and planned responses to domestic and family violence.

In NSW, there has been no direct engagement with the issue under the *NSW Domestic and Family Violence Plan 2022-2027* (NSW Government, 2022) which is disappointing from the perspective of both the *National Action Plan to End Violence against Women and Children 2022-2032* and the focus of activities under *the Modern Slavery Act 2018* (NSW).

3.2 NSW Response

3.2.1 Background

According to data released by the Australian Federal Police (AFP) in 2022, NSW remains the state with the highest number of reports at 34% of the total number reported since the offence was introduced in 2013. Responses to forced marriage in NSW have been evolving since this time. NSW has had multiple public reports of child and/or forced marriage occurring either domestically or internationally, involving NSW residents – for example:

- **2014** – it was reported publicly that a 9-year-old Sydney girl was removed from Australia for the purposes of being forced into marriage²
- **2014** – NSW police made their first arrest in the case of a child marriage, where it was alleged a 12-year-old girl was married to a 26-year-old man³. It is noted that this arrest was not made as an offence of forced marriage – but rather ‘procuring a child aged under 14 for unlawful sexual activity and being an accessory before the fact to a serious indictable offence’⁴.

As a result, there have been periods of targeted activity particularly from DCJ – child protection. The public nature of reporting in 2014 saw several initiatives led by the then Minister, Pru Goward. For example, in October 2014 Minister Goward announced that there would be a dedicated option via the Child Protection Helpline for callers to select if their report was in response to a child and/or forced marriage. In doing so, specific data would be collected, and a dedicated response would be initiated. This option was only temporarily introduced and no longer remains.

Additionally, in 2014 when revisions were being made to *the Structured Decision-Making System – NSW Mandatory Reporter Guide* (NSW Department of Family and Community Services, 2014), specific indicators were included under the mandatory reporting criteria to flag ‘underage marriage’ as a necessary concern for report of ‘significant risk of harm’ – encouragingly, this shift in 2014 remains in the guide and is a prompt for reporting. Unfortunately, given that ‘underage forced marriage’ is an indicator of other categories of risk of significant harm – rather than a standalone reporting category

²<https://www.theguardian.com/society/2014/dec/02/suspected-forced-marriage-of-nine-year-old-girl-under-investigation>

³ <https://www.smh.com.au/national/nsw/pru-goward-child-brides-claim-a-surprise-to-nsw-police-20140214-32r6g.html>

⁴<https://www.smh.com.au/national/nsw/father-of-child-bride-did-not-protect-daughter-from-harm-court-told-20150529-ghcnfd.html>

– the statistical information available from DCJ cannot articulate how many reports have been made in relation to this form of harm – contributing to the ongoing incomplete picture of the issue both in the state and nationally.

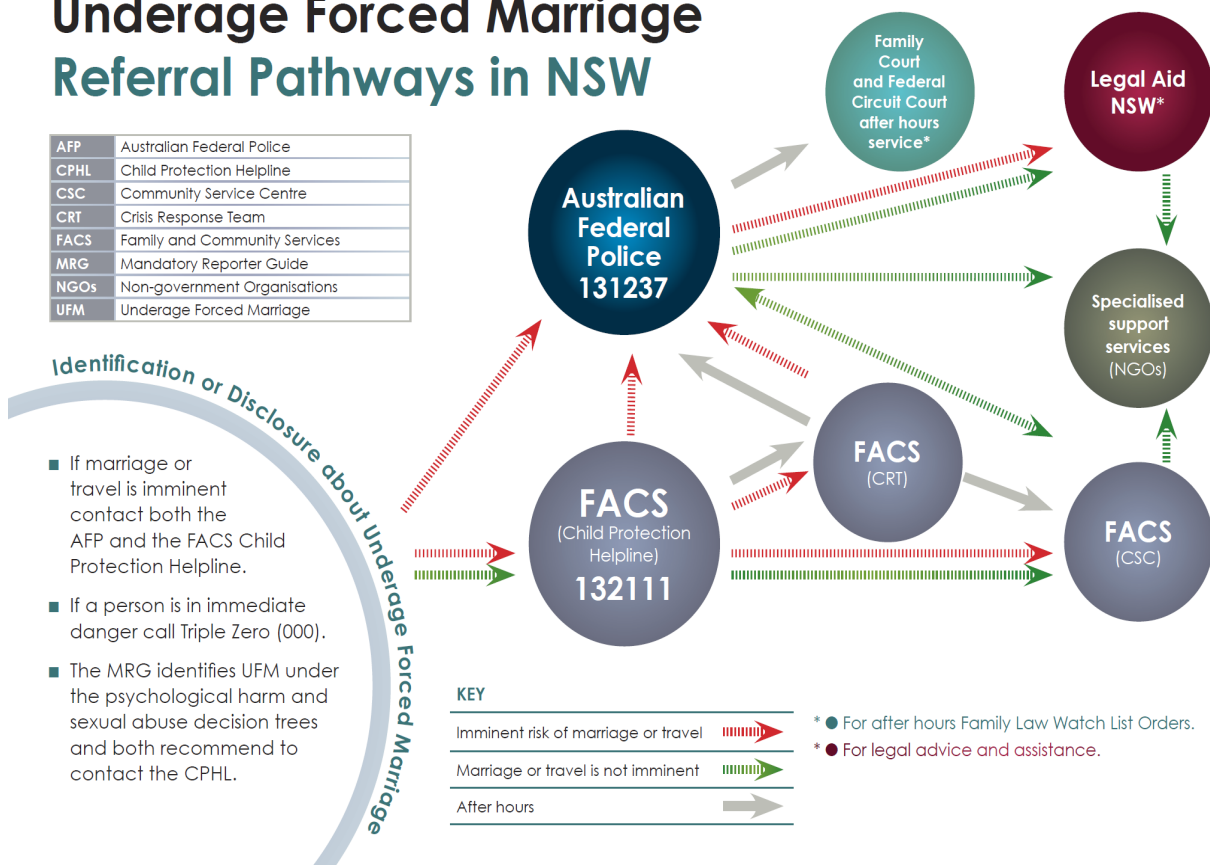
Other policy responses with respect to how reports of forced marriage are handled when received are not publicly available – however practice experience shows variation in the ways in which these reports are handled which is discussed in the following section.

The early responses to forced marriage in 2014 set up a framework where reporting could be made in the state via NSW police or the child protection helpline. The response was almost always a deferral to the Commonwealth. This is not a critique – rather – an observation about the limited infrastructure in the state to respond to forced marriage, whilst the Commonwealth has both a dedicated legislative and support framework. To circumvent some of the challenges with reports being made in NSW and unable to be responded to at the Commonwealth level, largely due to hesitance by individuals to engage with law enforcement, several state-based agencies both government and civil society developed a referral pathway to guide immediate responses to those disclosing risk (**Figure 1**). Legal Aid NSW assumed a leadership role in chairing an inter-governmental group to not only develop the referral pathway but to also build in consistency and consultation to the approach – this is of note for the ways in which in some instances there was both a need to consider state and federal legal remedy – for example the activation of a Family Law Watch List Order. It is unclear if this referral pathway remains operational in NSW as responses to forced marriage in NSW have not been systematically recorded or documented.

Figure 1 – Forced Marriage Referral Pathways in NSW

Underage Forced Marriage Referral Pathways in NSW

AFP	Australian Federal Police
CPHL	Child Protection Helpline
CSC	Community Service Centre
CRT	Crisis Response Team
FACS	Family and Community Services
MRG	Mandatory Reporter Guide
NGOs	Non-government Organisations
UFM	Underage Forced Marriage



3.2.2 Mandatory Reporting – Concerns of a minor being forced into marriage.

In a report on child marriage in Australia by the National Children’s and Youth Law Centre (2013) Section 23 of the *Child and Young Person’s (Care and Protection) Act 1998* (NSW) is highlighted as having specific utility in reporting cases of child marriage – knowing that child marriage fulfils the criteria of a child being at ‘risk of significant harm’. The report includes a response from a letter from the then Acting Chief Executive of the Department outlining the position of the Department:

The NSW Department of Family and Community Services (Community Services) [now DCJ] has stated that forced marriage of children is a serious human rights issue and a matter that would warrant a response from Community Services, given its role in providing child protection services in NSW. Community services recognises the range of behaviours associated with the forced marriage of children, including sexual assault, psychological abuse, threatening behaviour, removal from education, abduction, and imprisonment. It also recognises the potential medical consequences of forced marriage such as early pregnancy, sexually transmitted diseases, complications during pregnancy and birth and the development of psychological problems. The behaviours associated with forced child marriage and the consequences of these behaviours do give rise to child protection concerns and would be capable of being reporting to Community Services under the existing child protection legislation. Many of these breaches also involve breaches of the criminal law in NSW, and as such, are matters for police investigation. (National Children’s Youth and Law Centre, 2013, p.16)

Since this time as noted above ‘underage marriage’ has been added as prompt criteria for a mandatory report. Under Section 19(3)(c) of the Modern Slavery Act 2018 (NSW) a review of actions by DCJ are required to be reported on in the Annual Report of the NSW Anti-Slavery Commissioner. In the 2023 report – the first report of the NSW Anti-Slavery Commissioner, child protection services state:

The Child Protection and Permanency, District and Youth Justice division delivers services across the departmental functions of child protection, out-of-home care, youth justice and public housing. It works with children, young people, families, and communities who are experiencing vulnerability and disadvantage to support them. As part of the Department’s role, services are provided to children and young people whose safety is at risk of significant harm due to domestic and family violence. This may include instances where the child or young person has been, or is at risk of being, subject to underage forced marriage.

The Department operates within the legislative framework of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) to assess the safety and wellbeing of children and young people and provide ongoing support to reduce risk to them. In some circumstances, this may mean supporting them to live outside of the family home. In most instances, this is provided by kinship or foster carers and, in some situations, youth accommodation facilities.

The Department may also connect a child or young person to health and therapeutic supports to meet their individual needs. In addition, Targeted Earlier Intervention services are also engaged to support children, young people, and families where appropriate. In occurrences of underage forced marriage, there may also be a criminal response by way of charging the alleged perpetrator with the offence of child forced marriage under section 93AC of the Crimes Act 1900 (NSW) and also ensuring ongoing support to the impacted child or young person (Office of the Anti-Slavery Commissioner, 2023, p.40)

Unfortunately, this report does not provide any specificity about the actions being taken to develop a response from a child protection perspective that specifically targets the unique needs of individuals in a forced marriage situation. Despite reassurance (National Children’s Youth and Law Centre, 2013) and a re-statement of child protections remit to respond to forced marriage it is our experience over the last 10 years that practice across the state is variable. As practitioners we have had experiences where in some instances there is a direct response to mandatory reports of forced marriage and in other instances not. It is particularly precarious for reports where the individual is aged over 16 years given the statutory limitations of response within *the Child and Young Persons (Care and Protection Act) 1998* (NSW) for individuals in this age category. In these instances, young people have been left – often alone and without support – to navigate alternatives - to the child protection system to avoid being forced into marriage.

3.2.3 Criminal Offence - Forced Marriage

The *Modern Slavery Act 2018* (NSW) amended the *Crimes Act 1900* (NSW) to create a new offence of child forced marriage under section 93AC where a person is guilty of the offence:

- where they cause a child to enter into a forced marriage and intend to cause, or is reckless in causing, that forced marriage (s 93AC (3)).
- if the person enters into a marriage with a child and knows that it is a forced marriage and is not a victim of the forced marriage (s 93AC (4)).

The definition of ‘forced marriage’ mirrors the definition of ‘forced marriage’ in the *Criminal Code Act 1995* (Cth), as discussed above, though only in relation to children. That is, a child enters into a forced marriage if the child is under 16 years of age (s 93AC(2)(b)) or enters into the marriage without freely and fully consenting because of the use of coercion, threat, or deception, or because the child was incapable of understanding the nature and effect of the marriage ceremony (s 93AC(2)(a)). The offence applies whether the use of the coercion, threat or deception is by another party to the marriage or by another person or is against the child or another person (s 93AC (5)). Like the Commonwealth offence, at the time of writing, there have been no convictions under the offence to date.

3.2.4 Civil and Criminal Offences - Non-specific to forced marriage

There are a range of criminal offences that may capture other behaviours and circumstances related to forced marriage in NSW, including the threat of forced marriage. These include domestic and family violence offences, sexual offences, assaults, kidnapping and/or abduction, false imprisonment,

destruction, or theft of property, and more. In this regard, it will be of interest to follow the intersection of new NSW coercive control reforms, commencing with the introduction of the new criminal offence of coercive control under section 54D of the *Crimes Act 1900* (NSW) to come into effect at some stage after 1 February 2024.

Of relevance and focus to this Review is the civil protection order scheme in NSW, discussed further below in section 4.

3.2.5 The Modern Slavery Act 2018 (NSW)

The *Modern Slavery Act 2018* (NSW) commenced on 1 January 2022, with its objects set out under section 3 as follows:

- (a) to combat modern slavery,
- (b) to provide assistance and support for victims of modern slavery,
- (c) to provide for an Anti-slavery Commissioner,
- (d) to provide for detection and exposure of modern slavery that may have occurred or be occurring or that is likely to occur,
- (e) to raise community awareness of, and provide for education and training about, modern slavery,
- (f) to encourage collaborative action to combat modern slavery,
- (g) to provide for the assessment of the effectiveness and appropriateness of laws prohibiting modern slavery and to improve the implementation and enforcement of such laws,
- (h) to provide for mandatory reporting of risks of modern slavery occurring in the supply chains of government agencies,
- (i) to make forced marriage of a child and certain slavery and slavery-like conduct offences in New South Wales,
- (j) to further penalise involvement in cybersex trafficking by making it an offence to administer a digital platform for the purpose of child abuse material or encourage another person to use a digital platform to deal with child abuse material,
- (k) to provide for education, training, and guidance about identifying and addressing modern slavery taking place within supply chains of organisations.

Upon commencement, schedules 4 and 5 of the *Modern Slavery Act 2018* (NSW) made legislative amendments to other acts and regulations to implement objectives in relation to the legal offences and other protections included at section 3(i) and 3(j) above. The other objectives fall within the functions of the newly appointed Anti-slavery Commissioner, as outlined in Part 2 Division 2 of the *Modern Slavery Act 2018* (NSW). As can be seen from its objectives, the *Modern Slavery Act 2018* (NSW) has great potential to be a significant support to victim-survivors of forced marriage. In this regard, we note the recent release of the first Annual Report of the Office of the Anti-Slavery Commissioner and its report against those objectives (Office of the Anti-Slavery Commissioner, 2023) including the potential that both the strategy and the ongoing inter-departmental engagement has to action the recommendations we make in this submission.

3.2.6 Other supports - access to the victims support scheme in NSW

While acknowledging that the Discussion Paper is exploring legal protections rather than remedies for victim-survivors of forced marriage in NSW, we consider it appropriate to address the issue of the

victims support scheme as a support tool for victim-survivors of modern slavery including forced marriage, particularly where the scheme is discussed in Appendix A of the Discussion Paper.

In the experience of these practitioners, the amendments made by the *Modern Slavery Act 2018* (NSW) to the *Victims Rights and Support Act 2013* (NSW) to include ‘acts of modern slavery’ to expand the victims support scheme have had very little, if any, practical benefit at all to victim-survivors of modern slavery, including forced marriage. In particular, we draw the Review’s attention to the many submissions made to the statutory review of the *Victims Rights and Support Act 2013* (NSW), including those concerned with the limited financial and other supports available to applicants, onerous evidence-gathering requirements, need to separately prove injury, unnecessary internal reviews, harmful issuing of restitution orders, and the need to review and update the recognition payment categories and amounts available to victim-survivors of acts of violence and acts of modern slavery.

Of particular concern for victim-survivors of modern slavery, including forced marriage, there is no option for them to access the Immediate Needs Support Package unless they categorise their experience as ‘violence’ rather than ‘modern slavery’, and there is no category of recognition payment that has a clear nexus and appropriate definitions to reflect a victim-survivors experience of – for example – forced marriage. An applicant is still required to try to fit their experiences within the limited definitions and categories available under section 35 of the *Victims Rights and Support Act 2013* (NSW), none of which appropriately or adequately capture the behaviours and offending conduct of modern slavery including forced marriage. Our experience is that applicants are better off making applications in relation to ‘acts of violence’ rather than ‘acts of modern slavery’ to maximise their eligibility and level of support under the scheme, which at a bare minimum defeats the beneficial purpose of the scheme and recognition payments, which is to ‘recognise’ the experience of the applicant and provide linked and appropriate supports to recovery from that specific experience.

We also note that submissions to the statutory review closed on 22 July 2022 and yet no response or report has been forthcoming from the Department of Communities and Justice (DCJ) undertaking the review.

Recommendation 5: Dedicate review of the victim’s support provisions as they relate to modern slavery is undertaken by the NSW government. Specifically:

5.1 The NSW government identifies and releases the figures in relation to how many applications for ‘acts of modern slavery’ have been made, and the amount and type of victims support that has been awarded to applicants, under the modern slavery provisions of the *Victims Rights and Support Act 2013* (NSW) for ‘acts of modern slavery’ since commencement of the provisions from 1 January 2022.

5.2 As part of the current statutory review into the *Victims Rights and Support Act 2013* (NSW), any under-utilisation of the modern slavery provisions of the *Victims Rights and Support Act 2013* (NSW) be considered, and amendments made to provide accessibility and appropriate support under the victims support scheme to victim-survivors of modern slavery.

4. APPREHENDED VIOLENCE ORDERS: A TOOL FOR RESPONDING TO FORCED MARRIAGE.

Before addressing the specific discussion questions outlined in the Discussion Paper this submission offers two additional considerations:

- (1) the advantages and disadvantages of AVOs as a tool in responding to forced marriage; and
- (2) the efforts at the Commonwealth level to develop a national model of a 'Forced Marriage Protection Order' (FMPO) which is a necessary consideration with respect to efficacy and utility of an order at the state level.

4.1 Use of AVOs as a tool in responding to forced marriage.

A description of how the AVO scheme operates in NSW is contained in the Discussion Paper (DJC, 2023) and does not bear repeating at length here. Rather, the focus of this section is on the development and current legal utility of the AVO scheme and the way it can or cannot offer support for victim-survivors of forced marriage separate to the issues posed by the discussion questions.

For contextualising the below discussion on the utility of the AVO scheme, we briefly note that the Apprehended Violence Order (AVO) scheme under the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) provides for two types of AVOs, being an Apprehended Domestic Violence Order (ADVO) for those within a domestic relationship, and an Apprehended Personal Violence Order (APVO) for those not in a domestic relationship. A 'domestic relationship' under section 5 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) relates to a person:

- a. who is or has been married to the other person
- b. is or has been a de facto partner of that other person
- c. has or had an intimate personal relationship with the other person
- d. Is living or has lived in the same household as the other person.
- e. Is living or has lived as a long-term resident in the same residential facility as the other person and at the same time as the other person.
- f. has or has had a relationship involving his or her dependence on the ongoing paid or unpaid care of the other person.
- g. is or has been a relative of the other person.
- h. In the case of an Aboriginal person or a Torres Strait Islander, is or has been a part of the extended family or kin of the other person according to the Indigenous kinship system of the person's culture.

Further to section 5(g) above, 'relative' is defined under section 6 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) to mean:

- a. a father, mother, grandfather, grandmother, stepfather, stepmother, father-in-law, or mother-in-law, or
- b. a son, daughter, grandson, granddaughter, stepson, stepdaughter, son-in-law, or daughter-in-law or

- c. a brother, sister, half-brother, half-sister, stepbrother, stepsister, brother-in-law, sister-in-law, or
- d. an uncle, aunt, uncle-in-law, aunt-in-law, or
- e. nephew or niece or
- i. a cousin.

The relevant definitions of forced marriage as they apply to the AVO scheme and the above definitions in NSW are set out in (1) section 93AC of the *Crimes Act 1900* (NSW) for a child forced marriage; and (2) sections 270.7A and 270.7B of the *Criminal Code Act 1995* (Cth) for a child or adult forced marriage:

(1) *Crimes Act 1900* (NSW), section 93AC, Child forced marriage:

93AC Child forced marriage

(1) In this section -

child means a person who is under 18 years of age.

marriage includes the following -

- (a) a marriage under the law of a foreign country,
- (b) a marriage that is void, invalid or not recognised by law for any reason.

(2) For the purposes of this section, a child enters into a *forced marriage* if—

- (a) the child enters into the marriage without freely and fully consenting—
 - (i) because of the use of coercion, threat or deception, or
 - (ii) because the child was incapable of understanding the nature and effect of the marriage ceremony, or
- (b) when the marriage is entered into, the child is under 16 years of age.

(3) A person—

- (a) who causes a child to enter into a forced marriage, and
- (b) who intends to cause, or is reckless as to causing, that forced marriage, is guilty of an offence.

Maximum penalty – imprisonment for 9 years.

(4) A person is guilty of an offence if the person—

- (a) enters into a marriage with a child, and
- (b) knows that it is a forced marriage, and
- (c) is not a victim of the forced marriage.

Maximum penalty – imprisonment for 9 years.

(5) For the purposes of subsection (2)(a)(i), the subparagraph applies whether the use of the coercion, threat or deception—

- (a) is by another party to the marriage or by another person, or
- (b) is against the child or another person.

(2) *Criminal Code Act 1995* (Cth), sections 270.7A and 270.7B, forced marriage:

270.7A Definition of forced marriage

(1) A marriage is a *forced marriage* if:

- (a) either party to the marriage (the *victim*) entered into the marriage without freely and fully consenting:
 - (i) because of the use of coercion, threat or deception; or

(ii) because the victim was incapable of understanding the nature and effect of the marriage ceremony; or

(b) when the marriage was entered into, either party to the marriage (the *victim*) was under 16.

(2) For the purposes of subsection (1), *marriage* includes the following:

(a) a registered relationship within the meaning of section 2E of the *Acts Interpretation Act 1901*;

(b) a marriage recognised under a law of a foreign country;

(c) a relationship registered (however that process is described) under a law of a foreign country, if the relationship is of the same, or a similar, type as any registered relationship within the meaning of section 2E of the *Acts Interpretation Act 1901*;

(d) a marriage (including a relationship or marriage mentioned in paragraph (a), (b) or (c)) that is void, invalid, or not recognised by law, for any reason, including the following:

(i) a party to the marriage has not freely or fully consented to the marriage (for example, because of natural, induced or age-related incapacity);

(ii) a party to the marriage is married (within the meaning of this subsection) to more than one person.

Note: Section 2E of the *Acts Interpretation Act 1901* covers relationships registered under a law of a State or Territory that are prescribed by regulations under that Act.

(3) Subparagraph (1)(a)(i) applies whether the coercion, threat or deception is used against the victim or another person.

270.7B Forced marriage offences

Causing a person to enter into a forced marriage

(1) A person (the *first person*) commits an offence if:

(a) the first person engages in conduct; and

(b) the conduct causes another person to enter into a forced marriage as the victim of the marriage.

Penalty:

(a) in the case of an aggravated offence (see section 270.8)—imprisonment for 9 years; or

(b) in any other case—imprisonment for 7 years.

Being a party to a forced marriage.

(2) A person commits an offence if:

(a) the person is a party to a marriage (within the meaning of section 270.7A); and

(b) the marriage is a forced marriage; and

(c) the person is not a victim of the forced marriage.

Penalty:

- (a) in the case of an aggravated offence (see section 270.8)—imprisonment for 9 years; or
- (b) in any other case—imprisonment for 7 years.

(3) Strict liability applies to paragraph (2)(c).

Note: For strict liability, see section 6.1.

(4) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3)).

Consent to commence proceedings if defendant under 18.

(5) Proceedings for an offence against subsection (1) or (2) must not be commenced without the consent of the Attorney-General if the defendant was under 18 at the time the defendant allegedly engaged in the conduct constituting the offence.

(6) However, a person may be arrested for, charged with, or remanded in custody or on bail in connection with, such an offence before the necessary consent has been given.

4.1.1 Before the introduction of the Modern Slavery Act 2018 (NSW)

Prior to the introduction of the *Modern Slavery Act 2018* (NSW) and its amendments to the *Crimes (Domestic and Personal Violence) Act 2007* (NSW), there was in-principle application of the AVO scheme as a response to forced marriage. It is unclear how often, if ever, it was utilised. While AVOs were not created to respond to the issue of forced marriage and ‘forced marriage’ as a concept and offence were not explicitly included in the *Crimes (Domestic and Personal Violence) Act 2007* (NSW), the provisions arguably covered a situation of forced marriage or behaviours typical of, or associated with, forced marriage. For example, under section 11(1)(c), an offence intended to coerce or control a person or to cause a person to be intimidated and / or fearful, including an offence under the *Criminal Code Act 1995* (Cth) such as the forced marriage offence under s 270.7B, was considered a ‘domestic violence offence’, which could in turn trigger the making of an apprehended domestic violence order (ADVO). This covered situations where there was a ‘domestic relationship’ (section 5 of the *Crimes (Domestic and Personal Violence) Act 2007* [NSW]) only.

In a situation of forced marriage occurring outside a domestic relationship - for example, being pursued or perpetrated by extended family members not included within the definition of ‘relative’ in section 6, such as community members, family friends, religious celebrants etc - there were less clear pathways to accessing an apprehended personal violence order (APVO) although it was still plausible. That is, as forced marriage was not included under section 4 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) as a ‘personal violence offence’, only behaviours associated with forced marriage under other offences such as the below had potential to protect a person under an apprehended personal violence order (APVO):

- assault and bodily harm offences (being offences in the *Crimes Act 1900* (NSW) listed in section 4(a) of the *Crimes (Domestic and Personal Violence) Act 2007* [NSW]), or

- as stalking or intimidation offences under section 13 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW).
 - **Intimidation (Section 7)** - including conduct amounting to harassment or molestation of the person; an approach made to the person that causes the person to fear for his or her safety; and any conduct that causes a reasonable apprehension of injury to a person or to a person with whom he or she has a domestic relationship or of violence or damage to any person or property.
 - **Stalking (Section 8)** - including following a person about; watching or frequenting the vicinity of, or an approach to a person's place of residence, business or work or any place that a person frequents for the purposes of any social or leisure activity.
 - **Stalking or Intimidation with intent to cause fear of physical or mental harm (Section 13)**. Including causing a person to fear physical or mental harm to another person with whom he or she has a domestic relationship.

There was also the additional requirement - which remains - that an adult in need of protection from a personal violence offence 'in fact fears' the conduct (section 19(1) of the *Crimes (Domestic and Personal Violence) Act 2007* [NSW]). A child and a person of appreciably below average general intelligence function are excluded under this requirement (section 19(2) of the *Crimes (Domestic and Personal Violence) Act 2007* [NSW]). This is different to the situation of a domestic violence offence where, under section 16(2), it is not necessary for a court to be satisfied that the person in need of protection (PINOP) 'in fact fears' the offence. Where the person is a child, suffers from an appreciably below average general intelligence function, has been subjected on more than one occasion to the offending conduct by the defendant and there is reasonable likelihood the defendant may commit an offence and the order is necessary to protect the PINOP, or the court is satisfied on the balance of probabilities that the PINOP has reasonable grounds to fear the commission of a domestic violence offence against the PINOP. **It is arguable that in a forced marriage situation, the same exceptions should apply whether the conduct is being perpetrated within a domestic relationship or by a relative (a domestic violence offence) or by another perpetrator (a personal violence offence).**

Recommendation 6: Examine the exceptions under section 16(2) of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) that apply for a person seeking protection under an ADVO and consider extending them to section 19(2) of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) for a person seeking protection under an APVO for a forced marriage – i.e. outside a domestic relationship. This removes the requirement that a person seeking an APVO in a situation of a forced marriage faces the higher threshold of 'in fact fearing' the conduct or offence.

4.1.2 After the introduction of the Modern Slavery Act 2018 (NSW)

Effective from 1 January 2022, the *Modern Slavery Act 2018* (NSW) amended the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) explicitly to enable victim-survivors of forced marriage to apply for apprehended domestic violence orders (ADVOs) or apprehended personal violence orders (APVOs):

- a child forced marriage under s 93AC of the *Crimes Act 1900* (NSW) and a child or adult forced marriage under s 270.7B of the *Criminal Code Act 1995* (Cth), or an attempt at either, became ‘personal violence offences’ (section 4(b2) and section 4(c) of the *Crimes (Domestic and Personal Violence) Act 2007* [NSW])
- conduct amounting to the coercion or deception of, or a threat to, a child to enter into a forced marriage (within the meaning of section 93AC of the *Crimes Act 1900* [NSW]) or a child or adult (within the meaning of section 270.7A of the *Criminal Code Act 1995* [Cth]) was included under the definition of ‘intimidation’ (sections 7(d)-(e) of the *Crimes (Domestic and Personal Violence) Act 2007* [NSW])
- an AVO may now prohibit behaviour of a person that might coerce, threaten, or deceive a child or adult to enter into a forced marriage within the meaning of the *Crimes Act 1900* (NSW) or *Criminal Code Act 1995* [Cth]) (section 35(2A) of the *Crimes (Domestic and Personal Violence) Act 2007* [NSW])
- a court must make an interim AVO where a person is charged with the forced marriage of either a child or an adult, or attempts to do so, under either the *Crimes Act 1900* (NSW) or *Criminal Code Act 1995* (Cth) (sections 40(5) (c1) and 40(5)(d)) of the *Crimes (Domestic and Personal Violence) Act 2007* [NSW])
- an application for a final AVO being made to protect a child being subjected to coercion to enter into a forced marriage under either the *Crimes Act 1900* (NSW) or *Criminal Code Act 1995* (Cth) may now additionally be made by the Department of Communities and Justice (DCJ), a person authorised by DCJ, or any other person prescribed by the regulations (section 48(2)(c) of the *Crimes (Domestic and Personal Violence) Act 2007* [NSW]). The DCJ may commence proceedings according to new section 52A and serve notice according to new section 55(2A).

The combined effect of the above changes means that the provisions of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) now explicitly include forced marriage of children and adults and may operate to protect persons from a forced marriage occurring within or outside a domestic relationship by making it possible for ADVOs and APVOs to be applied for and granted to prevent a forced marriage.

4.1.3 Barriers to protection for young people aged 16 years to 18 years.

Despite these changes, there are still barriers for accessing AVO protection from forced marriage, further discussed in sections 5 and 6 below. However, one area of concern is in relation to vulnerable young people aged over 16 years and under 18 years. This stems from the fact that a ‘child’ under the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) is defined as a person under the age of 16 years (section 3 of the *Crimes (Domestic and Personal Violence) Act 2007* [NSW]). For example:

- The power for DCJ to apply for an AVO in the situation of a child forced marriage under s93AC of the *Crimes Act 1900* (NSW) applies only ‘in the case of a child’ (section 48(2)(c) *Crimes (Domestic and Personal Violence) Act 2007* [NSW]) so would apply only to those under 16 years. This means that a person over 16 years and under 18 years must still rely on NSW police, a guardian, or themselves to apply for an AVO.
- Where an ADVO or interim ADVO is being made for a person over 18 years, a ‘child’ with whom the PINOP has a domestic relationship must be included as a protected person (section 38(2) of the *Crimes (Domestic and Personal Violence) Act 2007* [NSW]). As a ‘child’ is defined as a person under 16 years in the *Crimes (Domestic and Personal Violence) Act 2007* (NSW), this means that those over 16 but under 18 years are not included. In situations that have been experienced by those victim-survivors these practitioners are aware of, and with due reference to intergenerational norms and examples provided by those with lived experience. This is illustrated in the case studies of Layla and Zahra in Section 2 of this submission. There are situations where younger siblings or relative family members may face the same kind of pressure in relation to a forced marriage as the PINOP and may benefit from an expansion of this provision.
- A person over 16 years and under 18 years eligible for an APVO must ‘in fact fear’ the conduct according to section 19(1) as the exceptions under section 19(2) applicable to a ‘child’ refers to someone under 16 years. See also discussion above at recommendation six in relation to this fear threshold.

Recommendation 7: Review relevant provisions of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) to ensure protections available to those under 16 years are available to the greatest possible extent to those over 16 years and under 18 years.

4.1.4 Regard for pattern of behaviour beyond single moment in time in which marriage occurs.

As discussed in Section 2.1 of this submission, a person’s experience of forced marriage and a situation of forced marriage is not a ‘point in time’ event; rather the pattern of behaviour that occurs over a period of time. This can involve conduct not immediately or obviously related to a marriage but conduct which is experienced as harmful. This can be difficult to recognise and capture in legislation – both criminal and civil.

There are attempts within the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) to guide practitioners and courts towards a greater understanding of the nature of such offending. For example, for the purpose of determining whether a person’s conduct amounts to intimidation in

relation to forced marriage (section 7(d) of the *Crimes (Domestic and Personal Violence) Act 2007* [NSW]) ‘a court may have regard to any pattern of violence (especially violence constituting a domestic violence offence) in the person’s behaviour’ (section 7(2)), and conduct may amount to intimidation of a person ‘even though it does not involve actual or threatened violence to the person’ (section 16(3) of the *Crimes (Domestic and Personal Violence) Act 2007* [NSW]).

We also note that recent criminalisation of coercive control in NSW may also offer a tempting nexus to recognise the pattern of behaviours. Whilst from a principled point of view there may be some validity to understanding the associated conduct of forced marriage within the framework or definitions of coercive control, we note up front that it is our position when looking across available remedies that further criminal justice responses to address forced marriage are not a clear solution to the current gaps.

For the purpose of ensuring the AVO scheme in NSW in relation to forced marriage is as robust and impactful as it can be to protect against forced marriage, it will be crucial to ensure that there is a broad and non-exhaustive set of behaviours which can constitute grounds for an order – and – that education and capacity building amongst practitioners, law enforcement, and the judiciary about the broader context of behaviours in relation to forced marriage in applying the relevant *Crimes (Domestic and Personal Violence) Act 2007* (NSW) provisions is prioritised.

Recommendation 8: Include a broad and non-exhaustive set of behaviours in the development of a AVO scheme to respond to forced marriage. In addition, we recommend:

8.1 These provisions should be complemented by education and capacity building amongst practitioners, law enforcement and the judiciary to ensure effective implementation.

4.2 Commonwealth ‘Forced Marriage Protection Order’ (FMPO)

In 2018 the Commonwealth announced its intention to work on the development of a FMPO. This announcement came as a recognition that support beyond the criminal justice framework may be required in situations of forced marriage. Since this time, it is unclear what has progressed about the development of an FMPO in Australia - not least there has been no model released for public consultation. The *National Action Plan to Combat Modern Slavery 2020-25* includes an action item (Item 23) dedicated to the development of ‘a model for enhanced civil protection and remedies for individuals, in, or at risk of, forced marriage’ (Australian Government, 2020b, p.27). As members of the former ‘Civil Society Forced Marriage Protection Order Consultation Group’ and the now ‘Civil Society Consultation Group on Forced Marriage’ chaired by the Attorney-General’s Department we understand that the Standing Council of Attorney’s General (SCAG) have agreed to address forced marriage through a coordinated national response. This includes the establishment of a ‘Forced Marriage Sub-Committee’ tasked with developing options for an enhanced civil protections model and/or remedies. This has been taken to mean that whilst the FMPO was something which was being given due consideration by the Commonwealth following the announcement in 2018 is no longer being considered the primary civil mechanism for consideration.

The FMPO as is operational in the UK provides civil protections and criminal sanctions for breach of those orders, regardless of a victim's age. In England and Wales, the *Family Law Act 1996* (UK) allows for applications for an FMPO to be made by victims or persons at risk of a forced marriage, by organisations seeking to help victims, and family members with leave of the court. The *Anti-Social Behaviour, Crime and Policing Act 2014* (UK) introduced a new section which criminalised the breaches of an FMPO in England and Wales. In Scotland, the *Forced Marriage etc (Protection and Jurisdiction) Act 2011* (Scotland) authorises the making of FMPOs for victims and persons at risk of a forced marriage and largely reflects the provisions of England and Wales. The provisions in Scotland also establish the offence of breaching an FMPO.

A detailed analysis of the FMPO provisions is provided at **Appendix 2**. By way of summary (for further analysis see: Vidal, 2017) the strength of considering a FMPO or similar scheme in a practical way includes:

- An individual requesting an FMPO can be externally represented - that means either police or other designated authorities can represent the individual which takes the onus off the individual to apply and take their own, typically, family members through the court process.
 - The scheme also provides for redacted records - for example if an individual applying for an order and/or their representative is subpoenaed they can redact critical information that does not share with the family (or others) what efforts the individual has made to avoid the proposed marriage.
- The threshold for evidence to enact an FMPO is low and may be circumstantial. Whilst this may be something to exercise caution around - there is an opportunity to put in an immediate intervention to safeguard the individual whilst consequent investigations progress.
- The process for putting an FMPO in place is timely - that is it can be taken out as soon as 24 hours depending on the circumstances.
- An FMPO can extend to include siblings / family members also at risk of harm from the proposed forced marriage. What we understand about forced marriage is that the practice is intergenerational, and risk can increase for siblings when another family member has resisted a proposal for marriage.
- The legislation provides that an FMPO can include a non-exhaustive list of conditions made possible by the fact that the High Court has inherent jurisdiction. Some provisions with utility worth noting includes:
 - Can provide for not instructing a third person to engage in acts related to or that may cause a forced marriage. This can therefore address the broader spectrum of behaviours which are involved in creating risk and / or harm which are not currently able to (always) be captured or addressed by the criminal provisions.
 - Provides for the return of an individual who has been taken overseas for the purposes of a marriage - for example a parent or another influential family member who can

facilitate the return of the individual may have an Order served on them to enable this. The FMPO can state that a proof of return ticket must be presented to police within 24 hours or require a family to escort an individual to the nearest embassy.

- In addition - the provisions can also extend to liaison with individuals at embassies and consulates to plan intervention - this is made successful in the context of the UK as part of their overall strategy to address forced marriage targeted relationships have been built with embassies and consulates in countries where individuals are known to be travelling for the purposes of forced marriage.
- Provisions can be made for contact to be made with the local authority (child protection department) on a regular basis for example - week face to face, phone, online contact.

Compared with the current system in Australia where similar orders (for example those which stop travel outside of Australia, retention of passports etc) may be made - for example under the *Family Law Act 1975* (Cth) - the system of FMPOs is not restricted to individuals under the age of 18 years. State-based schemes which may be designed to meet some of these needs are somewhat limited to the specificity of the context in which a forced marriage may occur. This is why we suggest there remains utility in looking at a federal scheme - to either complement what is possible within the state or provide a more holistic approach. For example - FMPOs are fully enforceable and apply across all jurisdictions within the UK. Translated to the Australian context an FMPO would provide coverage across all states and territories and allow for provisions such as Airport Watchlist Orders which are currently outside of state and territory jurisdiction to be a key tool in prevention for all individuals at risk, not just those under the age of 18 years. Nevertheless, for as much as is possible - the examples provided above about effective provisions in civil orders pertaining to forced marriage are a reference point for considering what may be possible in the implementation of an AVO scheme in NSW responding to forced marriage. Further discussion of the benefits of implementing either a stand-alone FMPO scheme or making changes to existing family violence provisions across Australia is detailed in **Appendix 3**. This is supplementary analysis for consideration and to inform potential engagement with the Commonwealth on proposed civil protection mechanism/s under the *National Action Plan to Combat Modern Slavery 2020-2025* (Australian Government, 2020b).

With that said the implementation of FMPOs in the UK have not been without their challenges. Therefore, in looking at the efficacy and appropriateness of civil protections there is much to be learnt from the UK experience. This includes that whilst there is a high volume of FMPOs issued in the UK each year - 200-250 per year (UK Government 2023)- 'little is known about their use and potential impact on the victims/survivors' (Anitha et al, 2023, p.6). **This emphasises the need to ensure that in the introduction of any measure seeking to provide intervention and support should be coupled with a plan for, and, allocated resources to evaluate the mechanism and make changes to ensure that it meets the needs of individuals impacted.**

Anitha et al's (2023) first-ever study of FMPOs examines the workings of FMPOs and makes critical recommendations for improving the preventative and protective responses to forced marriage in the UK. Whilst not everything - contextually or legislatively - directly translates, what they emphasise as necessary considerations is essential reading for anybody considering legislative (or otherwise) intervention in the context of forced marriage. We identify that part of the findings from this study show that the efficacy of such orders is reliant on a coordinated, multidisciplinary approach that couples support with legislative mechanisms. In addition to this, we would like to highlight these specific points they relate to identification, risk assessment and information sharing:

Forced marriage cases cannot be dealt with uniformly - rather, they must be addressed on a case-by-case basis. This means that cases must be reported across multiple agencies, allowing staff to exercise their professional judgement about the presence of a significant risk of harm and appropriate safeguarding responses.

Recognising that domestic violence, forced marriage, honour-based violence, and child abuse in the context of family violence frequently co-exist, together with recognising the harmful effects of exposure to such intersecting forms of family violence on children, requires an urgent need for improved collaboration between statutory safeguarding services and specialist violence against women services.

The police and other criminal justice bodies need to work with specialist 'by and for' services to determine the right service response (Anitha et al, 2023, p.10)

In the Australian context, it is also worth noting the debate and considerations around the proposed modern slavery risk orders (MSRO) that were eventually removed from the final version of the *Modern Slavery Act 2018* (NSW). The modern slavery risk order provisions were ultimately removed in favour of existing protections, including state-based AVOs, and in deference to the fact that '[r]isk based and prevention-oriented orders are complex and challenge fundamental principles of justice, including the presumption of innocence. They should not be introduced lightly' (NSW Parliament, 2020, p.41). The NSW Government and other stakeholders at the time 'expressed concern that modern slavery risk orders fit poorly into the current criminal justice and criminal courts frameworks' (NSW Parliament, 2020, p.41). The Office of the Director of Public Prosecutions (ODPP) identified the following issues in particular:

- 'It is not clear if a MSRO is a civil order or a criminal sanction. Characterisation of an order as either civil or criminal is fundamental in terms of interpreting and applying the provision, it is also essential from a procedural perspective. Consequential issues would also arise in relation to the technology used by the courts to process and enforce the orders ...
- .. The avenues for appeal against the imposition of an MSRO would require consideration and legislative clarification ...
- ... Applications may be made by the court on its own volition, the Attorney General or the Director of Public Prosecutions. As the Police conduct prosecutions of offences in the Local

Court that may qualify for a MSRO, it is not obvious who would apply for the order in those cases on behalf of the Police ...

- ... In terms of bringing an application, it is not clear to me how the ODPP would obtain additional evidence as to the risk factors, nor how a MSRO is intended to sit with the other sentencing options and post sentencing orders available to the court ...
- ... [I]t is not clear who is responsible for the monitoring and enforcement of MSROs' (ODPP (Submission 84) as cited by, NSW Parliament, 2020, p.43

Many of the arguments made about the 'problematic aspect' cited in the Second Reading Speech of the *Modern Slavery Amendment Bill 2021* (NSW) (NSW Legislative Assembly, 2021) of introducing such orders are relevant to the introduction of a stand-alone FMPO in the Australian context and would be worth revisiting where an FMPO is being considered.

Recommendation 9: Consider the utility of an FMPO outside of and/or in addition to the AVO scheme being developed in NSW. Specifically:

9.1 Consider what an FMPO may offer in the prevention and intervention of forced marriage in certain circumstances.

We assert that this is not a tool that can operate in isolation. Therefore, it should be considered for its strengths as part of a suite of both federal and state-based tools which are coordinated and can meet the diverse needs of individuals impacted by forced marriage.

9.2 Build in a mechanism for review following implementation of the AVO scheme to ensure that considerations made in operationalising the model remain fit-for-purpose and best practice.

5. RESPONSES TO DISCUSSION QUESTIONS: AVOs

The responses to these discussion questions are made within the background context provided in Sections 2-4 of this submission. Some of the questions have been answered through this commentary and will be noted as such.

5.1 Applications for AVOs

1. Is the obligation to apply for a provisional AVO in the context of forced marriage appropriate, sufficiently clear, and consistently complied with?

Firstly, we note that an AVO should not be considered an ‘obligation’ but rather part of a suite of tools that provide options for those experiencing forced marriage. In turn, an AVO cannot be overly relied upon on its own as sufficient deterrent to those intent on perpetuating forced marriage behaviours.

In relation to the obligation, section 27 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) sets out the situations where a NSW police officer is obliged to make a provisional AVO. This includes where the investigating police officer suspects or believes that:

- a domestic violence offence under section 11 or stalking / intimidation offence under section 13 has or is being committed, is imminent or is likely to be committed, or proceedings have been commenced in relation to the offence (sections 27(1)(a)(i) and (iii));
- an offence of child or young person abuse under the *Children and Young Persons (Care and Protection) Act 1998* has or is being committed, is imminent, or is likely to be committed, or proceedings have been commenced in relation to the offence (sections 27(1)(a)(ii) and (iii));
or
- an order needs to be made immediately to ensure the safety and protection of the person (section 27(1)(b)).

A forced marriage is a relevant offence in each of the above scenarios. One issue that arises in this respect is that while a NSW police officer will have an obligation to apply for a provisional AVO, their powers in relation to the prohibitions and restrictions they may impose in that provisional order are limited and may be ineffectual in preventing the forced marriage behaviours and offence. That is, a provisional order may only impose the prohibitions and restrictions set out under section 35(1)(a)-(e), namely:

- (a) prohibiting or restricting approaches by the defendant to the protected person,
- (b) prohibiting or restricting access by the defendant to any or all the following—
 - (i) to any premises occupied by the protected person from time to time or to any specified premises occupied by the protected person,
 - (ii) to any place where the protected person works from time to time or to any specified place of work of the protected person,

- (iii) to any specified premises or place frequented by the protected person, whether or not the defendant has a legal or equitable interest in the premises or place,
- (c) prohibiting or restricting the defendant from approaching the protected person, or any such premises or place, within 12 hours of consuming intoxicating liquor or illicit drugs,
 - (c1) prohibiting or restricting the defendant from locating or attempting to locate the protected person,
- (d) prohibiting or restricting the possession of all or any specified firearms or prohibited weapons (within the meaning of the *Weapons Prohibition Act 1998* (NSW) by the defendant,
- (e) prohibiting the defendant from interfering with the protected person's property.

This means that police are explicitly excluded from utilising the general provision at section 35(2)(f) to prohibit or restrict 'specified behaviour by the defendant that might affect the protected person', and the specific forced marriage provision at section 35(2A) that prohibits behaviours of the defendant that 'might coerce, threaten or deceive the protected person to enter into a forced marriage'. It is therefore questionable how effective such an obligation is in relation to protecting a person from a forced marriage where the order itself cannot impose the very prohibitions and restrictions that are needed to prevent the forced marriage occurring.

Recommendation 10: That an AVO should not be considered an 'obligation' but rather part of a suite of tools that provide options for those experiencing forced marriage. Specifically:

10.1 Where police are obliged to apply for a provisional AVO under section 27 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) in a forced marriage situation, police should also be able to utilise the general provision at section 35(2)(f) or the forced marriage provision at section 35(2A) to prohibit specific conduct of the perpetrator in relation to forced marriage behaviours not captured by section 35(2)(a)-(e) to which police are currently restricted (by section 35(3)).

2. Are there any other circumstances in which the making of an AVO should be mandated in matters involving forced marriage?

Sections 40 and 39 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) respectively require a court to make an interim AVO on charge of a serious offence, and a final AVO if a person pleads guilty or is found guilty of a serious offence, which includes the forced marriage offences under the *Crimes Act 1900* (NSW) and *Criminal Code Act 1995* (Cth). For the reasons outlined in the Section 2 discussion about understanding forced marriage, including the potentially detrimental and ostracising consequences for a victim-survivor of forced marriage being perpetrated by family members, AVOs should not be mandated in any other circumstances.

Recommendation 11: That AVOs should not be mandated in any other circumstances than those set out in sections 40 and 39 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) where a person has been charged with a serious offence including forced marriage or convicted of a serious offence including forced marriage.

5.2 Applications for AVOs and standing

3. Should section 48 of the CDPV Act be amended to give additional people or entities standing to apply for AVOs in situations of forced marriage? If so, who else should have standing?

We support the expansion of section 48 to give additional people or entities standing to apply for AVOs in situations of forced marriage. Given the complexities and dangers that both children and adults may experience in applying for an AVO themselves (e.g. in navigating the system), through NSW Police (e.g. where they may be hesitant to interact with law enforcement or fear immigration ramifications), their guardian (e.g. who may be the perpetrator), or DCJ only.

In the first instance, the Australian Federal Police (AFP) should have standing to apply. As the law enforcement agency with primary carriage of the forced marriage caseload, the AFP currently do not have standing under the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) as while a ‘police officer’ may apply for an AVO (section 48 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW)), a ‘police officer’ for the purpose of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW), is defined as a member of the NSW Police Force under Schedule 4 of the *Interpretation Act 1987* (NSW).

In relation to other appropriate persons or entities with standing, we agree that interested parties such as carers, other family members, support organisations, and friends should have standing to apply. This expansion could be guided by the FMPO scheme under the UK Act and Scottish Act discussed in detail in Section 4 and **Appendix 2**, where applications for an FMPO may be made by a protected person, a relevant third party, or any other person with leave of the court.⁵ Those falling within the definition of ‘relevant third party’ differ between the Acts but include local councils, local authorities, the Lord Advocate (equivalent to the Director of Public Prosecutions in Australia) and any other person specified by subordinate legislation.⁶ In deciding whether to grant leave, a court must have regard to:

- the applicant’s connection with the protected person;
- the applicant’s knowledge of the circumstances of the protected person; and
- the wishes and feelings of the protected person so far as they are reasonably ascertainable, and so far as the court considers it appropriate, in light of the protected person’s age and understanding of risks.⁷

While we would recommend being guided by the common features of the FMPO models under the UK Act and the Scottish Act, we note that consistency with whatever is being proposed at the Commonwealth level in relation to any form of forced marriage protection order scheme should be a key consideration. We would also recommend that - unlike the UK Act and Scottish Act which do not require it - an interested party should only be able to make such an application with the consent of the person in need of protection.

⁵ UK Act ss 63C (2)-(3), Scottish Act ss 3(1)-(2).

⁶ UK Act, s 63C (7), Scottish Act s3(7).

⁷ UK Act s 63C (4), Scottish Act ss 3(3)-(4).

Recommendation 12: Expand section 48 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) so that interested parties may have standing to apply for AVOs in situations of forced marriage. In addition:

12.1 Give separate standing to the Australian Federal Police (AFP) to apply for an AVO to protect a person from forced marriage.

12.2 Be guided by the common features of the FMPO models under the UK Act and the Scottish Act, particularly in relation to the considerations of the court in deciding whether to grant leave to interested parties to appear.

12.3 Any changes are consistent with whatever is being proposed at the Commonwealth level in relation to a forced marriage protection order scheme.

12.4 Include a condition that an interested party should only be able to make such an application with the consent of the person in need of protection.

4. Are there any risks if additional people or entities have standing to apply for AVOs in situations of forced marriage? If so, what are these risks? Are there ways to mitigate against these risks?

As discussed above in answer to question 3, to mitigate against risk involved in permitting standing to other interested parties to apply for AVOs in situations of forced marriage, we recommend being guided by the relevant FMPO sections of the UK Act and Scottish Act in relation to the considerations a court must have regard to when deciding whether to grant leave to appear to interested parties. We additionally recommend that an interested party should only be able to apply with the consent of the person in need of protection.

We note the Discussion Paper's comment that '[e]xpanding the list of those who can apply for an AVO may make it difficult for a court to determine which parties are acting in the true interests of a victim-survivor in applying for an order' (DCJ, 2023, p.11). We respectfully suggest that a court exists to make objective, evidence-based 'difficult' determinations, as they do daily in current AVO and other matters and would be more than capable - with the help of carefully crafted mitigating provisions as suggested - of continuing to make difficult determinations.

5.3 Grounds for making an AVO

5. Do the grounds for making an ADVO effectively recognise and respond to circumstances of forced marriage? Could these grounds be further strengthened for this purpose and, if so, how? AND

6. Under what circumstances will individuals involved in facilitating a forced marriage not be in a domestic relationship with the victim-survivor? Do the grounds for making an APVO effectively protect victim-survivors in these cases? If not, how could these grounds better respond to the needs and circumstances of victim-survivors of forced marriage?

Refer to discussion above at 4.1.1. and recommendation six in relation to exploring whether the same exceptions under section 16(2) of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) that

apply for a person seeking protection under an ADVO for a forced marriage should be in place under section 19(2) of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) for a person seeking protection under an APVO for a forced marriage.

5.4 Prohibitions or restrictions under AVOs

7. Are the existing prohibitions and restrictions that may be imposed under an AVO adequate and effective to safeguard against forced marriage? Are any changes needed to the prescribed form?

Section 35 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) provides a non-exhaustive list of types or prohibitions and restrictions an AVO may include, as follows:

- Prohibiting or restricting approaches to the protected person.
- Prohibiting or restricting access by the defendant to any or all the following:
 - to any premises occupied by the protect person from time to time or to an specific premises occupied by the protect person
 - to any place where the protected person works from time to time or to any specified place of work of the protected person
 - to any specified premises or place frequented by the protected person
- Prohibiting or restricting the defendant from approaching the protected person, or any such premises or place, within 12 hours of consuming intoxicating liquor or illicit drugs.
- Prohibiting or restricting the defendant from locating or attempting to locate the protected person.
- Prohibiting or restricting the possession of all or any of specified firearms or prohibited weapons by the defendant.
- Prohibiting or restricting specified behaviour by the defendant that might affect the protected person.

Under Section 36 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) every AVO is taken to specify that the defendant is prohibited from:

- assaulting or threatening the protected person or a person with whom the protected person has a domestic relationship.
- stalking, harassing, or intimidating the protected person or a person with whom the protected person has a domestic relationship.
- intentionally or recklessly destroying or damaging any property that belongs to, or is in the possession of, the protected person with whom the protected person has a domestic relationship.

As this list is both non-exhaustive and broad - it could be readily argued that many sufficient provisions are already included within the current scope of AVOs in NSW. With that said, increasing specificity may have two-fold value: (1) include specific behaviours and/or conduct that are irrefutable amongst the broad and more general nature of current AVO provisions and (2) support the uplift in state judiciary to recognise and respond to the specificities of a forced marriage and ensure orders are comprehensive. Some specifics which could be included as guidance include:

- Preventing steps to organise a marriage - booking travel, engaging an officiant, completing a notice of intent to marry and/or similar conduct.

- Preventing removal from the country and assisting with repatriation (Noting that there are likely jurisdictional limitations here).
- Preventing disclosure of location of a protected person.
- Surrender of passport to the court.

We would also encourage the review of provisions within *Family Law Act 1975* (Cth) ‘child-related injunctions’ to consider how these can apply within the state based AVO scheme - including that they be extended to those over the age of 18 where circumstances call for it. Specifically:

- Personal protection of a child.
- Personal protection of a child or person who has parental responsibility for the child.
- Restraining a person from entering or remaining in a place of residence, employment or education of the child or a person with parental responsibility of the child.

We note these here as recognition that whilst the law in Australia limits parental responsibility from the age of 18 years - socially and culturally parental responsibility, expectation and pressure does not end at the age of 18 years. Therefore, where there is an individual impacted by forced marriage and the parents are central to the facilitation of this marriage - it is critical to consider how orders can reflect this and make clear the boundary of parental responsibility.

We agree with the previous submissions of Legal Aid NSW (2019) that the current protections provided by AVOs do not address one of the biggest risks to victim-survivors in our experience, which is their removal from Australia, and strongly support any amendments to provisions under section 35 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) and changes to the prescribed form under the *Crimes (Domestic and Personal Violence) Regulation 2019* (NSW) Schedule 1 Form 1 (APVO) and Form 2 (ADVO), or however the change may be implemented.

Recommendation 13: Explore the benefits of increasing the specificity of the existing prohibitions and restrictions that may be imposed under an AVO to irrefutably include relevant behaviours and conduct relevant to forced marriage and support the uplift in the judiciary to recognise and respond to the specificities of a forced marriage and ensure orders are comprehensive. Specifically:

13.1 Review the provisions of the *Family Law Act 1975* (Cth) to consider how those orders and injunctions may be applied within a state based AVO scheme, and that the current child-related provisions be extended to those over 18 years where circumstances call for it.

13.2 Make orders available under the AVO scheme that specifically prevent travel of a person – child or adult – at risk of a forced marriage.

8. Should provisional AVOs be able to prohibit behaviour of the defendant that might coerce, threaten, or deceive the protected person to enter into a forced marriage, as court ordered AVOs have the power to do?

This question is addressed in our response to question 1.

5.5 Practice and procedure for AVOs

9. Are there any practice changes that could be made to better support victim-survivors of forced marriage to have access to the protections under AVOs? If so, what are they?

This question is addressed at question 11 and more broadly in the discussion at Section 2.3 of this submission.

10. Is additional guidance necessary or helpful to assist victim-survivors and support services to make use of AVOs in cases of forced marriage? If so, what should this guidance consist of?

To our knowledge there is no specific guidance in the state of NSW for the identification of and response to forced marriage. Guidance of a limited nature exists in part at the federal level - for example:

- the Attorney General's Department at the time of criminalisation produced a '*Community Pack*' (Australian Government, 2014) which included a suite of awareness raising materials and simplified risk assessment and case planning tools.
- the *Guidelines for NGOs: Working with trafficked people* (Australian Government, 2015) are currently under review by the Attorney-General's Department but have historically provided a broad national view of basic best-practice principles.
- the *National Domestic and Family Violence Benchbook* (Australian Government, 2022). offers an overview of the federal provisions in response to forced marriage with some basic narrative about forced marriage in Australia.

In addition to these sources of guidance, Anti-Slavery Australia was funded by the DSS to produce a '*Frontline Worker Guide*' (Anti-Slavery Australia, 2022). This guide provides a range of best-practice information, useful again in a general sense. However, given the intricate nature of the various legislative and non-legislative tools and agencies which intersect in NSW and the Commonwealth there is a case to be made for producing specific and targeted guidance - targeted toward both the judiciary, the legal profession and broader civil society organisations in a position to identify and respond. It is our position that responses to forced marriage will be enhanced through an ongoing uplift of knowledge but also testing of provisions and establishing of case law to show the strengths and limitations of current responses.

Learning from the experience of the state of Victoria, where forced marriage was added as a statutory example of family violence in 2018 - simply making a legislative change and not complementing it with necessary guidance and resources for implementation does not result in any material change to the prevention or protection of situations of forced marriage (Tan & Vidal, 2023). Of note from the Victorian experience is the identification that whilst there was general acceptance of forced marriage as something which may be identified in the context of family violence, amongst other recommendations, there is a need to:

- Implement evidence-based training for all specialist family violence practitioners and frontline service providers in Victoria to strengthen their capacity to identify and address forced marriage and enhance delivery of support. Training initiatives should include the following:

- Ensure a foundational level of knowledge and understanding of forced marriage including how it affects children, young persons and those who are already in such marriages.
 - Understand how to navigate the two support frameworks which are currently operational in Victoria - both that of family violence and of human trafficking and modern slavery.
- Review and broaden assessment and identification of forced marriage in the MARAM (common risk assessment tool) beyond association with culturally and linguistically diverse communities.
 - Establish a National Roundtable to facilitate collaboration across national, state and territories - with a focus to:
 - Develop clear guidelines on reporting and service coordination across Commonwealth, State and Territory agencies, in particular, between the Commonwealth and Victoria where there are conflicting agendas around the involvement of law enforcement agencies (Tan & Vidal, 2023, p. 11)

Again, reflecting on the Victorian experience we draw to the attention of DCJ the extensive policies and procedures⁸ that have been developed by the Victorian Department of Families, Fairness and Housing child protection division as suggested modelling for not only inclusion in guidance but also uplift to child protection protocols in response to forced marriage.

Recommendation 14: Produce ‘live’ and ‘working’ guidance for responding to forced marriage in the state. This should include clear pathways of intersection, roles and responsibilities between the state and the Commonwealth - including legislative and non-legislative provisions, statutory and non-statutory actors. Specifically:

14.1 The guidance should be complemented by training that extends beyond ‘identification’ and targets judiciary, the legal profession and broader civil society organisations in a position to identify and respond to forced marriage.

11. Are there additional barriers for specific cohorts of the community in obtaining protections against forced marriage under the AVO system?

As discussed in Section 2 of this submission the nature of forced marriage is such that parents or close relatives are often involved in the facilitation of the marriage. It remains a significant barrier to help seeking and a prioritised consideration amongst individuals with a lived experience with respect to the steps they take to engage in intervention, or not. We refer DCJ to the discussion at Section 3.1.2 of this submission and in particular the Case Study of Sam for an illustration of some of the complexities individuals with lived experience are navigating when taking out civil orders. We recommend close consideration be given to the nature and context of forced marriage and reiterate

⁸ [1] Victorian Government Department of Families, Fairness and Housing: ‘Forced Marriage: Procedure’ - <https://www.cpmanual.vic.gov.au/policies-and-procedures/children-specific-circumstances/forced-marriage-procedure> [2] Victorian Government Department of Families, Fairness and Housing: ‘Forced Marriage: Advice’ - <https://www.cpmanual.vic.gov.au/advice-and-protocols/advice/children-specific-circumstances/forced-marriage-advice>

the need for support to be a fundamental part of the AVO system in response to forced marriage. We also draw attention to Section 6.1 of this submission for a consideration about the role of families in the process of help-seeking.

6. RESPONSES TO DISCUSSION QUESTIONS: FORCED MARRIAGE OFFENCES

12. Are the existing criminal offences under NSW legislation adequate and appropriate as criminal justice responses to forced marriage (also noting the Commonwealth forced marriage offences)?

As noted in the Discussion Paper (DCJ, 2023) the NSW legislation responds to forced marriage in two specific ways:

- By providing for civil protections under the AVO framework of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW)
- By providing for a criminal offence of child forced marriage under section 93AC of the *Crimes Act 1900* (NSW)

It is also acknowledged that other criminal offences in NSW may also apply in circumstances of forced marriage, and Commonwealth legislation also deals with the issue via the *Commonwealth Criminal Code 1995* (Cth).

At the outset, we note that this submission supports the position of Good Shepherd Australia New Zealand and Monash University (2019) in their submission to the Inquiry into the *Modern Slavery Act 2018* (NSW) and *Associated Matters*. That is – it remains unclear as to why there is a standalone introduction of an offence of ‘child forced marriage’. As they note: ‘anecdotal evidence and practice experience shows that individuals experience an increased risk of forced marriage the nearer they are to reaching age 18’ (Good Shepherd New Zealand & Monash University, 2019, p.17). The introduction of the offence of ‘child forced marriage’ does not, as they point out, necessarily add strength to the existing legislative framework held by the Commonwealth. With that said, given the offence has been introduced – this submission contends with the question of criminal offences – raising questions of the utility of such offences as a primary tool in recognising and responding to forced marriage. It then moves to highlight other existing legislation in NSW – that may be applicable to situations of forced marriage. Here, we emphasise that it may be less of an issue to continue to reform legislation but rather turn focus to capacity building across government, civil society, and the judiciary around the use of such legislation.

6.1 Addressing forced marriage through criminal legal provisions

Significant critique both domestically and internationally exists about the limitations of criminal legal provisions in response to forced marriage (Vidal, 2023). Vidal’s (2023) research with young women who have an experience of forced marriage reveals specific insights in relation to experiences of police and / or criminal justice intervention. The research engaged with young women who chose to report to police and others who did not. Those who chose to report engaged with a combination of State police and the Australian Federal Police (AFP) options - emphasising that ‘they did so in circumstances where they felt a serious threat to their safety’ (Vidal, 2023, p.117).

Case Study – Ella, 26 years old.

Ella, a 26-year-old young woman forced into a marriage overseas, was experiencing significant physical and psychological abuse from her spouse and his family on their return to Australia. She reported to state police (in Victoria) and was provided with a response that included emergency accommodation and the option of having an Apprehended Domestic Violence Order (ADVO) put in place. It was only Ella's own internet search specifically about 'forced marriage' that led her to then make a self-report to the AFP for what she described as more 'specific' support.

"I was scared for my life ... I went to the police because I wanted to go into refuge, because of all the threats [from my husband and his family] and everything ... I thought the police could help me to do that..."

The [state] police helped me to call Safe Steps [the family violence crisis service], they sent me to a hotel, I stayed for one month, I went to multiple hotels over the course of the month ... after that I got into a refuge, a women's refuge...

I researched it [forced marriage] online and contacted the AFP. They called me back the next morning.

[I spoke to the AFP] to protect myself ... and to hold him [my ex-husband] accountable because it was so serious ... Yes, it was helpful in protecting me ... They introduced me to the Red Cross; they taught me safety planning and everything ... about security ... I was already in a refuge..."

(Extracted from: Vidal, 2023)

Overwhelmingly for the young women interviewed in this research they indicated that the decisions they made in response to forced marriage were about the potential impact reporting to law enforcement would have on their family members. That is, many chose to not report because of the actual and/or perceived implications such a report would have on their family members.

Case Study – Aisha, 27 years old

Aisha was 20 years old when her parents proposed a marriage for her with a family friend who lived overseas. Until this proposal came the idea of marriage was not something that was openly discussed with Aisha including any expectations that her family had of her to be married. Aisha's parents made all of the plans for her marriage without her involvement - and eventually - because of mounting pressure from both her parents and grandparents, Aisha was married. Aisha chose not to seek support from either law enforcement or any other support services. The driving factor influencing this decision was the potential impact this would have on her family and her relationship with her family.

People who are in a situation where there's physical abuse and violence ... definitely need to be able to go to the police ... for me, there is a step before that ... where you might just need to go somewhere safe to stop and think about what your options are ... it's tricky because telling other people about the things that were being said to me seemed like sort of talking behind your family's back ... even though

that's happening to you ...you don't want to be like almost telling on them in a way ... I feel there just needs to be a safe middle ground where you can talk to somebody and talk through your options without ... fear of consequences ... or anything like that.

[Calling the police] would seem like a very, very drastic step to take ... I've grown up in the family, so I didn't just want to leave it and then be alone. I also didn't feel like I'd done anything wrong, that I should be the one to have to just leave everything behind...

(Extracted from: Vidal, 2023)

As indicated earlier in this submission there is increasing emphasis on the need to consider the role of families in response to forced marriage. Vidal's (2023) research identifies that 'despite the young women's desire for support mechanisms to involve or identify a role for family ... it was not clear that such support mechanisms are readily available' (p.134). Engaging families in responses to forced marriage is not without contention. Evidence about the efficacy and/or risk of this approach is scant. Danna and Cavenaghi (2011) identify some models with promise whilst also flagging the tensions particularly that have emerged out of the UK - where the guidance remains that in no circumstances should family members be engaged in interventions in response to forced marriage (UK Government, 2023).

As highlighted by Vidal (2023) 'well-researched approaches to other experiences of gendered harm, particularly intimate partner violence, suggest mediation or dialogue between victim-survivors and perpetrators is to be discouraged ... recognising the unique context of forced marriage ... [there is a] need for further research on and exploration of this issue' (p.134). Vidal (2023) also goes on to emphasise that in interviews with young women there was ongoing psychological distress emerging as a result of having to independently navigate their connection with family - as there were no supported avenues in which this could occur. This is a view which has also been supported by Zeweri and Shinkfield (2021) who in their ethnographic research involving case studies of young women facing forced marriage in Victoria, Australia also suggest that pathways which include families are worthy of closer consideration. Whilst there is a need for caution, it is our position from both practice and research with individuals impacted by forced marriage that responses that involve victim-survivors families are worthy of consideration and promote autonomous decision-making of individuals in the assessment of their risk and development of strategies that establish their own safety.

In 2022 the Commonwealth funded Good Shepherd Australia New Zealand to develop the '*Safe and Empowered Families*' initiative⁹. This initiative was a pilot of a family dialogue mechanism modelled off an approach which has been successfully implemented primarily in Denmark but also expanded to other parts of Scandinavia and Europe. Whilst operational challenges have limited full implementation of this model there is merit to considering this approach - particularly as something which can

⁹ Author Dr Laura Vidal can be contacted to discuss the specificities of this model and the operational considerations should this be of interest to the Department of Communities and Justice - in the context of this review or beyond.

complement the ongoing consideration of civil and/or supportive interventions in response to forced marriage. An evaluation of the pilot is pending.

Recommendation 15: Commission research into a viable model of support which includes the involvement of family members in circumstances which lend themselves to this mode of intervention - this includes specific consideration of the ways in which such intervention can realistically operate in the face of an AVO or similar civil intervention.

6.2 NSW framing and location of forced marriage in the law

The explicit framing and location of forced marriage within criminal law in NSW appears in two places: (1) the stand-alone offence of ‘child forced marriage’ under section 93AC of the *Crimes Act 1900* (NSW) and (2) the offences of stalking/ intimidation under section 13 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) and contravening an AVO under section 14 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW). These offences have been discussed in detail in Section 4.1. We also refer to Section 3.2.4 where we acknowledge that there are a range of criminal offences in NSW that may capture other behaviours and circumstances related to forced marriage in NSW.

Referring also to Section 2 of this submission where the complex pattern of behaviours and people involved in forced marriage is discussed, it is evident that existing provisions under the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) are relevant and specific – leading to the potential for them to be appropriately invoked in situations of forced marriage in NSW (see: Vidal, 2018). It is our practice observation, however, that this is not something that is common within responses to forced marriage. More commonly, the response has historically and continues to be defaulted to the Commonwealth. With that, there remains no clear understanding of or transparency about how various state and Commonwealth provisions and agencies, including law enforcement, are making decisions about leadership on these matters and/or what may be gained for the benefit of the individual impacted by forced marriage by choosing either state or Commonwealth remedies.

Questions have emerged about the utility of the offences and provisions in the state of NSW. As flagged at the beginning of this section the introduction of the offence of “child forced marriage” is inherently duplicative of the Commonwealth offence but is limited to children in NSW. Given what we know about forced marriage in Australia – including the age of those who are most at risk being over the age of 18 years – it remains unclear why such an offence was introduced and isolated to the occurrence of forced marriage amongst children. By default, of the Commonwealth offence being included in the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) all marriages of force involving either a child or an adult is accounted for in NSW. Therefore, when addressing questions of adequacy or appropriateness there is a need to clarify the utility of the various legal provisions, what would motivate the use of one over the other and ultimately how the victim-survivor seeks to benefit from invoking any of these provisions.

Recommendation 16: Undertake a review that extends beyond the two provisions subject to this discussion paper. Focused specifically on:

16.1 What other legislation is relevant to responding to forced marriage?

16.2 What is the uptake (if any) of such legislative provisions in cases that are identified?

16.3 Identifying gaps as to the limitations of legislative provisions and their implementation and use these to inform future reform in response to forced marriage.

6. REFERENCES

- Anitha, S., & Gill, A. (2009). Coercion, consent and the forced marriage debate in the UK. *Feminist Legal Studies*, 2(17), 165-184.
- Anitha, S., & Gill, A. (2011). Reconceptualising consent and coercion within an intersectional understanding of forced marriage. In A. Gill and S. Anitha (Eds.), *Forced marriage: Introducing a social justice and human rights perspective* (pp. 47–66). Zed Books.
- Anitha, S., Gill, A., Noack-Lundberg, K. (2023). *Understanding Protection and Prevention Responses to Forced Marriage in England and Wales*, University of Lincoln, and University of Bristol. <https://research-information.bris.ac.uk/en/publications/understanding-protection-and-prevention-responses-to-forced-marri>
- Anti-Slavery Project. (2011). Forced and service marriage: Anti-Slavery Project submission in response to the Australian Government Attorney-General's Department Discussion Paper. <https://opus.lib.uts.edu.au/handle/10453/36771>
- Asylum Seeker Resource Centre (ASRC), InTouch Multicultural Centre Against Family Violence (InTouch), Fitzroy Legal Service and Project Respect. (2011). *Submission to the Federal Attorney-General's Discussion Paper Criminal Division: Forced and Servile Marriage*. https://d3n8a8pro7vhm.cloudfront.net/fitzroylegal/pages/77/attachments/original/1458435173/2011_Submission_to_the_Commonwealth_Attorney-General's_Department_regarding_its_Discussion_Paper_regarding_Forced_and_Servile_Marriage.pdf?1458435173
- Australian Federal Police (AFP). (2022, July 30). Reports of human trafficking and slavery to AFP reach new high [Press release]. <https://www.afp.gov.au/news-media/media-releases/reports-human-trafficking-and-slavery-afp-reach-new-high>
- Australian Government. (2010). *Discussion paper: Forced and servile marriage*. <https://www.homeaffairs.gov.au/criminal-justice/files/discussion-paper-public-release-forced-servile-marriage.pdf>
- Australian Government. (2014). *Forced Marriage: Community Pack*. [Online Resource]. <https://www.homeaffairs.gov.au/criminal-justice/files/forced-marriage-overview.pdf>
- Australian Government. (2015). Guidelines for NGOs working with trafficked people (3rd Ed). Australian Government. <https://www.homeaffairs.gov.au/criminal-justice/files/guidelines-ngos-working-with-trafficked-people.PDF>

- Australian Government. (2020a). *Trafficking in persons: The Australian Government response – The ninth report of the Interdepartmental Committee on Human Trafficking and Slavery*. Commonwealth of Australia. <https://www.homeaffairs.gov.au/criminal-justice/files/interdepartmental-committee-human-trafficking-and-slavery-07-2016-06-2017.pdf>
- Australian Government. (2020b). *National action plan to combat modern slavery 2020-2025*. <https://www.homeaffairs.gov.au/reports-and-publications/submissions-and-discussion-papers/combat-modern-slavery-2020-25>
- Australian Government. (2021). *Trafficking in persons: The Australian Government response – The tenth report of the Interdepartmental Committee on Human Trafficking and Slavery*. Commonwealth of Australia. <https://www.homeaffairs.gov.au/criminal-justice/files/report-of-the-interdepartmental-committee-on-human-trafficking-and-slavery-2017-2020.pdf>
- Australian Government. (2022). *National domestic and family violence bench book*. Attorney-General's Department, Australasian Institute of Judicial Administration, University of Queensland, Melbourne University. <https://dfvbenchbook.aija.org.au/understanding-domestic-and-family-violence/forced-marriage/>
- Australian Red Cross. (2019). *Support for Trafficked People Program: Data snapshot 2009-2019*. <https://www.redcross.org.au/globalassets/corporatecms-migration/migration-support/support-for-trafficked-people/support-for-trafficked-people-data-snapshot-2009-2019.pdf>
- Commonwealth of Australia. (2019). *National Plan to Reduce Violence against Women and their Children: Fourth Action Plan*. Commonwealth of Australia, Department of Social Services. <https://plan4womenssafety.dss.gov.au/the-national-plan/fourth-action-plan/>
- Commonwealth of Australia. (2022). *National Plan to End Violence against Women and Children 2022-2032*. Commonwealth of Australia, Department of Social Services. https://www.dss.gov.au/sites/default/files/documents/10_2023/national-plan-end-violence-against-women-and-children-2022-2032.pdf
- Department of Communities and Justice (DCJ). (2023). *Review of NSW legal protections for victim-survivors of forced marriage: Discussion Paper*. NSW Government. <https://www.haveyoursay.nsw.gov.au/reviewing-forced-marriage-legal-protections>
- Department of Social Services. (2023). *Support for trafficked people program* [Online information]. <https://www.dss.gov.au/women/programs-services/reducing-violence/anti-people-trafficking-strategy/support-for-trafficked-people-program>
- Gangoli, G., Chantler, K., Hester, M., & Singleton, A. (2011). Understanding forced marriage: Definitions and realities. In A. K. Gill, & S. Anitha (Eds.), *Forced marriage: Introducing a social justice and human rights perspective* (pp. 25-45). Zed Books.

- Good Shepherd Australia New Zealand and Monash University. (2019). *Submission to the Inquiry into the Modern Slavery Act 2018 (NSW) and associated matters*. New South Wales Legislative Standing Committee on Social Issues.
<https://www.parliament.nsw.gov.au/lcdocs/submissions/66128/0048%20Good%20Shepherd%20Australia%20New%20Zealand%20and%20Monash%20University.pdf>
- Gill, A. (2004). Voicing the silent fear: South Asian women's experiences of domestic violence. *Howard Journal of Criminal Justice*, 43(5), 465–483.
- Gill, A. (2006). Patriarchal violence in the name of 'honour'. *International Journal of Criminal Justice Sciences*, 1(1), 1.
- Gill, A., & Anitha, S. (2011). Reconceptualising consent and coercion. In A. Gill, & S. Anitha (Eds.), *Forced marriage: Introducing a social justice and human rights perspective* (pp. 46–66). Zed Books.
- Idriss, M. M. (2017). Key agent and survivor recommendations for intervention in honour-based violence in the UK. *International Journal of Comparative and Applied Criminal Justice*, 42(4), 321–339.
- Kingston, A. (2006). *The meaning of wife: A provocative look at women and marriage in the twenty-first century* (1st ed.). Picador.
- Legal Aid NSW. (2019). Submission to the Legislative Council Standing Committee on Social Issues: Inquiry into the Modern Slavery Act 2018 and associated matters. Parliament of New South Wales.
<https://www.parliament.nsw.gov.au/lcdocs/submissions/66314/0100%20Legal%20Aid%20NSW.pdf>
- Lester, E. (2020). *Speaking up, speaking out, speaking with: Advocacy challenges for civil society's work with migrants in vulnerable situations*. <https://aus.jrs.net/wp-content/uploads/sites/20/2020/06/Eve-Lester-Speaking-Up-Speaking-Out-Speaking-With-April-2020-FINAL-amended.pdf>
- Lyneham, S., & Bricknell, S. (2018). *When saying no is not an option: Forced marriage in Australia and New Zealand*. <https://www.aic.gov.au/sites/default/files/2020-05/rr11.pdf>
- National Childrens and Youth Law Centre. (2013). *End child marriage: Research report on the forced marriage of children in Australia*. National Childrens and Youth Law Centre.
<https://yla.org.au/wp-content/uploads/2019/01/End-Child-Marriage-NCYLC-Research-Report.pdf>
- New South Wales Legislative Assembly. (2021). *Modern Slavery Amendment Bill 2021: Second Reading Speech*. Legislative Assembly Hansard.
<https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/'HANSARD-1323879322-120860>

- New South Wales Parliament. (2020). *Report 56: Modern Slavery Act 2018 and associated matters*. Legislative Council Standing Committee on Social Issues. Sydney, New South Wales.
<https://www.parliament.nsw.gov.au/lcdocs/inquiries/2546/Final%20Report%20No.56%20-%20Modern%20Slavery%20Act%202018%20and%20associated%20matters%20-%2025%20March%202020.pdf>
- New South Wales Government. (2022). *NSW Domestic and Family Violence Plan 2022-2027*. New South Wales Government, Communities and Justice.
<https://dcj.nsw.gov.au/documents/service-providers/domestic-and-family-violence-services/NSW-Domestic-and-Family-Violence-Plan-2022-2027.pdf>
- Office of the NSW Anti-Slavery Commissioner. (2023). *Annual Report (2022-2023): Foundations for Growth*. Office of the NSW Anti-Slavery Commissioner.
[https://dcj.nsw.gov.au/documents/legal-and-justice/anti-slavery-commissioner/Foundations for Growth, NSW Anti-slavery Commissioner%e2%80%99s Annual Report 2022 %e2%80%93 2023.pdf?mc_cid=61f0b169db&mc_eid=17f54bdc17](https://dcj.nsw.gov.au/documents/legal-and-justice/anti-slavery-commissioner/Foundations%20for%20Growth,%20NSW%20Anti-slavery%20Commissioner%e2%80%99s%20Annual%20Report%202022%20-%e2%80%93%202023.pdf?mc_cid=61f0b169db&mc_eid=17f54bdc17)
- Patton, C. (2018). Racialising domestic violence: Islamophobia and the Australian forced marriage debate. *Race and Class*, 60(2), 21–39.
- Prattis, G., & El Matrah, J. (2017). *Marrying young: An exploratory study of young Muslim women's decision-making around early marriage*. <https://apo.org.au/node/264921>
- National Legal Aid and Legal Aid Commissions. (2011). *Forced and servile marriage discussion paper*.
<https://www.nationallegalaid.org/wp-admin/admin-ajax.php?cdm-download-file-id=MzM2fDIwMTctMDMtMDEgMDU6MjA6NTh8ZGZlY3Vzc2lvbi1wYXBldi1vbi1mb3JjZWQtYW5kLXNlcnZpbGUtbWFycmlhZ2UtNy1mZWltMjAxMS5wZGY=>
- Simmons, F., & Burn, J. (2013). Without consent: Forced marriage in Australia. *Melbourne University Law Review*, 36(3), 970–1008.
- Simmons, F., & Wong, G. (2021). Learning from lived experience: Australia's legal response to forced marriage. *University of New South Wales Law Journal*, 44(4), 1619–1662.
- Stacey, K., & Boniface, S. (2019). *Australian Red Cross forced marriage stream trial evaluation: Final evaluation report (summary)*. Beyond: Kathleen Stacey and Associates.
https://www.dss.gov.au/sites/default/files/documents/09_2019/forced-marriage-stream-trial-final-evaluation-report-summary.pdf
- The Salvation Army. (2017). *Submission to the NSW Legislative Council Select Committee on Human Trafficking: Inquiry into Human Trafficking*. Parliament of New South Wales.
<https://www.parliament.nsw.gov.au/lcdocs/submissions/57221/0016%20The%20Salvation%20Army.pdf>

- The Salvation Army & RMIT. (2018). *Without choice: Examining forced marriage in Australia*.
<https://endslavery.salvos.org.au/wp-content/uploads/2018/05/Social-Forced-Marriage-Report-SINGLES-min-1.pdf>
- United Kingdom (UK Government) Foreign, Commonwealth & Development Office. (2023). Forced Marriage Unit Statistics. [Online information]
[https://www.gov.uk/government/statistics/forced-marriage-unit-statistics-2022/forced-marriage-unit-statistics-2022#:~:text=In%202022%2C%2035%20cases%20\(78,victim%20has%20mental%20capacity%20concerns.](https://www.gov.uk/government/statistics/forced-marriage-unit-statistics-2022/forced-marriage-unit-statistics-2022#:~:text=In%202022%2C%2035%20cases%20(78,victim%20has%20mental%20capacity%20concerns.)
- Vidal, L. (2017). *Developing innovative, best practice solutions to address forced marriage in Australia*. Winston Churchill Memorial Trust.
<https://www.churchilltrust.com.au/fellow/laura-vidal-nsw-2016/>
- Vidal, L. (2018). *Opportunities to respond to forced marriage within Australia's domestic and family violence framework: Issues Paper*. Good Shepherd Australia New Zealand.
<https://apo.org.au/node/257336>
- Vidal, L. (2023). Young women impacted by forced marriage in Australia: an examination of marriage, gender, and harm. Monash University. [Thesis].
https://bridges.monash.edu/articles/thesis/Young_women_impacted_by_forced_marriage_in_Australia_an_examination_of_marriage_gender_and_harm/22682224
- Zeweri, H., & Shinkfield, S. (2021). Centring migrant community voices in forced marriage prevention social policy: A proposed reframing. *The Australian Journal of Social Issues*, 56(3), 1–21.

Legislation

- Anti-Social Behaviour, Crime and Policing Act 2014 (UK)*
Australian Passports Act 2005 (Cth)
Child and Young Persons Care and Protection Act 1998 (NSW)
Crimes Act 1900 (NSW)
Crimes (Domestic and Personal) Violence Act 2007 (NSW)
Criminal Code Act 1995 (Cth)
Family Law Act 1975 (Cth)
Family Law Act 1996 (UK)
Forced Marriage etc (Protection and Jurisdiction) Act 2011 (Scotland)
Marriage Act 1961 (Cth)
Modern Slavery Act 2018 (NSW)
Victims Rights and Support Act 2013 (NSW)
Weapons Prohibition Act 1998 (NSW)

Cases

- Madley & Madley + Anor [2011] FMCAfam 1007
 Nagri & Chapal [2012] FamCA 464

7. APPENDIX

1. Author Backgrounds

Dr Laura Vidal

BSW (Hons.1), Masters Human Rights Law and Policy, PhD, Criminology

Laura Vidal is a Lecturer in Social Work at the University of Canberra. The discipline of Social Work is a new discipline within the Faculty of Health where an innovative Masters in Social Work (Qualifying) Degree is being delivered. Laura holds a Bachelor of Social Work (Hons.1) and a Masters in Human Rights Law and Policy from the University of New South Wales. She obtained a PhD in Criminology in 2023 from Monash University. Laura's PhD research focused on young women's experiences of forced marriage in Australia including the ways in which they both understand and define their experience, and how they navigate support and assistance. Laura's research emerged out of both her award of a 2016 Churchill Fellowship focused on best-practice responses to forced marriage and over a decade of direct practice as a social worker – where she worked in support of individuals with experiences of gender-based violence, specifically diverse forms of family violence, human trafficking, and modern slavery – including forced marriage. These experiences and insights continue to drive Laura's teaching and research agenda where her primary focus is on the intersections of gendered violence, migration and systems of intervention and support.

Ms Rebecca Dominguez

BA (Hons), MLLP (Hons)

Rebecca Dominguez is the Director and Principal Solicitor of the Western Sydney University Justice Clinic, a community legal service where lawyers and academics work on client cases, undertake research and law reform projects, run health justice outreach clinics, provide community legal education, operate the university's student legal service, and teach the clinical legal education subjects of the School of Law. Rebecca has worked previously as a pro bono practitioner, criminal defence lawyer, in private practice and in-house. As well as developing a human rights-based legal practice over many years in the legal assistance sector, focused primarily in the areas of family violence, modern slavery, and refugee law, Rebecca has a strong interest and history in law reform. Rebecca won the 2019 Pro Bono Lawyer of the Year award for her legal work with those affected by family violence and modern slavery and received the 2022 WSU Vice-Chancellor's Award for Excellence in Indigenous Teaching and Learning, and the 2022 University of Technology (UTS) Alumni Award for Excellence in Law. In 2023, she completed the University of Oxford's Executive Leadership Programme, and sits on a number of Commonwealth and NSW committees and advisory boards focused on the legal assistance sector, human rights, and modern slavery.

2. United Kingdom Forced Marriage Protection Order (FMPO) Provisions

Overview

A Forced Marriage Protection Order (FMPO) is a civil protection mechanism used in England, Wales, and Scotland to prevent forced marriages and protect potential victims.¹⁰

In England, Wales, and Scotland, forced marriage is criminalised through the *Anti-Social Behaviour, Crime and Policing Act 2014* (UK) (Anti-Social Behaviour Act).¹¹

In England and Wales, the *Family Law Act 1996* (UK) (the UK Act) allows applications for an FMPO and establishes the offence of breaching an FMPO. In Scotland, the *Forced Marriage etc (Protection and Jurisdiction) (Scotland) Act 2011* (the Scottish Act) was created to authorise the making of FMPOs for victims and persons at risk of forced marriage, and establishes the offence of breaching an FMPO.

The provisions of the Scottish Act largely reflect the forced marriage provisions of the UK Act even though the Scottish Act is a stand-alone statute and not part of a larger piece of family law like the UK Act.

As noted earlier in this submission, the majority of the key features and conditions detailed below already exist within Australia's current legislative system without the need for introducing a stand-alone scheme that would then need to be implemented across a vast range of legal issues and jurisdictions.

Common features of FMPOs

The common features of FMPOs under the UK Act and the Scottish Act are listed below.

- (a) A court may make an FMPO for the purpose of protecting a person from being forced into a marriage or from any attempt to force the person into marriage, or to protect a person who has already been forced into a marriage.¹²
- (b) Applications for an FMPO may be made by the protected person, a relevant third party or any other person with the leave of the court.¹³
- (c) A court may make an FMPO where an application is made to it, regardless of whether family proceedings (UK) or civil proceedings (Scotland) have been instituted.¹⁴
- (d) Even where an application has not been made to it, a court may take it upon itself to make an order where:

¹⁰ FMPOs are available in England and Wales under Part 4A of the *Family Law Act 1996* (UK)(UK Act) and in Scotland under the *Forced Marriage etc (Protection and Jurisdiction)(Scotland) Act 2011* (Scottish Act).

¹¹ Section 121 of the *Anti-Social Behaviour, Crime and Policing Act 2014* (UK)(Anti-Social Behaviour Act) criminalises forced marriage in England and Wales, and section 122 criminalises forced marriage in Scotland.

¹² UK Act s 63A(1), Scottish Act s 1(1).

¹³ UK Act ss 63C(2)-(3), Scottish Act ss 3(1)-(2).

¹⁴ UK Act s 63C(5), Scottish Act ss 3-4.

- any other family proceedings (UK) or civil proceedings (Scotland) are before the court;
 - the court considers that an FMPO should be made to protect a person, whether or not the person to be protected is a party to the current proceedings; and
 - a person who would be the respondent in an FMPO is a party to the current proceedings.¹⁵
- (e) In deciding whether to make an order and what order to make, the court must have regard to all the circumstances including the need to secure the health, safety, and well-being of the protected person.¹⁶
- (f) In ascertaining the protected person's well-being, the court must have regard to the protected person's wishes and feelings (so far as they are reasonably ascertainable), to the extent that the court considers appropriate on the basis of the person's age and understanding.¹⁷
- (g) An FMPO can be made even where a respondent has not been given notice of the proceedings.¹⁸ It must be "just and convenient"¹⁹ or "equitable"²⁰ to make such an order and a court must have regard to all the circumstances, including any risk of significant harm to the protected person or another person if the FMPO is not made immediately.²¹
- (h) An FMPO can include such prohibitions, restrictions or requirements, and such other terms as the court considers appropriate for the purposes of the order.²²
- (i) The FMPO may relate to conduct within and outside the relevant country, persons attempting to force a person into marriage, or persons involved in other respects.²³ Examples of 'involvement' are aiding, abetting, counselling, procuring, encouraging, or assisting another person to force, or attempt to force, a person to enter into a marriage, or conspiring to do so.²⁴
- (j) An FMPO can be made for a specified period, or until varied or discharged ('recalled' under the Scottish Act).²⁵

¹⁵ UK Act s 63C(6) with s 63C(7) outlining proceedings under other jurisdictions which may also be considered 'family proceedings'; Scottish Act s 4(1).

¹⁶ UK Act s 63A(2), Scottish Act s 1(2).

¹⁷ UK Act s 63A(3), Scottish Act s 1(3).

¹⁸ UK Act s 63D, Scottish Act s 5.

¹⁹ UK Act s 63D(1).

²⁰ Scottish Act s 5(1).

²¹ UK Act s 63D(2), Scottish Act s 5(3).

²² UK Act s 63B(1), Scottish Act s 2(1).

²³ UK Act s 63B(2), Scottish Act s 2(2).

²⁴ UK Act s 63B(3), Scottish Act s 2(4).

²⁵ UK Act ss 63F-63G, Scottish Act ss 6-7.

- (k) Both Acts specify that their forced marriage provisions do not affect any other protection or assistance available to a person facing or enduring a forced marriage under other laws or jurisdictions.²⁶
- (l) Breach of an FMPO, knowingly and without reasonable excuse, is an offence.²⁷
- (m) The police may arrest without warrant any person they reasonably believe is breaching or has breached an FMPO.²⁸
- (n) A person found guilty of breaching an FMPO is liable:
- on conviction on indictment, to imprisonment (up to 1 year under the Scottish Act and up to 5 years under the UK Act) or a fine or both;
 - on summary conviction, to imprisonment (up to 1 year under both Acts) or a fine or both.²⁹

Common types of conditions in FMPOs

The common types of conditions that courts administering the UK Act and Scottish Act may include in an FMPO are:³⁰

- to take the protected person to a place of safety designated in the order;
- to bring the protected person to a court at such time and place as specified;
- to refrain from violent, threatening or intimidating conduct (whether against the protected person or any other person);
- to appear in court;
- to disclose, if known, the whereabouts of a protected person or victim;
- to refrain from taking the protected person from, or to, a specified place, including taking them out of the country;
- to facilitate or otherwise enable the protected person or another person to return or go to a certain place within a certain time;

²⁶ UK Act s 63R, Scottish Act s 12.

²⁷ UK Act s 63CA(1) and (2), Scottish Act s 9(1).

²⁸ UK Act s 63CA, Scottish Act s 9(2).

²⁹ UK Act s 63CA(5), Scottish Act s 9(4).

³⁰ The Scottish Act includes a non-exhaustive list of these actions in ss 2(3) (a) - (i).

- to submit to the court such documents (including passports, birth certificates or other documents identifying the person and travel documents) as the court may specify;
- to order that a marriage may not take place;
- to grant a personal protection order;
- to provide the court with such other information as it may specify.

3. Consideration of stand-alone FMPO scheme versus amendments to existing family violence provisions in Australia

Benefits of FMPOs over Family Violence (FV) protection

Based on research undertaken by these authors separate to this Review (for a summary see, Vidal, 2018), the potential advantages of FMPOs over FV protection include the following.

- An FMPO system avoids placing the issue of forced marriage in any paradigm, such as the modern slavery paradigm or the family violence paradigm and embed the issue of forced marriage as its own, specific issue.
 - Avoiding this paradigm question improves the chance of better developing and implementing access to informed and coordinated support for forced marriage and establishing central points of coordination, such as the Forced Marriage Unit that has been established in the UK and considered crucial to the success of the UK FMPO scheme. Other specialty or central units might include a specialty police unit to monitor and deal with breaches of FMPOs and the establishment of a central register of FMPOs, accessible by police, courts, child protection authorities, and welfare and support agencies accredited or nominated by the court.
- An FMPO could make Family Law Watchlist orders a condition of the order, rather than a standalone order made under the Family Law Act for persons under 18 years only.
- There may be a lower threshold when applying for an FMPO compared to accessing FV protections. This is because when applying for an FMPO, an actual event or incident of violence may not be required. A "threat" may be sufficient to obtain an FMPO, as may a reasonable suspicion of forced marriage.
- FMPO legislative provisions could specify who may apply for an FMPO, with leave of the court (rather than having to depend on the specific dictates of each piece of FV legislation).
- An FMPO may apply to Australian citizens and non-citizens (residing in Australia on visas such as temporary or bridging visas) alike, whereas FV protections may be limited to Australian citizens only.³¹
- An FMPO could provide that the courts have a wide discretion to formulate non-exhaustive terms and conditions of FMPOs rather than relying on the types of existing orders available under FV protection. However, a counter argument is that it has been shown that the vast majority of protections afforded or theoretically afforded by FMPOs under the UK Act and Scottish Act are already available under the existing family violence framework in Australia.

³¹ For example, under section 69E of the Family Law Act, proceedings for protective or injunctive orders are only allowed if the child or the parent or party to proceedings is an Australian citizen or ordinarily resident in Australia.

Benefits of Family Violence (FV) protection over FMPOs

Based on research undertaken by these authors separate to this Review (for a summary see, Vidal, 2018) the potential advantages of FV protection over FMPOs include the following.

- A major advantage, and possibly an advantage that supersedes other considerations, is that the family violence framework in Australia across all jurisdictions may already exist to provide forced marriage protections, or may be amended to include forced marriage protections. This could be done through the amendment or inclusion of "forced marriage" into the definition of "family violence" (or "harm", "abuse" or otherwise, as noted) across legislation, as outlined in the accompanying family violence legislation research.
- In many instances where an FMPO scheme might appear to have an advantage over any FV protection, this could be mitigated or countered by inserting certain provisions into FV protection. For example,
 - an FMPO could make Family Law Watchlist orders a condition of the order. Family violence legislation could be amended so that a court has the power to include a Family Law Watchlist order in any FV protection orders.
 - there may be a lower threshold for applying for an FMPO than accessing FV protections. This could be changed by amending the access provisions for FV protections, where applicable.
- It is unclear which courts in Australia have jurisdiction over the FMPO scheme. One aspect of the FMPO model in the Scottish Act³² is that courts considering issues relating to forced marriage also have the power to make declarations of nullity of forced marriages at the same time as hearing an application for an FMPO. This may be problematic under Australian law because a declaration of a nullity of marriage is only available under the *Family Law Act 1975* (Cth)(Family Law Act),³³ on the ground that the marriage has been found void under the *Marriage Act 1961* (Cth)(Marriage Act).³⁴ It is unclear whether the same courts that might have jurisdiction under the FMPO scheme would be the same courts with jurisdiction under the Family Law Act and Marriage Act.
- In many cases, FV protection would trigger a child protection response, whether voluntary or mandatory. Child protection law in Australia is multi-faceted and complex, and the interaction between child protection laws and family law has been described as "an especially fragmented system [where]...the boundaries between the various parts of the system are not always clear and jurisdictional intersections and overlaps are an inevitable, but unintended, consequence".³⁵ Utilising an existing FV framework with established child protection reporting and response requirements may be a better alternative than introducing another stand-alone scheme where any child protection response needs also be embedded into the intricate system.

³² Scottish Act Part 2.

³³ *Family Law Act 1975* (Cth) s 44.

³⁴ *Family Law Act 1975* (Cth) s 51; *Marriage Act 1961* (Cth) s 23B.

³⁵ Australian Law Reform Commission *Family Violence - A National Legal Response*, ALRC Report 114 (October 2010) 52.