Forced & Servile Marriage Casebook

Beyond the stereotypes

Seeing the face, hearing the voices of forced marriage in Australia
This case book was developed as part of the Forced & Servile Marriage Research Project at Rosemount Good Shepherd Youth & Family Services in Sydney, Australia. The primary work was completed by the Research Project Officer, Carolyn Evans CSC MLS MBA Grad Dip OR BBus (Dist). Enquiries about this case book can be directed to Rosemount by email at reception@rosemountgs.org.au.

Development of this case book has been greatly assisted by collegiate inputs from many people, not least the counselling team and others at Rosemount Good Shepherd, as well as through collaboration with colleagues at Anti-Slavery Australia (www.antislavery.org.au), the National Children’s and Youth Law Centre (www.ncylc.org.au) and the Australian Red Cross Support for Trafficked People Program (www.redcross.org.au/support-for-trafficked-people.aspx).
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Preface

The passage on 27 February 2013 of the Federal Government’s Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2012 marked the culmination of a substantial process of community engagement and legislative development. These changes included provisions to criminalise conduct involved in forced marriage and related offences. The Good Shepherd Network was active in the preceding consultative process, for example in making a submission in regard to the exposure draft of the legislation.

The research required to prepare this and other submissions highlighted the potential for serious human rights violations of concern to Australia. Relevant circumstances include where a person may be forced into marriage without their full and free consent, or treated as property and delivered into a servile marriage through, for example, sale or inheritance of that person as if they were property.

There continues to be a significant lack of information available about how, and how much, these issues impact Australia and Australians. Research to date shows that there is a non-trivial issue in approaching 150 countries around the world, which is about three out of four of the member countries of the United Nations. They are both developing and developed countries, and cross cultural, religious, ethnic and national boundaries.

Early or child marriage, that of a person under 18 years of age, is taken as forced marriage in recognition of the UN’s Convention on the Rights of the Child making 18 years an almost universally agreed age at which a child becomes an adult under the law. At law, a child lacks the capacity to consent to marriage, thus generally making child marriage also a form of forced marriage.

As documented by the United Nations and others, forced marriage can lead to a lifetime of harm and ongoing violation of human rights. Distinguished from an arranged marriage by the lack of full and free consent, forced marriage is best understood as a form of violence against women and girls. In this context, in recent years the United Nations has been outspoken against all forms of forced marriage.

The mission of Rosemount Good Shepherd is to bring about positive change and increase hope for people and communities who are experiencing disadvantage, marginalisation and oppression. This includes researching and working towards more just social structures, processes, institutions and outcomes which respect the human rights of all and promote flourishing wellbeing. Accordingly, we appreciate your interest in this important topic and welcome your feedback at any time on how we may better address the issue of forced and servile marriage in Australia.

Lyn Harrison
Chief Executive Officer
23 April 2014
Introduction

Background

The advent of legislation criminalising forced marriage and a range of related conduct has brought forward a debate, in Australia and elsewhere, about an individual’s effective rights in relation to fully and freely consenting to marriage, and to live free of slavery in the form of servile marriage (wherein a person is treated as property and bought, sold or inherited into marriage).

This debate has also illuminated a range of very pragmatic questions on the nature of “marriage” across cultural, ethnic, religious, national and other boundaries. As has also been found in other countries, experience to date in Australia highlights many commonly-asked questions such as:

1. Does “forced marriage” include circumstances where a “marriage” ceremony was performed by someone other than a registered marriage celebrant?
2. What about when the person is made to live with their “partner” and/or the other family before a (legal) marriage takes place?
3. What if the person was “married” in another country before reaching the legal age for marriage in that other country?
4. Is it really a marriage if they were “married” as a child but the marriage was not consummated?
5. What if the ceremony was conducted in a language that the person does not understand, or understands only in a very limited way?

The fact is that any or all of these situations could involve the risk or reality of forced marriage, and/or servile marriage depending on the exact circumstances.

Aim of the Casebook

Seeing education as a crucial part of advocating for positive social change, this casebook is intended to be a resource for those who may encounter the risk or reality of forced and/or servile marriage in their work. For example, this could include circumstances in which a teacher observes that a student may be at risk, or where a case worker assesses that a client’s circumstances involve the risk or reality of forced and/or servile marriage or a similar marriage like relationship.

By aiding understanding of the variety of forms that these practices can take, and the great diversity of contexts in which they may occur, the aim of the casebook is to support early intervention and/or prevention and thus ameliorate the harm done to those facing forced and/or servile marriage.
Using this Casebook

To provide insight into the reality of forced marriage in Australia today, this case book is based on lived experiences of people involved in cases brought to our attention in the course of research and advocacy on forced and servile marriage. All cases have been edited to preserve the privacy and anonymity of those involved or who observed the case unfold, and to that end all are intentionally composed of elements from multiples cases.

Equally, the cases included here are deliberately cast as neutral in terms of culture, ethnichcity, religion, country of origin and/or other social reference points. The simple reason is that this truly represents the nature of forced marriage. Almost identical cases have been observed or related from multiple, highly diverse contexts. Accordingly, this socially featureless presentation is an authentic approach which accurately portrays the most salient feature of forced marriage – that it transcends such boundaries and ought never be discounted as a possibility in any case, most particularly on the grounds of the supposedly “known” incidence of forced or servile marriage in any given context.

Cases are laid out in a four page format to facilitate their use as stand alone printable resources. Each case is presented in a standard structure to support their complementary use where appropriate. For handouts to use in a group discussion, the selected case(s) may be printed as a leaflet of the four pages to provide participants with a self-contained tool for the session and then a take away for later use.

Similarly, the ‘Resource Material’ section is set out in a four page format that can be printed as a takeaway reference for later reference.

In terms of the content of each case:

- A narrative provides the stimulus material for discussion, some styled in the first person of the potential/actual victim, some from the perspective of another party. A combination is useful in developing understanding of the layered nature of disclosure/discovery of forced marriage cases.
- Each narrative is followed by a standard set of questions that are designed to prompt individual thinking and draw out the different dimensions found in the risk or reality of forced marriage. They also structure a small group discussion or larger group debrief.
- The four page layout is completed by a notes page for convenience of users.

Finally, the ‘Discussion Guide’ section includes a synopsis of the case set to assist in contrasting cases and case selection for discussion, along with model answers to the standard questions for each case to assist the discussion leader. These are not intended to be exhaustive but to tap the key issues and, used in tandem, show important points of departure in how cases unfold.

Further input on development of these responses over time would be particularly welcome from those making use of this case book.

In an emergency, ring 000
or contact the Australian Federal Police on 131 AFP (131 237)
Resource material

Legislation in Australia

Notwithstanding that marriage customs vary significantly around the world, as well as both within and between cultures and religions, it is well worth noting at the outset that all the major religions require full and free consent to marriage.

That said, marriage in Australia is defined in the *Marriage Act 1961* (Cth), and this provides that the legal age for consent to marriage in Australia is 18. The definition of marriage under this Act circumscribes the types of relationship that are able to be registered under Australian law. Beyond that, experience in common with many other jurisdictions shows that a variety of other relationships approximating marriage occur regularly without being registered formally under Australian law. When forced, these relationships involve the risk or reality of all the harms of forced marriage.

In terms of engaging child protection legislation, the Family Court of Australia has held that permitting a child (a person under the age of 18) to be taken overseas for the purpose of marriage in any circumstances is contrary to the child’s welfare.

International Obligations

A range of treaties and conventions concluded under the auspices of the United Nations, beginning with the *Universal Declaration of Human Rights*, provide that any forced marriage is a violation of human rights. For example, the UN’s *Convention on the Elimination of All Forms of Discrimination Against Women* requires States Parties (sovereign states being party to the Convention) to ensure that ‘the betrothal and marriage of a child shall have no legal effect’.

It is also worth noting that the UN’s *Convention on the Rights of the Child* has been ratified by 193 countries including all United Nations members except the USA, South Sudan and Somalia. This Convention defines a child as being anyone under 18 years of age, and thus effectively establishes 18 as the reasonably universal age for marriage.

The Committee on the Rights of the Child, responsible for monitoring Australia’s compliance with that Convention, has recognised forced child marriage as a violation of children’s rights, including the right to survival and development as encapsulated in Article 6 of the Convention. This is because forced child marriage exposes children to various risks, not least to their reproductive and sexual health.

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‘Marriage shall be entered into only with the free and full consent of the intending spouses.’

*United Nations Universal Declaration of Human Rights*  
Article 16 (2)

‘No one may invoke cultural diversity to infringe upon or limit human rights ... the use of cultural relativism to challenge the universal legitimacy and applicability of human rights norms [is of deep concern].’

Definitions

**Marriage**

Under Australian (Commonwealth) law, marriage means the union of a man and woman to the exclusion of all others, voluntarily entered into for life. In the absence of a formal marriage meeting this definition and able to be registered under Australian law, a range of marriage-like relationships are relevant to potential or actual cases of forced marriage.

**Child**

For the purposes of marriage, a child is a person under the age of 18.

**Forced Marriage**

Under Australian law, a forced marriage is a marriage in which one or both spouses do not fully and freely consent to the marriage because of the use of coercion, threat or deception. Forced marriage is a criminal offence punishable by four years imprisonment. Forced marriage of a child is an aggravated forced marriage offence, punishable by up to seven years imprisonment.

**Child Marriage**

Child marriage is the marriage of a person under 18 years of age, who is legally incapable of consenting to marriage. Accordingly, one view is that child marriage is always a forced marriage *per se*. Under the *Marriage Act 1961* (Cth), the marriage of a person under the age of 18 is an offence, unless that person is aged 16 or 17, has both parental and court consent and their intended spouse is over 18 years of age. In such a case while it would be a child marriage it would not necessarily be a forced marriage.

**Forced Child Marriage**

The marriage of a person under the age of 18, obtained through coercion, threat or deception. Australian law makes an allowance for parental and court consent where one partner is under 18 (but not both). This is at issue with some as the child’s consent is not specifically required.

Marriage-like relationships where one partner is a child would broadly be considered forced, because a child by definition is a person legally incapable to be consenting to such an arrangement.

**Forced Marriage-like Relationship**

Under Australian law, the offence of forced marriage can include forced marriage-like relationships.

A forced marriage-like relationship may be found where a marriage registered with the State does not occur, but, *without* the full and free consent of one partner, an arrangement such as a ‘common law marriage’, ‘de facto relationship’, ‘cultural marriage’ or ‘religious marriage’ takes place. This includes arrangements for a ‘promised bride’ or a formal betrothal that is said to be irrevocable, or any other ‘marriage’ considered as such by the parties and their community, such as polygamous marriages or other arrangements that may not meet the requirements of a valid marriage under Australian law.

**Servile Marriage**

Servile marriage occurs where a person is bought, sold or inherited into marriage. Under Australian law, such practices are criminal offences and subject to other penalties.
**Arranged Marriage**

Not to be confused with forced marriage, an arranged marriage arises where the families of the spouses play a leading role in arranging the marriage, but both of the spouses have the right and ability to accept or refuse the arrangement. Consent has to be real for an arranged marriage to be valid and lawful. Accordingly, consent cannot be obtained through coercion or from a person legally incapable of consenting (such as a child).

**Human Trafficking**

Forms of forced and/or servile marriage may be used as camouflage for practices of human trafficking.

Human trafficking is the recruitment, transportation, transfer, harbouring or receipt of a person for the purpose of exploiting that person through slavery, forced labour, sexual servitude, debt bondage, organ removal or other forms of exploitation.

Traffickers may control their victims through the use of force, threats, coercion or deception. Coercion can occur through threats of physical or non-physical harm or the abuse or threatened abuse of a legal process (for example, threats of deportation).

In contrast, in Australia people smuggling offences occur where a person facilitates or organises the illegal entry of another person into a foreign country (whether or not Australia) for a benefit.

Forced marriage may provide superficial legitimacy to such practices, in particular by forcing the marriage of under age women to hide the unlawful movement of others across national boundaries.

**Debt Bondage**

In general terms, debt bondage is a common form of contemporary slavery, wherein bonded labourers are forced to work to repay alleged debts and various forms of force, threats and coercion are used to ensure the person/s stays working. In many cases bonded labourers are kept under lock and key or at least heavy surveillance.

The International Labour Organisation currently estimates at least 11.7 million people are in forced labour in the Asia-Pacific region, the majority in debt bondage.

As a subset of such practices, girls may be consigned to forms of forced or servile marriage by an allegedly indebted parent, including sham marriages that facilitate visa fraud and/or human trafficking.

‘... a child means every human being below the age of eighteen years …’

*Convention on the Rights of the Child*

*Article 1*

‘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.

This child has a voice, which the international convention requires to be heard…’

*Harman FM*

*Federal Magistrates Court of Australia, 19 September 2011*
Forced marriage is sometimes used as a cover for domestic slavery, although case details may well show that the “marriage” would better be described as a “marriage like relationship” because it is invalid under Australian law. In such cases, one or more criminal offences relating to slavery and similar practices may be involved regardless of the alleged presence of a marriage or similar relationship.

Servitude

Servitude is a slavery-like practice that means a person is significantly deprived of personal freedom and control over their lives – eg. the victim does not consider that they are free to leave the place where they work, because of the use of coercion, threat or deception over them.

Domestic servitude is commonly found where a forced marriage has been used to perpetrate visa fraud or otherwise circumvent the proper operation of migration regulations. Even if a marriage broker has been employed, and a valid marriage takes place in the first instance, case experience shows that what follows may be nothing more than slavery-like practice in a household setting.

Organisations

Users of this casebook may wish to note that in Australia there are three key sources of information, advice and casework for instances involving the risk or reality of forced marriage. These are:

- Anti-Slavery Australia at the University of Technology Sydney – where work by Director of Anti-Salvery Australia, Associate Professor Jennifer Burn, spans a range of exploitative practices including human trafficking, people smuggling, debt bondage, servitude and other slavery like practices.
- National Children’s and Youth Law Centre – a key source of expertise for children and young people facing legal issues, and the author of forthcoming guidelines on early responses to forced child marriage.
- Australian Red Cross – through their Support for Trafficked People Program team, Red Cross provides comprehensive casework support to people as they recover from their forced marriage (and/or trafficking) experiences and are assisting the Australian Federal Police in investigations. In most cases, referral to the program is made via the Australian Federal Police, who determine eligibility.

In addition, the Australian Federal Police have a key role to play in enforcement of the legislative provisions that criminalise offences in relation to forced marriage, and can offer particular assistance where removal of a person from Australia may occur in relation to forced marriage.

Many other organisations responding to family violence, domestic violence, abuse or neglect of children, migrant and/or refugee assistance and like matters have some experience in dealing with forced marriage and its consequences. Rosemount Good Shepherd can provide further contacts as required.

In an emergency, ring 000 or contact the Australian Federal Police on 131 AFP (131 237)
Forced & Servile Marriage Casebook

B’s Case
B’s Case

Tall and strong for her age of 15, B had no trouble convincing the hotel manager that she was 18 and could handle the heavy work of scrubbing floors. After working as a cleaner for over two years, B was used to long hard days and heavy labour.

Like her mother, B is a quiet, hard working girl – they go out together and easily find enough work from local motels keen to get cleaning done cheaply.

Of course, B didn’t have time for school but she probably couldn’t go anyhow. Although it was all a bit confusing, she did understand it was because she and her mother shouldn’t still be in Australia. Her mum had brought her from their home country for a holiday. That was nearly three years ago and they just never went home.

Her mum didn’t say anything but B had worked out that there was something wrong with staying. Her mother had drummed into her that she must not tell anyone her real age, or talk about where they were from, and that she would have to work only for cash. It seemed pretty obvious that she couldn’t go to school again, but they had a better life here even with all the hard work. Keeping a few secrets didn’t seem like that big of a deal, although B would have liked to have more friends her own age.

They lived happily with her aunty. Her mother’s sister had lived in Australia since marrying an Australian man ten years before. Her marriage was a very happy one and her uncle was respectful of B and her mother, so they all shared the house very comfortably. They go to church together on Sundays and it was a nice community to be part of.

She didn’t really miss her father. B felt a bit bad about it, but he always drank a lot and spent money on his own things so food was often short. They were better off on their own even if she missed going to school like before.

Coming home after work one day, B and her mother found her aunty talking to one of the men from church. As they went through to the kitchen, B heard the man say “Anyhow, choice does not matter. She is of age and it seems to me that it is best that she be married.”

After the visitor left, her aunt explained. Her father was insisting on “his rights as her father”, saying that B must go back to their home country to be married. Her father owes money from gambling and he has promised B in marriage to settle the debt. The other men have threatened to kill him if B does not go home for the wedding, and they have now contacted a friend at the church here in Australia to ensure that there is no further delay.

The man from church says he has arranged it and that B must go with him tomorrow to fly home.
Situation:

1. What are the main issues of this case?

2. What, if any, type of forced marriage situation may be involved?

3. What other issues arise in the circumstances described in this case?

Response:

4. What are the immediate/early responses likely to be needed?

5. What types of information and/or advice might those involved need to make some choices?

6. Who else could contribute to a holistic response to those involved beyond the immediate term?
Forced & Servile Marriage Casebook

C’s Case
Lurking around the reference section, C looked at the crowd for familiar faces. No way did she want to get caught looking at “unapproved” books. Usually, C was the quiet member of the family. She never wanted to be in the spotlight and, as one girl with many brothers, it was pretty easy to stay out of it. In their community, attention was given to boys and their achievements. Girls were thought best if they stayed in the background and that suited C just fine. Until now she had watched her six brothers get into scrapes and out of them, content to do her chores and her homework and go to social gatherings at the community centre. But today, there was just something that pushed her on. Her father had made such a fuss last night about an offhand comment from her eldest brother. She really wanted to find out why a science text book had become “unapproved” and removed from the school library.

Nobody really noticed when she asked to stay later at the public library. In her last year at school, her parents had become accustomed to her heading off there - hoping for a good score to get in to uni, she needed a few more resources than their school could offer. She was normally so unadventurous, C thought that it probably never occurred to anyone she might not be doing what she said! As soon as her mother had disappeared out of the library entrance, C had slipped around the shelves to the location listed for the book. But a lot of reading later, C had more questions than answers.

Without a sister, C took all her “girly” questions to F, her favourite cousin who lived a couple of doors up from them in the same street. But, going over for a cup of tea after dinner, C just did not know where to start. In the end, she plunged in. C asked F “Weren’t you the top of your class most of high school?” “Yes, that’s right.” “So how were your final results?” “C, you know I didn’t sit my exams.” “But why?” “Because I was already expecting the first baby. We got married in the mid-year break and I got pregnant right away.” “What happened?” “C, you know the baby died. What’s all this about?”

C pressed on. “Why didn’t you go back to school and finish?” “I wanted to but everyone told me that I would be better off to have more babies and just forget about school. I suppose they were right. I had some miscarriages but it was okay after that.” “Even K said so? He never says anything about you, being your husband, having babies or any of that married person stuff. I think he still sees me as about 12 years old!” “Perhaps I need to talk with him. You are 18 and it is time for you to be married.”

C jumped up from the table. “But that’s the whole problem! I don’t want to get married. I want to get a good final result and I know that is what Mother and Father want me to do. But after that I also want to go to university. I know I can do it, but not if I’m married. Anyhow, who would I marry? You chose K, but I would not choose any boy here. They seem like my brothers and they are all cousins anyway. And what I read in a book today says it would be mad to marry anyone here, even if I was interested which I’m not!!” The girls looked at each other. F said very carefully, “What book?” Faced with C’s silence F said, “I did not hear that. If I heard it I would be obliged to respond. But if that is how you truly feel, I will try to be your sister and support you. The problem would be that I have no clue how.”
Discussion Questions

Situation:

1. What are the main issues of this case?

2. What, if any, type of forced marriage situation may be involved?

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6. Who else could contribute to a holistic response to those involved beyond the immediate term?
Forced & Servile Marriage Casebook

E’s Case
E’s Case

After the dryness of her home country and nearly five years in dusty refugee camps, E still enjoyed the rain every time. Even after a year in Australia, she never ran inside to stay dry and liked to walk in the rain just for fun.

Of course, in a country town, that sort of thing could get you talked about – definitely “not a good thing”. Now 19 and studying to obtain certificates for the hospitality industry, her work placements in cafes let her hear a lot of local women gossip. E knew it would be better if she did not draw attention to herself.

Despite the challenges of being an immigrant and a newcomer, she still had a lot to be thankful for. Quick to move when the troubles started, her family escaped much of the violence of the rival warlords that was still going on in their home country. A primary school education in English meant she had been the family spokesman to refugee agencies, and with so much practise, her spoken English was really good as a result. That had made catching up her education a lot easier than it was for her brothers and sisters, who had much less schooling before Australia.

Even better, she had made many friends her own age. Although unaccustomed to the co-educational style of Australian schools, her parents still tried very hard to be supportive and give each of their children a fresh start in their new home. E felt she had adapted well and this seemed to be confirmed when one of the boys in her technical college class asked her out to go to the movies with a group of the other students.

She thought nothing of it at the time, but looking back her parents did not seem entirely comfortable when they realised she was going to the movies with a boy. Now, a couple of weeks later after the boy walked her home from the technical college, her parents said that they needed to speak seriously with her. Trying not to roll her eyes, E thought “When will they realise I am an adult?”

Once her parents explained their concerns, however, E quickly realised that the problem was a great deal more complicated than just fussy parents.

Her father summarised: “You must be more careful of how you behave in public. You – and your next brother - have been married already since you were five years old. This is not a matter for children but you are now of age and you must acknowledge and answer for your responsibilities. When your husband, and your brother’s wife, make arrangements to join us you must be ready. You are a married woman and now that you are no longer a school girl, you must take great care to act accordingly while you prepare to live with your husband.”

Looking sad, her father concluded: “My darling daughter, we may see things differently now we are settled in Australia, but a promise is a promise. It is the custom of our people and your mother and I feel that the promise of your marriage cannot be undone.”
Discussion Questions

**Situation:**

1. What are the main issues of this case?

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3. What other issues arise in the circumstances described in this case?

**Response:**

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Additional Notes
Forced & Servile Marriage Casebook

H’s Case
H’s Case

The paper seemed to again be full of depressing stories about war zones, people trafficking, “boaties” and the debate about how best to work out who is a “real” refugee. From a family that left their home country before the worst of the civil war, H really understood her good fortune in coming to Australia as a babe in arms in 1989. Now 24, she was proud to be an Australian citizen.

Putting the newspaper to one side, H gave some thought to her sisters. After the hardship of years to reach Australia and get on their feet, her mother and father had added two younger sisters to the family. F was approaching 17 and starting into her final year at secondary school, while their baby sister at 11 was close to finishing primary school. The age difference meant H was like a second mother to the younger girls while she was living at home, and she tried to stay close even now she had her own place.

While not normally given to tempers, F had been surly and rude for the last couple of weeks. H at first thought it was stress from school, or “just being a teenager”, but it now seemed like more than that. She decided to tackle the problem head on. Tomorrow being a rostered day off from her own job, she arranged with her mother to take a turn collecting her sisters from school. Walking from the high school to the primary school, she hoped to just chat with F without pressure. Odd that her mother seemed to hesitate and check with her father before agreeing, but her father had always been very much the “head of the house” and H had often clashed with him when she was at high school.

No sooner than they left the high school, F lashed out. “This is all your fault, you know. All because you wanted to do your own thing and not what father says, it’s all on me to do the right thing.” Stunned, H just looked at her sister. F went on: “Have you any idea about the men they are making me meet? I am not even allowed a boyfriend and now they say I must get married!!”

Pulling her thoughts together, H tried to understand what was going on before they reached the primary school. Apparently, her own pursuit of a career had brought criticism from the family back in the old country. They were putting pressure on her father to make a “proper marriage” for at least his younger daughters, so his answer was to put a deadline on F to agree to a betrothal, marriage to be set for just as soon as she finished her final exams at high school.

H had endured harsh slappings from her father when she insisted on finding a job, and 2 years ago she had moved out of the family home rather than continue to cause upset to her mother. Looking more carefully at F, H had to ask: “What do you mean ‘you must’?” “He is the head of the family and they both say he can marry me off to whoever he likes.”

F paused before she went on. “Besides ...” H came to a stop as F pushed up her sleeve to reveal an arm covered in bruises.

‘He is the head of the family and they both say he can marry me off to whoever he likes.’
Discussion Questions

Situation:

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I’s Case
I’s Case

Reading emails, N realised that there was someone sitting rather quietly outside her office. Unusual in this rural high school, more often students with a health issue just barged in! Ten minutes after asking could she help, N was worried she only had half the story.

The student, I, had been to her first class of the day, Year 8 English with Miss T, but complained of a “headache” and had been sent to see N. Just getting that much information was really hard work - on first impressions, the girl appeared quite out of it, but possibly just feeling sick. Noting that I’s file showed her mother as ‘dead’, and an aunt rather than her father listed as the emergency contact, N resorted to calling the aunt to come in and take I home for the day.

Leaving I to rest in her office at the morning break, N caught up with T, I’s teacher and was surprised to hear: “Actually, she is normally a bit inclined to back chat in class – if she doesn’t like the lesson she let’s me know, and she certainly doesn’t hold back with other students. She was so subdued today, I assumed the headache was real.” N’s feeling that something was not quite right grew.

When the aunt arrived they sat and chatted for a moment, all seemed well and N almost thought she was jumping at shadows. Then the aunt went to put her arm around I to help her up, but I flinched away to raised eyebrows from her aunt. “Sorry Auntie M, I’ve got a bruise.” “No worries darl, let’s just get you home for a lie down. A headache and a bruise? You are in the wars. What the heck have you been up to?” Chatting on and gathering up bags and books, the aunt didn’t notice I dissolving into tears. “What is it, I?” N said. When the aunt turned to look properly at her niece, I started sobbing in earnest. Looking a lot more worried, the aunt said, “Do you want to tell me about this bruise?” “I’m not allowed, I’m not allowed” was all that I would say but she did let her aunt give her a hug.

An hour and two cups of tea later, leaving I with her aunt, N went to the principal. After going over what she knew with the principal, which admittedly wasn’t that much, they called the child protection people for advice. Apparently, since I was 13 she would have to go on the waiting list with other low priority cases, and there was no telling when resources might be available to look into the situation. Stumped, they let N go home with her aunt for the rest of the day.

A week later, with no further response from child protection, I’s teacher Miss T let N know that I was away from school: “After that business last week, just thought I’d better let you know.” I’s auntie couldn’t help when N called her: “Actually, she didn’t come around after school yesterday, but she occasionally does miss a day so I didn’t want to be panicking straight off.”

A little reluctantly, the principal agreed that N should enquire with I’s father. Two days later after still no sight of I and still nothing more from child protection, N finally got the father on the phone and was stunned by the explanation: “She won’t be back to school, she’s done with all that crap here. I promised her to my best friend years ago, to be his when she grew up. Now I say she is old enough and I’m sick of her being so uppity. So I gave her to him like I promised, she belongs to him now. He can worry about what she does and where she does it. You can mind your own damned business and so can all those other nosey, loud mouthed women like my sister in law M.”
Discussion Questions

Situation:

1. What are the main issues of this case?

2. What, if any, type of forced marriage situation may be involved?

3. What other issues arise in the circumstances described in this case?

Response:

4. What are the immediate/early responses likely to be needed?

5. What types of information and/or advice might those involved need to make some choices?

6. Who else could contribute to a holistic response to those involved beyond the immediate term?
Forced & Servile Marriage Casebook

L’s Case
L’s Case

L thought balancing the baby on her hip as she sat down in front of the doctor was hard enough anytime, but all the worse just now for the nausea of her new pregnancy – and her head was still spinning from being slapped by her husband as a reminder of her wifely duties.

It hadn’t been like this at the start. She had come to Australia thinking that she would be able to help her family by marrying the man who found her via an online broker. Living in an affluent country she hoped to save money and send something home regularly to help her mother – a lot better than sewing in a factory since she was 13.

Marrying a man in a rich country had seemed risky at first, but a woman from her village told her stories of other girls who had gone overseas and been happy. She had even emailed some of them and it did seem that this modern sort of “arranged marriage” might work.

Trying to listen to the doctor, L thought how differently it had worked out for her. The flight to Australia with her fiancé had been exciting and fun for her as a 23 year old leaving a life of hardship behind. He seemed delighted to meet her in person and was charming as they made their way through the formalities of the airport in Sydney.

Once home to his house in the suburbs, though, reality gradually broke over her. To start with, it was rules: don’t talk to the neighbours, don’t answer the door when he was out. Thinking he was trying to protect her, L worked hard to deserve his approval as his wife. But there was always more rules: don’t leave the house without him, only wear the clothes that he brought home, no need to have money or to go shopping, and no using the computer unless he was with her. It was very confusing, especially as her English was not very good, but L was partly reassured when he took her to see a man in a big office where they signed some papers and afterwards he said they were married.

Then she suggested she look for a job. The charming face disappeared and her husband become enraged. Although he pretended at first she had just surprised him, things went steadily downhill. Now her only trips away from the house were to the doctor. Even then she had to wear the clothes he selected to cover up marks from his violence. Disappointed for herself, L endured for the sake of her family. Violence to women happened in her home country too and, besides, she did manage to stockpile a little money for her mother even though she could not find a way to send it.

But when the doctor confirmed that she was pregnant again, L realised she was at the limit. After the first child, her husband had continually accused her of having a baby as an excuse to ignore him - he threatened to divorce her and get custody of the child. On some days he would fling her away as if she disgusted him, other days he would force himself on her no matter what she said. With her guess that she was pregnant confirmed, she mostly felt stunned and just could not imagine how he would react to another child. As she struggled to stand up holding the baby, the doctor looked at her with a concerned face. With no one else to ask, L wondered silently if the doctor would know how to help her in this mess – or even be willing to help her at all.
Discussion Questions

**Situation:**

1. What are the main issues of this case?

2. What, if any, type of forced marriage situation may be involved?

3. What other issues arise in the circumstances described in this case?

**Response:**

4. What are the immediate/early responses likely to be needed?

5. What types of information and/or advice might those involved need to make some choices?

6. Who else could contribute to a holistic response to those involved beyond the immediate term?
Additional Notes
Forced & Servile Marriage Casebook

M’s Case
M’s Case

Of all the “sex talks” that Dr V had experienced over a long career as a GP, this one really did win some sort of prize. In fact, she couldn’t believe how wrong she had got the story to begin with.

When this young person, M, had come in to the surgery, Dr V recognised her as the eldest daughter of a family that had been patients of the practice for years. As soon as she realised M was on her own for the first time, the alarm bell in Dr V’s head went off to say “here comes the sex talk request and I wonder if she wants family planning advice without mum here”. There was a pattern to this kind of thing that she had experienced many times over the years.

As M was taking a seat and putting her bag down, Dr V pulled up her file to check the girl’s age. MMMmm, only 14 but certainly not the youngest person ever to come in about this sort of stuff.

Sure enough, Dr V was right on the button – in fact, M came straight out and requested that she prescribe contraceptives. Dr V asked, “Are you sexually active now?” and it was then that everything went a bit sideways.

“No, no Dr V, I am not doing that yet, not like a lot of the girls in my class. But it is different for me. After all, I am married woman.” “Sorry?” “I was married over a year ago.” Dr V thought she must have misheard. “When did you get married?” “As soon as I became a woman. We are well acquainted now and the time is coming soon when we will live together as man and wife.”

Confused, Dr V tried to get hold of the story properly. “So you are already married?” Nodding, “Yes.” “But you still live with your parents?” “Yes, of course, I must get to know my husband before we live together.” Feeling like she was in an alternate reality, Dr V paused, then said “But aren’t you a bit young? And how did you choose your husband if you didn’t know him?” M smiled. “That is not how it is done. Our parents arranged it many years ago. We were betrothed then, and married later when I was ready. When we live together, it will be with his parents until we can afford our place. My mother is keen to have grandchildren very soon, and I do not want to disappoint her. But I would like to finish school first. So I think it is best that I plan my family properly and that is not something that I want to discuss with my mother.”

Choosing her words very carefully indeed, Dr V agreed that 14 was too soon to be having children, but then went back to the marriage thing and tried to communicate that the age for marriage was set at 18 in most cases. She realised she had failed to get the idea across, when M responded: “It sounds like you are saying it is wrong for me to be married when I am so young. But I am happy to be married. People listen to a married woman. In my community a married woman can be an important person, but a girl is always just a girl no matter what else she achieves. And I would not have been married if I was not old enough to have children of my own. Anyhow, what is the difference if I am married? Many girls in my class at school have sex with boys without being married. Nobody stops them.”
Discussion Questions

Situation:

1. What are the main issues of this case?

2. What, if any, type of forced marriage situation may be involved?

3. What other issues arise in the circumstances described in this case?

Response:

4. What are the immediate/early responses likely to be needed?

5. What types of information and/or advice might those involved need to make some choices?

6. Who else could contribute to a holistic response to those involved beyond the immediate term?
Additional Notes
Forced & Servile Marriage Casebook

R’s Case
Heading out to university on the train, R looked at the posters for a rock concert pasted up on the walls of a building.

The way his parents went on, anyone would think he was leading a dissolute Western life of “sex, drugs and rock’n’roll”. In reality, instead of drunken nights out with a bunch of mates or hiding in his room snorting cocaine, he was a diligent and studious 24 year old whose tastes ran to quiet dinner parties and classical music.

Since he turned 18, though, all R had heard from his parents was how important it was for him to make a good marriage. At first, when he started his degree, they went quiet for a while, and said that it was a good thing that he focus his attention on his studies. That lasted until the first summer break when he decided he would rather go to the museum or the art gallery with his friends than go to yet another family gathering.

“You are not a dutiful son” became their constant chorus. “You shame us by staying away from the family. It is as if we never had a son.” “Why do you upset your mother, always going out with those boys who don’t care about family? You should be here with us and making your place in our community.” Worn down by this nagging, he tried to fit in with a proper family dinner at their home once a week.

That worked for a while, but then his mother found a thousand clever ways to invite yet another young woman from the community around to share their meal. “Such a nice young lady and a wonderful cook. Just the sort of girl I could see as a dutiful daughter-in-law.”

By the end of his first degree, R became quite adept at dodging the arguments. He found a job, and worked endless hours, often eating before he went home. When he did eat at home, he did it without warning, just arrived in time for the meal without telling them first. It really made no difference since his mother always cooked enough food for an army.

Why couldn’t he just move out like lots of others? R thought that would just about kill his mother, who would see it as a final rejection. In their community, young people lived with their parents until they married, no exceptions. Frankly, he couldn’t see himself ever getting married, and when he tried to move forward with some other idea of his life, R felt exhausted, hopeless and depressed just thinking about how his parents would react.
Discussion Questions

Situation:

1. What are the main issues of this case?

2. What, if any, type of forced marriage situation may be involved?

3. What other issues arise in the circumstances described in this case?

Response:

4. What are the immediate/early responses likely to be needed?

5. What types of information and/or advice might those involved need to make some choices?

6. Who else could contribute to a holistic response to those involved beyond the immediate term?
Additional Notes
Forced & Servile Marriage Casebook

S’s Case
S’s Case

S’s family has been living in Sydney for nearly two years after her father was brought to Australia on a ‘457’ working visa by an IT company. Living at home with her mother, father, elder brother and two younger sisters, S is currently attending the local high school in a suburb of south west Sydney.

Working here has been a major improvement in the family’s fortunes and they all enjoy living in Australia. Her father had multiple educational qualifications and progressed well in his work back home, but there are many more opportunities in Australia and working conditions are far better. Her parents are very keen to seek citizenship and stay permanently in Australia; since her father is so skilled at his work they think they have a good chance.

Coming to Australia at age 12 with only a smattering of English, at first S struggled with school. This year she was making much better progress after being allowed to take intensive English instruction at a community centre, a suggestion from the counsellor at school. Having recently turned 14, her father is very strict about what she is allowed out of the home to do. He agreed to her taking English coaching only if she is accompanied by her brother (who is now 18 and finishing school soon).

Life has been hectic recently, as her cousin from back home has been staying with the family on holiday. He is 31 and also works in IT like her father did before they came to Australia. But her cousin has no qualifications and much less English, so it doesn’t look like he would be as fortunate as her father in obtaining a work visa.

S found it was a bit uncomfortable having this cousin in the house. She had only met him once or twice before, at family days back in the old country. Really, it felt like having a stranger hanging around the house. S is not accustomed to being around boys and men anyhow, as she is not allowed to socialise outside school, attend parties or have a boyfriend.

Yesterday, S was surprised to overhear her mother on the phone talking about a wedding to be arranged. They don’t have any other family in Australia so at first S thought it must be that her mother was helping some other family in their community. Her parents are both very traditional and insist on “doing things properly”.

Today, she got a total shock. As she was leaving for school, her mother said she will no longer take her extra English lessons as she must practice her first language instead, and that in a few weeks she must go back to her grandmother in their home country and learn about being a wife. Her mother says that S will be married to her cousin while she is there.

Arriving at school, S was hardly able to sit in class let alone concentrate on what the teacher said. At morning break, she couldn’t stand the thought of pushing through the crowds of students. She went and sat outside the administration office just to get some space. She was there so long the nice lady there finally asked her what she wanted and S just started crying and couldn’t stop.
Discussion Questions

Situation:

1. What are the main issues of this case?

2. What, if any, type of forced marriage situation may be involved?

3. What other issues arise in the circumstances described in this case?

Response:

4. What are the immediate/early responses likely to be needed?

5. What types of information and/or advice might those involved need to make some choices?

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Additional Notes
Forced & Servile Marriage Casebook

Z’s Case
Z’s Case

J looked at the woman in front of her and tried to guess her age. Small and slight with a smooth face, on first glance she could have been anywhere from 20 upwards.

The lines at the edges of her eyes told a different story. Over the weeks that they had shared long shifts at the restaurant, J had seen Z smile only rarely. That showed a few pleasant lines, but mostly Z’s eyes were creased by a worried frown.

Thinking over what she knew of Z, J realised it wasn’t much. There was a man – Z said she had been with him for a long time, but dodged the question of when and where they had been married. There were no children – when the other women went into one of their “proud mother” rants, Z just became even more silent. Beyond that, Z never allowed herself to be drawn on her parents or extended family. Really, all J knew was that one of the other women talked to Z occasionally in some other language. In some ways, Z was the “dream” team mate – diligent, punctual, reliable and certainly self-contained. But she had also become a puzzle that J felt obligated to try solving.

Feeling Jane look at her – again – Z ducked her head even lower. She was very afraid that if the kind lady, J, asked her any more questions she would just let the dam burst, she so longed to talk to someone. Although nearly 30 now, she felt like a child with so many fears - for her family living in a country where violence was everywhere and the police were to be feared, and for herself, trapped alone in a foreign country.

The man who brought her to Australia had seemed so nice. He wanted a wife and he even paid her fare and promised she could have money for a nice dress for the wedding. But it was all lies. From the airport he had taken her straight to a filthy house that seemed never to have been cleaned and told her to make it spotless. Thinking at first she misunderstood, she started to ask questions – he just grabbed her bag away and then locked her in until the next day. When he found she had not started cleaning, he beat her and threw the cleaning gear at her, locking her in again. That day she didn’t waste any more time crying – she knew what some men did to women, so she cleaned and cleaned, hoping to please him. After weeks of such work and earning his praise as a hard worker, she even went for the marriage willingly, thinking that things would work out in time.

Two years later, she knew better. The cleaning was just the start. Her reality was hours of sewing and other work while locked in the backyard shed where they lived, or being “rented out” as a labourer in restaurants owned by his friends or to do cleaning like that first terrible house. The occasional kind stranger like Jane was the only spot of light in Z’s world – with no money, no papers, no friends, she was a shamed woman and her world was filled by that man with his constant violence and threats of reporting her to the authorities.

Looking again at the bowed head of her work mate, J debated whether to intrude further or just back away and leave Z to work out her problems privately.
Discussion Questions

Situation:

1. What are the main issues of this case?

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Additional Notes
Discussion Guide

Case examples in context

The situations covered by this casebook are not intended to be an exhaustive summary of the issues encountered by those facing the risk or reality of forced marriage. The intention is educational, to highlight the highly variable dimensions of forced and servile marriage involving adults and children, and the ubiquity of forced marriage as a social phenomenon of contemporary times.

That said, and acknowledging that some victims are male, Rosemount Good Shepherd experience suggests that forced and servile marriage is best understood in a context of violence against women and the cases observed to date reflect this reality. This is in keeping with the United Nations approach to this subject matter.

Similarly, while physical violence commonly occurs in such cases, it does not in many others. It is crucial to always bear in mind that coercion and duress may take many forms, and they are not at all limited to physical violence. In any case, physical violence alone is not definitive in determining whether a situation involves the risk or reality of forced marriage. Accordingly, some cases are designed without this dimension to facilitate learning through a simpler case example.

Cases recommended to begin with are B, E, R and S. Cases C, H, M and Z are more complex. A and L are generally found to be the most challenging cases.

Sample answers

To facilitate discussion, key points for each key are summarised in the balance of this section. Again, these answers are intended to be indicative rather than comprehensive. They work well when used as a discussion scaffold for more specific information in context – eg. if a referral to another service would be required, addressing which specific service would be used by those in the discussion, or identifying a gap that needs filling for such information.

In the table overleaf, the case context also provides the key theme underpinning the case – these were the common themes identified in actual cases arising.

Rosemount Good Shepherd would be most grateful to receive feedback from users of the case book to assist in further developing cases and model answers for a future revised edition.
## Overview of Cases

<table>
<thead>
<tr>
<th>CASE, ABOUT, NARRATED BY*</th>
<th>STATUS</th>
<th>‘MARRIAGE’ INSTIGATOR</th>
<th>SAFETY ISSUES</th>
<th>CASE CONTEXT</th>
</tr>
</thead>
<tbody>
<tr>
<td>B, a child of 15, by herself</td>
<td>Irregular migrant, holiday visa over stay</td>
<td>Father</td>
<td>Immediate removal from Australia threatened now; mother may also be in danger</td>
<td>Despite visa issues, circumstances probably engage Australia’s international obligations to protect against human rights violations</td>
</tr>
<tr>
<td>C, almost 18, by herself</td>
<td>Australian citizen by birth; parents also</td>
<td>Parents and community</td>
<td>Marriage not imminent but highly controlled lifestyle; many barriers to help from outside community, possible reprisals for non compliance now or refusing marriage in due course</td>
<td>Social conservatism/preservation of culture or tradition or community practice usually the main motivation; forced marriage occurs almost everywhere, so religious backdrop is just that – can’t dismiss the risk of forced marriage just because religion involved is not ‘the usual suspects’</td>
</tr>
<tr>
<td>E, an adult of 19 &amp; younger brother, by herself</td>
<td>Refugee, now Australian citizen</td>
<td>Family</td>
<td>Already married as a child, doesn’t recall this, brother also, now must sponsor spousal visa</td>
<td>Otherwise well integrated migrants may still be highly impacted by norms of original country and/or community; positive support may assist prevention</td>
</tr>
<tr>
<td>Two children (17, 11), by H their sister (24)</td>
<td>All Australian citizens, possible dual nationalities</td>
<td>Father, assume Mother agrees</td>
<td>Father has been quite violent to compel compliance</td>
<td>Binding betrothal is contrary to fundamental human rights, regardless of culture or tradition; may have multiple passports</td>
</tr>
<tr>
<td>I, a child of 13, by N (health care worker)</td>
<td>Migrated on a spousal visa, current status not confirmed</td>
<td>‘Husband’, validity of marriage unknown</td>
<td>Removed from home, whereabouts unknown, safety unknown, may have already been assaulted by father, possibility of physical or sexual assault by man to whom she was given</td>
<td>Reality of priorities due to resource limitations in child protection; men may assert the ‘promised bride’ or equivalent practice as a cultural norm while women from same community reject the notion; found in many cultures so specific setting not the defining feature; regardless of place, these are violations of fundamental human rights</td>
</tr>
<tr>
<td>L, an adult mother in her 20s, by herself</td>
<td>Australian citizen born in Australia, immigrant parents</td>
<td>Parents</td>
<td>Agreed between two sets of parents, partners appear to have been ‘willing’</td>
<td>Where the child ‘consents’, child marriage is still against Australian law – even if it is not a registerable marriage, it would be a marriage like relationship involving a child; mandatory reporting issue despite ‘consent’</td>
</tr>
<tr>
<td>M, a child of 14, by V, her doctor</td>
<td>Father on a 457 visa, has brought family with him</td>
<td>‘Husband’ who may or may not have actually married her</td>
<td>From the child’s perspective, no issues as she accepted the marriage, status of the marriage indeterminate</td>
<td>Forced marriage is best understood as an issue of violence against women, but serious cases do arise involving men and boys</td>
</tr>
<tr>
<td>R, an adult male, by himself</td>
<td>Agreed between two sets of parents, partners appear to have been ‘willing’</td>
<td>Potential mental health care issues</td>
<td>Dangers of stereotyping forced marriage as primarily involving certain countries, religions etc; role of a school in prevention</td>
<td></td>
</tr>
<tr>
<td>S, a child of 14, by herself</td>
<td>Believed she was migrating for marriage but quite possibly an irregular migrant</td>
<td>‘Husband’ who may or may not have actually married her</td>
<td>Appears to be routinely imprisoned, exploited through forced labour and/or domestic servitude; severe violence and ongoing threat</td>
<td>Vulnerable women with limited English language skills may actually be trafficked and/or violently exploited under cover of a ‘marriage’ (whether it is real, sham or faked) in which they were initially willing; importance of the ‘one chance’ concept</td>
</tr>
</tbody>
</table>

*Case evidence to date suggests strongly that in most cases another person will become involved as a de facto advocate to instigate or provoke resistance to a forced marriage, or provide the crucial support that enables a victim or potential victim to resist or respond to resolve the situation. These may be family or community members when views on marriage are not held ubiquitously in the family/community, or those connections arising through education, health or other social services to which the individual presents.*
B’s Case – Sample Answers

Situation:

1. **What are the main issues of this case?**

B is a minor. She is in the care of her mother, but not attending school. They are both working in some irregular arrangement(s) and of uncertain citizenship/migrancy status. B’s mother appears to have suffered violence and abuse in her married life in another country. They are now threatened with violence in Australia, and there may be safety issues for all four people in their current household. The (unknown) parental rights of B’s father are at issue, and to some extent what these are and how they would be viewed depends on the country of origin.

**Background:** Cases of this kind have been identified involving people from many countries, particularly across the Pacific and Africa. Visa overstay issues are particularly common as a complicating factor associated with those from island nations in the Pacific region generally.Various churches have been implicated when the church advocates unquestioning obedience to parents and as a consequence fails to support child protection measures.

2. **What, if any, type of forced marriage situation may be involved?**

Legally, B is a child, and thus too young for marriage under prevailing Australian law, and international law, and possibly also the law in her country of origin. She is probably unwilling to marry, and is too young for the exception under Australian law to operate in this case.

Depending on the details of the marriage bargain struck by her father, beyond a forced marriage she may also be facing a servile marriage (if she has been regarded as property offered to settle her father’s debts) and/or be facing some other form of slavery (depending on the details of her father’s dealings).

**Background:** According to Article 1 of *The International Convention toSuppress the Slavery Trade and Slavery 1926*, known as the 1926 Slavery Convention, slavery is ‘the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including where such a condition results from a debt or contract ...’. Servile marriage is a form of slavery in all cases.

As well, the *Convention on the Rights of the Child* establishes 18 as the virtually universal age for marriage, and marriage at a younger age is therefore a child marriage even if not forced by violence etc. Changes to Australian law in 2013 made it a crime to engage in conduct related to forced marriage (including forced child marriage) and servile marriage, regardless of where the marriage will take place. It makes no difference that some events are taking place in Australia, forced and/or servile marriage are still very much at issue. It is worth noting that the United Nations position regarding relevant international law is that culture or traditional practice do not justify human rights violations. The UN Charter includes a statement of universal human rights – universal meaning they are not a matter of privilege but are due equally to every person regardless of culture, religion, nationality, gender, age, etc. When a country becomes a member of the United Nations, that country takes on an obligation to uphold this view of human rights, as Australia did in 1945. The UN now has 193 members including almost all countries in the world.
There are no legal decisions yet to indicate how the Australian Government would respond to a case of this particular type.

3. What other issues arise in the circumstances described in this case?

B and her mother are probably employed in contravention of a variety of workplace laws, including various provisions of the *Fair Work Act 2009* (Cth). In addition to the complexities of their migration status, this could be used as a further factor to intimidate or coerce them into compliance with the father’s wishes.

**Background:** The right to work in Australia is governed by citizenship and migrancy status and having overstayed a holiday visa it is very unlikely that they currently have the right to work. Anyone working ‘off the books’ may be very reluctant to contact law enforcement as a result, fearing deportation and the human rights violations that they may be facing in their country of origin.

**Response:**

4. What are the immediate/early responses likely to be needed?

While the situation of B and her mother under Australian law is undoubtedly complicated by their irregular status, Australia has relevant obligations under international law that will need to be evaluated. Legal advice is essential for B and her mother. It is highly unlikely that B’s father would have enforceable rights to B as property and the Australian Government has responsibilities to protect individuals from being delivered into situations where gross human rights violations may occur. If the Australian Government chose to assist, Australian Federal Police assistance would probably be required to prevent removal of B back to her country of origin for the purposes of a forced and/or servile marriage. Other police assistance may be required to ensure the safety of B, her mother, aunt and uncle if the father’s contacts press the matter on his behalf. As an immediate priority, the currency, whereabouts and custody of B’s own passport need to be established as part of preventing anyone from removing her from Australia. It would be preferable to have her placed on the airport watchlist as a further protection. The Australian Red Cross Support for Trafficked People Program may be able to provide support and case work for up to 45 days, but beyond this B and her mother may need to seek refuge in a women’s shelter, not least so that their whereabouts are protected from those wishing to perpetrate a forced or servile marriage in keeping with the father’s plan.

5. What types of information and/or advice might those involved need to make some choices?

A protection visa may be an option – contact Anti-Slavery Australia for advice.

B and her mother are likely to be assisted by advice about the right to refuse marriage in her home country, notwithstanding the alleged rights of her father. Again, knowledge about the world wide prohibition on servile marriage as a form of slavery (which has long been unlawful) would be most informative for all those involved, including the relevant church community.

6. Who else could contribute to a holistic response to those involved beyond the immediate term?

Educational support to the “church” may be appropriate to avoid possibly well-intentioned but actually unlawful actions or conduct in the future. Some form of ongoing support/monitoring of the safety of the aunt and uncle would be wise in the short to medium term.
C’s Case – Sample Answers

Situation:

1. **What are the main issues of this case?**

   C and F live in some type of closed community with a very strict code of conduct based on religious belief, enforced by community elders, which appears to very tightly control many aspects of life with consequences for non-compliance. Marrying within the community appears to be a key requirement.

   **Background:** At odds with the impression created by media coverage about where forced and/or servile marriage is practiced, all major religions require full and free consent for a valid marriage. This scenario involving C, for example, has been observed in a variety of religious contexts, spanning all the major religions and many smaller sects. Severe social conservatism is much more often the common feature of such cases.

2. **What, if any, type of forced marriage situation may be involved?**

   C is very nearly an adult at law, even though still at school, and probably will be before a specific marriage arrangement is put forward. Evidently, however, she has no wish to marry at all for the present. She has also become aware that marrying within a community comprised largely of ‘cousins’ and specifically rejects that possibility as well.

   **Background:** Contrary to the United Nations position on these matters, communities such as this often present and justify their rules on the basis of traditional beliefs or long-standing cultural practice. Marriage within the community is also a typical norm and in these circumstances enormous pressure may be brought to bear on young people to follow such rules. Where the community is very small, there are very real and serious health issues arising from consanguineous marriage.

3. **What other issues arise in the circumstances described in this case?**

   No immigration issues appear to arise, but cannot be discounted without further information.

   As a separate case, F may well come to realise her own marriage is highly compromised by her close familial relationship to her husband, which may well have been the cause of her many miscarriages.

   **Background:**

   To avoid the health issues arising from consanguineous marriage, marriage to blood relatives is regulated by federal law. This fact is typically overlooked by such communities. Multiple generations of consanguineous marriages exacerbate the problem. While no quantitative research is available on this issue in Australia, primary health care and other medical practitioners have observed unusual rates of such problems in certain communities.

Response:

4. **What are the immediate/early responses likely to be needed?**

   Social responses would lead in this case, including counselling and support to open a dialogue about the issues, and to at least attempt a compromise solution that leaves the women able to remain in their community but also able to exercise their own choices. On the information available, it is not possible to assess the likely outcome at this stage.
If that approach does not go well, the situation could escalate to where they require immediate refuge and intervention by law enforcement. Before the first steps are taken, this is quite difficult to anticipate.

While C has no sisters, there may be various other girls in the community in related circumstances, whose situation should also be considered.

5. What types of information and/or advice might those involved need to make some choices?

Both C and F will need a variety of information about their legal rights, and support for their attempt to make their own decisions. However, it needs to be proffered in context of just how much they have been sequestered – in some extreme cases, they may be unable to function outside the familiar community setting and intensive long term support will be essential.

6. Who else could contribute to a holistic response to those involved beyond the immediate term?

C’s school may be able to support her desire to complete her leaving year unhindered, and assist with monitoring her situation in case she is prevented from following that plan.

If F is struggling with her grief in relation to repeated miscarriages, specific counselling or support on that may be of assistance to both women given their friendship.
E’s Case – Sample Answers

Situation:

1. **What are the main issues of this case?**

   E was a refugee but now appears to have Australian citizenship or at least permanent residency. This needs to be confirmed in order to know how best to handle this case. She is an adult of 19, living in the parental home with other siblings as well (all under age). If any marriage went ahead, she may also be drawn in to unlawful conduct as she is at risk of being forced to sponsor her fiance/husband to Australia under a spousal visa.

   **Background:** Child marriage of this kind is common in half the member countries of the United Nations, in many of which the average life expectancy is less than 40 years. So while child marriage may have been legislated against in those countries, it is very often a recent change to the law and enforcement is often patchy to non-existent. Those legally able to sponsor a partner to migrate to Australia must meet a variety of criteria to do this lawfully, whereas an arrangement to perpetuate an earlier child marriage could engage various crimes including visa fraud. In social terms, it is important to realise that in countries having 18 as the age of majority, that age may count for little in terms of decision making about family matters. For example, many communities do not fully recognise a woman as an adult until and unless she is married.

2. **What, if any, type of forced marriage situation may be involved?**

   It appears a child marriage has taken place, to another child while both were resident citizens of another country. It is entirely unclear on the information given whether this marriage would be recognised in Australia, and expert advice from, for example, Anti-Slavery Australia will be crucial to assisting E. If the parents insist on a future marriage of E in Australia to the husband from the earlier union, they may be committing an offence under Australia law. As an adult, E needs to understand that if she falls in with or does not resist these arrangements she could be committing a crime.

   **Background:** All member countries of the United Nations, except the USA, South Sudan and Somalia, are signatories to the *Convention on the Rights of the Child*, which establishes 18 as the age for marriage. However, countries vary quite a lot on the extent to which the provisions of the Convention have been implemented in their body of national legislation, and it may be that this marriage would still be recognised by the original community and/or registerable in the country of origin.

3. **What other issues arise in the circumstances described in this case?**

   Marriage is sometimes used as a migration pathway. In this case, however, the relevant events were so long ago and before civil strife erupted in the home country, it seems less likely. That said, despite not being planned, it may seem the easy option for the other family involved to escape to Australia.

   E has a brother in similar circumstances, although he is a minor child still and child protection may need to be engaged on his behalf as well as any younger children at risk.

   If the other families involved are not receptive to a negotiated arrangement to set these ‘marriages’ aside, any family members in the old country may face retribution or penalty there.
Background: While stereotyped as involving a very young girl and a much older husband, child marriage comes in a wide variety of forms and can often involve two young children. In many countries this form of forced marriage commonly involves boys as well as girls. If the ‘husband’ is not a consenting partner to the arrangements for re-unification with his ‘wife’, future forced marriage offences are also possible.

Response:

4. **What are the immediate/early responses likely to be needed?**

A response to the entire situation would usefully begin with counselling of parents and E, since the parents may well be open to setting the marriage aside. Equally, it will be crucial to assess the likely response of the other parents (still in the old country), and implications for migration intentions of E’s ‘husband’.

Similarly with her brother, monitoring of whom in the short term is probably well-advised lest he be taken out of school pursuant to his own marriage as a child.

5. **What types of information and/or advice might those involved need to make some choices?**

Legal advice and assessment of whether the child marriage would even be recognised under Australian law is critical. There is a real possibility that it would be seen both as a forced marriage offence and as a form of visa fraud if the child marriage is not valid and they coerce E to marry again just to get the visa (and the more so for her under age brother). In dealing with these complex matters, expertise and advice from Anti-Slavery Australia is crucial.

Support will be important to overcome community expectations and/or insistence that arrangements made for them as children be honoured, especially in the old country, but the exact response appropriate to the circumstances depends on which country is involved (and perhaps which specific part of that country, as practices and expectations vary).

6. **Who else could contribute to a holistic response to those involved beyond the immediate term?**

If the parents prove to be receptive to setting aside the earlier child marriages (or severing them if they prove to be *prima facie* lawful at the time conducted), they may be helped by intermediary assistance from an international organisation operating in the home country. Resettlement workers in Australia familiar with that country/community may also be able to offer additional insights and support.
H’s Case – Sample Answers

Situation:

1. **What are the main issues of this case?**

   H is an adult living independently from her parents. She has two under age sisters who still reside in the parental home. One sister is in immediate danger of a forced marriage, and there is a similar but less imminent threat pending on the younger sister. Both parents appear to share views on marriage practices. E has experienced violence from her father in the past, and the next sister F appears to be subject now to the same.

   **Background:** Forced marriage tends to occur in family patterns, so the occurrence or threat of one indicates a higher likelihood that others have or will take place. If the parents remain fixed in their views, older siblings may be the only viable alternative guardians (subject to whether they themselves may be recovering from forced marriage trauma or related issues).

2. **What, if any, type of forced marriage situation may be involved?**

   E (17 year old) is facing marriage probably before turning 18, whether in Australia or overseas. She is clearly unwilling and being coerced into compliance in part by violence from her father. Other forms of duress may also be involved.

   **Background:** Regardless of where the marriage takes place, coercion negates full and free consent and establishes that the marriage is a forced marriage. Violence is the most obvious form of coercion, but by no means the only form that is found commonly in forced marriage cases.

3. **What other issues arise in the circumstances described in this case?**

   Escalating violence could impact all sisters especially those resident in the parental home. The younger sisters could be withdrawn from education and sequestered to ensure compliance.

   Even if the parents moderate their views in the immediate term, setting up monitoring of the younger siblings is likely to be very well advised.

   **Background:** Crossing boundaries of nationality, culture, race and religion, removal from education to ensure compliance is one of the most ubiquitous features of gender based violence, including child forced marriage, honour violence, female genital mutilation and so on.

Response:

4. **What are the immediate/early responses likely to be needed?**

   Safety of the two younger sisters, plus the eldest if the situation escalates. Given that the father has been violent in the past, in which the mother appears complicit, this is likely to be the definitive consideration in this case.

   If a forced marriage is to take place, it is more likely intended to be overseas, and engaging Australian Federal Police assistance to prevent removal of either sister to another country is well advised to intervene in this avenue for forcing a marriage. Early contact with the Australian Federal Police is
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strongly advised, and assisting them with relevant enquiries may also allow engagement of support from the Australian Red Cross Support for Trafficked People Program which also supports eligible forced marriage cases.

However, it is not a certainty that such a step is enough. Responses to law enforcement involvement include arranging a marriage ceremony locally with a proxy for the ‘husband’, thus avoiding the safety net of airport security.

Regardless of other steps taken, the schools must be involved to monitor attendance of both younger girls. It is crucial to be aware that the relevant child protection service is unlikely to give the case a high priority at this stage.

5. **What types of information and/or advice might those involved need to make some choices?**

All the sisters need appropriate information on where and how they can be protected and safely assert their right to refuse any and all marriages not of their choosing.

If the parents cannot be convinced to moderate their views, and the younger sisters remain at serious risk, it may be necessary to explore options for H to become their guardian.

6. **Who else could contribute to a holistic response to those involved beyond the immediate term?**

There will be a need for support for the school to understand the issues and how to make an appropriate and supportive response, and staff may be assisted by professional development along these lines.
Situation:

1. **What are the main issues of this case?**

   I is a 13 year old minor, her mother appears to be deceased and I lives with her father. An aunt provides after school supervision and is the nominated emergency contact (rather than I’s father). Following an unresolved incident that may have involved violence leading to undetermined injuries, I has now been withdrawn from school by her father but without notice or formal advice to the school. I is under the minimum school leaving age. Her whereabouts and safety are unknown and she is said to have been ‘given’ to another man.

   **Background:** Contravening the UN’s *Convention on the Elimination of All Forms of Violence Against Women*, the ‘promised bride’ practice ‘binds’ a girl to be a future ‘wife’, nearly always without her consent and quite often without her knowledge. Circumstances vary from an otherwise registerable marriage (if she had consented), to a marriage-like relationship that would not be registerable in Australia (eg. being ‘married’ while still a child at law, becoming a ‘wife’ while under the age of consent for sexual intercourse, or being forced into a polygamous arrangement). The most common theme is that the girl (or woman) is seen as the property of her father, able to be given to become the property of another man. This practice was said to be common in indigenous communities in Australia until fairly recently, and is still reported in some places. It is also common in various communities around the world, for example where binding betrothals take place and the girl or woman has no ability to prevent such an arrangement being made about her and/or no right or ability to repudiate the arrangement if it is made.

2. **What, if any, type of forced marriage situation may be involved?**

   If her father is treating her as property, a servile marriage may be involved. As she is 13, it is a child marriage under international law and a forced marriage because she is not able to consent (due to age). In any case, she is under the minimum age for marriage in Australia even with parental and judicial consent. It is highly unlikely to be a registerable marriage, but a marriage like relationship may engage the provisions criminalising conduct related to a forced marriage (depending on the exact situation).

   **Background:** According to Article 1 of *The International Convention to Suppress the Slavery Trade and Slavery 1926*, known as the 1926 Slavery Convention, slavery is ‘the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including where such a condition results from a debt or contract ...’. Servile marriage is a form of slavery in all cases. As well, the *Convention on the Rights of the Child* establishes 18 as the virtually universal age for marriage, and marriage at a younger age is therefore a child marriage (even if not forced by violence etc). Changes to Australian law in 2013 made it a crime to engage in conduct related to forced marriage (including forced child marriage) and servile marriage, regardless of where the marriage will take place. It makes no difference that this is taking place in Australia, it is still forced and/or servile marriage. The father may justify his decision by cultural or traditional beliefs. However, treating his daughter as property and/or delivering her into a situation of sexual assault and other harms is not supported under international law that the Australian Government has undertaken to uphold, or under Australian law (notwithstanding the
views expressed by some courts in the past). It is worth noting that the United Nations position regarding relevant international law is that culture or traditional practice do not justify human rights violations. The UN Charter includes a statement of universal human rights – universal meaning they are not a matter of privilege but are due equally to every person regardless of culture, religion, nationality, gender, age, etc. When a country becomes a member of the United Nations, that country takes on an obligation to uphold this view of human rights, which Australia did in 1945.

3. What other issues arise in the circumstances described in this case?

The lack of response from child protection authorities is not an uncommon problem, but does not relieve the school of its mandatory reporting burden. In the absence of other legal advice or advocacy to engage the authorities in a timely fashion, assistance for the child (or sought on behalf of the child) may be available from the National Children’s and Youth Law Centre (NCYLC) along with assistance in interpreting child protection requirements. If the father has in fact been violent towards his daughter, or engaged in other unlawful conduct, the aunt may also face safety issues as may any other daughters resident with the father.

**Background:** While the expression of child protection guidelines and mandatory reporting requirements varies across the States and Territories, forced marriage/child marriage and related conduct has been determined by federal authorities to involve significant harm/s that engages child protection obligations. For more information, contact NCYLC or read their report entitled *End Child Marriage Australia*.

**Response:**

4. What are the immediate/early responses likely to be needed?

Locating A right now and assessing her health and safety are paramount. Law enforcement assistance is likely to be required on information available so far, since it is very possible that she has already been physically assaulted and/or sexually assaulted. Child protection assistance may be problematic and specialised legal advice may be required both to ensure A’s appropriate protection and to counter any suggestion that traditional practice etc can usurp her rights. In a rural setting, the greatest challenge may be to find A secure refuge that is not able to be located by her father and/or the putative ‘husband’. Outside major regional centres, refuges are few and far between, and those that exist find confidentiality of their location is almost impossible to sustain. It is also very unusual that a refuge will accept an unaccompanied, under age person. The aunt may be willing to shelter A, given law enforcement support and other services.

5. What types of information and/or advice might those involved need to make some choices?

If the mother is actually deceased, and her father is uncooperative, alternative guardianship is likely to be a priority since she has 4-5 years yet before becoming an adult under the law. The aunt may be an option but the safety issues may intrude given the father’s continuing presence in the local community.

6. Who else could contribute to a holistic response to those involved beyond the immediate term?

In all likelihood, long term support for an alternate guardian will involve complex case management. The school would probably benefit from professional development opportunities for staff to handle these issues in context.
L’s Case – Sample Answers

Situation:

1. **What are the main issues of this case?**

   L was brought to Australia apparently for a brokered or arranged marriage, the registerable status of which would need to be confirmed. In that regard, she appears to have been a willing participant. If it is an actual marriage, presumably the man is an Australian citizen, but neither is clear on the available information. Since then, she has had one child in the relationship and is again pregnant. In her relationship, she has experienced what is probably rape in marriage and/or sexual assault at the hands of her husband/partner, along with a variety of violent and coercive behaviour relating to both herself and the child.

   **Background:** Since L appears to have initially consented to the brokering of this marriage, and may be seen by some as ‘complicit’ in her situation as a result. This could prove to be a thin veneer for much more dubious conduct, possibly for L effectively being trafficked into Australia and actually having no legitimate papers. Even if brought on a valid spousal visa, it is not yet whether any registerable marriage actually took place. Regardless of her initial consent, she is trapped by isolation in this violent situation which the law does not require her to endure.

2. **What, if any, type of forced marriage situation may be involved?**

   Whatever the relationship, L appears to have consented initially and so a forced marriage does not appear to be the main thing at issue. However, domestic servitude may well be a relevant issue.

   **Background:** The *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking)* Act 2012 (Cth) criminalizes a range of conduct around forced marriage, forced labour and other exploitative practices. There may be other offences involved, some under other parts of the recent amendments to the Crimes Act, such as domestic servitude, but there are no cases decided yet in Australia that would help interpret these circumstances.

3. **What other issues arise in the circumstances described in this case?**

   Whether or not this proves to be a forced marriage or a domestic servitude scenario, and/or any other criminal conduct is found to be relevant, the doctor in question is possibly the only person L will see while she is unaccompanied by the man in question and able to seek help. Her situation is very violent and risky and her actual visa status is quite unclear, so if this chance to aid her is missed, there may not be another and she may well suffer great harm to herself and her children.

   **Background:** L may be very reluctant to see help from the law, whether police or legal advice, for fear of losing her children or being deported, and this fear will need to be addressed to help her at all. If crimes under federal legislation seem to be involved, L may be assisted accordingly. For example, those who assist the Australian Federal Police with their enquiries into crimes relating to forced marriage or domestic servitude may be eligible for support through the Australian Red Cross Support. There is little established practice yet, so engaging with the AFP as soon as possible is crucial.
Response:

4. **What are the immediate/early responses likely to be needed?**

L needs a place of safety and support as an immediate priority, but has no means to find this. Faced with violence and isolation, L feels trapped - so the tipping point of this situation may well be around the doctor. In these circumstances, what is called the ‘one chance rule’ in the UK may be relevant – if the doctor opens the conversation, and calms her fears about coming to the attention of law enforcement, L may speak up and ask for help. But if the doctor lets the opportunity pass, there may not be another.

Much will be determined by her exact visa status, so connecting her to Anti-Slavery Australia for legal advice is crucial. They may also be instrumental in connecting L to the services she needs immediately to remove herself to a place of safety.

5. **What types of information and/or advice might those involved need to make some choices?**

L will need to know her options for staying in Australia safely and lawfully, or taking her children to her country of origin. The parental rights of her partner/husband will need to be considered as part of what will probably prove to be a complex picture.

If in fact she is of some irregular migrancy status, her options to resolve that will certainly need the specialist expertise of Anti-Slavery Australia.

6. **Who else could contribute to a holistic response to those involved beyond the immediate term?**

Absent issues of forced marriage, domestic servitude or other exploitative conduct that amounts to wrongdoing under the Act, this case speaks to quite a complex scenario of domestic violence and could be handled in that vein.
M’s Case – Sample Answers

Situation:

### 1. What are the main issues of this case?

M is under age for marriage in any form. She has been ‘betrothed’ and then ‘married’ in some form recognised by her family and community, but these arrangements could not possibly constitute a registerable marriage in Australia due to her age and in fact contravene Australia’s obligations under international law. Consumption is not an element of establishing whether she is married – if it is not a registerable marriage under Australia law, it may still constitute a de facto marriage in the eyes of her family and community which leaves M in very complex circumstances in relation to her putative partner. While the ‘marriage’ has not yet been consumated, this seems relatively imminent. M seems to be a willing participant in these arrangements, although could not be said to have ‘consented’ in the legal sense as she is under the minimum age required.

**Background**: Australia is a party to the UN’s *Convention on the Elimination of All Forms of Violence Against Women*, which requires Australia to ensure that ‘the betrothal and marriage of a child shall have no legal effect’. The UN’s *Convention on the Rights of the Child*, to which Australia is also a party, defines a child as being anyone under the age of 18 years and the *Marriage Act 1961* (Cth) establishes 18 as the minimum age for marriage in Australia. Some limited exceptions are possible for a child over 16 years of age so long as the proposed partner is over 18, there is parental consent given and a court provides concurring consent. These provisions do not apply to M’s case. State law in Australia governs statutory rape of a child, child sexual assault and related matters. In this regard, the consent of the child is irrelevant as they are not legally competent to consent. If the ‘marriage’ were consumated any time soon, these criminal provisions would be engaged.

### 2. What, if any, type of forced marriage situation may be involved?

M is under 18 and she has been bound in some form of irrevocable arrangement in the eyes of her family and community, which amounts to a child marriage in terms of Australian law. Being under 16, under Australian law she is not legally competent to consent to marriage nor can consent be given on her behalf at this age, which in international law would make her ‘marriage’ also forced because consent is absent. However, the elements of coercion, threat or deception appear to be absent, calling into question whether it would be considered a forced marriage under Australian law. At the time of writing, no case has been decided which would assist in interpreting this situation. Should M proceed to cohabit with her partner and consumate the marriage, this could be considered a forced child marriage like relationship under international law, despite her views expressed to Dr V, but again the situation under Australian law is rather less clear.

**Background**: The Crimes Legislation Amendment (*Slavery, Slavery-like Conditions and People Trafficking*) Act 2012 (Cth) criminalizes a range of conduct around forced marriage, including child marriage where the child is under 16 (and thus no possibility of a registerable marriage exists), and coercion threat or deception are involved. There may be other offences involved under State law, for example under child sexual assault provisions if the ‘marriage’ is consumated, but relevant cases that would help interpret these circumstances are still pending at the time of writing.
3. **What other issues arise in the circumstances described in this case?**

Dr V would be acutely aware of the probability of consensual sexual relations while under age and the risk of childbearing in the relatively near future, making this a mandatory reporting matter in all States. She may resist from reporting out of consideration for the ‘culture and traditions’ of the community involved, and/or given the fact that it is unlikely to receive priority case management by child protection authorities, but Dr V remains under the obligation to report nonetheless.

**Background:** The National Children’s and Youth Law Centre is able to advise further on matters of law related to mandatory reporting and child marriage. See also their report ‘End Child Marriage Australia’, available from their web site.

**Response:**

4. **What are the immediate/early responses likely to be needed?**

It is not at all clear that M really understands the full nature of a marital relationship despite what she has said to Dr V. Depending on the age and sexual experience of her ‘husband’, and the views of her in-laws once she is under their control, she may well find that the reality is very far from her expectations. Accordingly, prevention of this step is essential until she is able to make a mature and informed decision. Since M has shown openness to deferring child bearing, and seems animated about successful completion of her schooling, the most positive immediate response may be to work towards M deferring cohabitation and consumation until much later, after she is properly able to make an informed choice in her own right (and preferably based on mature knowledge of what marriage actually entails). How to respond in the immediate sense will best be facilitated by Dr V given the the family members are long standing patients of the practice. Notwithstanding complexities in the mandatory reporting and medical ethics issues involved, Dr V is obliged to respond to this as a child protection issue but also in M’s best interests generally. This would potentially open the door for Dr V to play a role in the longer term response that highlights the reality of the practices of this community. The major risk involved is that the cohabitation step will be brought forward to ‘seal the deal’ and prevent M from having second thoughts, an approach in which one or both families may be complicit and acts involved would likely constitute criminal conduct. If the families are not supportive of M delaying the next step, or at least moderately cooperative, Dr V will need to engage other forms of support in this regard, perhaps including law enforcement.

5. **What types of information and/or advice might those involved need to make some choices?**

As M is on track of having ambitions for her own education, reinforcing this may be as little as is needed. Further building trust and bringing M and her family, and their wider community, to awareness of the relevant law would best be informed by Dr V also upskilling her own professional reference material around forced marriage in Australia.

6. **Who else could contribute to a holistic response to those involved beyond the immediate term?**

M’s school could play a very important part in the short term, and in the longer term for all children in that community. The Australian Federal Police have a role to play in relation to potential child forced marriage offences, even where the child will not be removed from Australia. This role has not yet been demonstrated.
R’s Case – Sample Answers

**Situation:**

1. **What are the main issues of this case?**

R is a tertiary qualified adult male who is working as well as studying for a post-graduate qualification. He lives at home with his parents. R has no interest in marriage at this time but has already experienced years of emotional pressure to get married. His mental state seems to be suffering, possibly quite seriously, as a result the relentless nagging from his parents about this and his lack of resources to find a solution to his dilemma. His dilemma may not be taken seriously by others from a different community.

**Background:** In various communities, parents feel strong obligations to ensure that their children are ‘safely’ married as soon as they are of age. Expectations on this may be reinforced by fear of behaviour that would taint the family’s good name, including generally any kind sexual activity outside marriage and/or homosexuality in particular. While media attention is given to the most violent forms of such behaviour, including ‘honour violence’, ‘honour killing’ and similar practices, nearly always of women, the impact on young men is very real and seen often in poor mental health observed by a family doctor or in the pastoral care setting of tertiary education.

2. **What, if any, type of forced marriage situation may be involved?**

Despite R being an adult male, if he is coerced into marriage through emotional duress from his parents, he will not provide the full and free consent needed for a valid marriage. Accordingly, the result instead will be a forced marriage under Australian law.

**Background:** Both men and women can be victims of this type of sustained emotional barrage that leaves them with few resources to express their own wishes or make their own choices. Resistance over a long period often presents in terms of depression and anxiety that first appears to be unexplained in a person with no other challenge to their wellbeing.

3. **What other issues arise in the circumstances described in this case?**

Since most services that may be able to help are located in the domestic violence services sector, R may find it especially difficult to get access to an appropriate service provider, or even be taken seriously by those with the option or capacity to refer him.

**Background:** As found in earlier times in relation to the sexual assault of men and boys, there are distinctive challenges to overcome when an issue is stereotyped as a ‘women’s issue’ and assumed not to apply to men.

**Response:**

4. **What are the immediate/early responses likely to be needed?**

At the very least, R needs to see a GP and have an initial assessment made of his health and mental state. In these circumstances, there is a heightened risk of self harm and/or suicide that often goes undetected in young men. In all likelihood, he will need support to open a dialogue with his parents to help them understand the burden he is carrying in this and reach some accommodation, hopefully
positive, that allows them all to move forward. His parents may be receptive and unaware of the problem, or potentially much more aggressive/belligerent about their rights as his parents, so much will depend on support for R in the careful progression of that dialogue.

5. **What types of information and/or advice might those involved need to make some choices?**

R is likely to need longer term counselling to highlight his options for managing his own mental health and general wellbeing in the light of his parents views, along with resources that show how these issues might be explored with his parents in a positive way.

6. **Who else could contribute to a holistic response to those involved beyond the immediate term?**

Opinion leaders in the wider community of R and his parents may have a useful role to play. Education of support services at his university would also alert them to the relevant issues and external service connections available to people such as R.
S’s Case – Sample Answers

Situation:

1. **What are the main issues of this case?**

   S is well under age for marriage in Australia and possibly also for a formal marriage in her country of origin. Notwithstanding, she may well have been a child bride in a community, customary or religious ceremony that is binding in the eyes of her family and/or community.

   S is in Australia with her family, accompanying her father who has a working visa.

   **Background:** Child marriage of this kind is common in half the member countries of the United Nations, in many of which the average life expectancy is less than 40 years. So while child marriage may have been legislated against in those countries, it is very often a recent change to the law and enforcement is often patchy to non-existent. Those legally able to sponsor a partner to migrate to Australia must meet a variety of criteria to do this lawfully, whereas an arrangement to perpetuate an earlier child marriage could engage various crimes including visa fraud. In social terms, it is important to realise that in countries having 18 as the age of majority, that age may count for little in terms of decision making about family matters. For example, many communities do not fully recognise a woman as an adult until and unless she is married.

   Such cases have been observed under Australia’s system for working visas, but no case has been resolved that would allow interpretation of how best to proceed for S.

2. **What, if any, type of forced marriage situation may be involved?**

   S is quite probably facing an unlawful (child) forced marriage, in her country and/or in Australia. Related conduct in Australia entails criminal offences.

   There may also be a deliberate intention to circumvent the visa/residency system in Australia, which would indicate other offences.

   **Background:** The *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking)* Act 2012 (Cth) criminalised a range of conduct relating to forced marriage, forced labour and other exploitative practices.

3. **What other issues arise in the circumstances described in this case?**

   The reaction from these apparently very “traditional” parents is quite difficult to predict. Lack of community integration in Australia, social isolation and lack of other support may be significant impacts on the view that they take in the end. They will, no doubt, have concerns as to what impact may occur in relation to the father’s work visa.

   **Background:** The *Convention on the Rights of the Child* establishes 18 as the virtually universal age for marriage, and marriage at a younger age is therefore a child marriage even if not forced by violence etc. Changes to Australian law in 2013 made it a crime to engage in conduct related to forced marriage (including forced child marriage) and servile marriage, regardless of where the marriage will take place. It makes no difference that some events are taking place in Australia, forced and/or servile marriage are still very much at issue.
It is worth noting that the United Nations position regarding relevant international law is that culture or traditional practice do not justify human rights violations. The UN Charter includes a statement of universal human rights – universal meaning they are not a matter of privilege but are due equally to every person regardless of culture, religion, nationality, gender, age, etc. When a country becomes a member of the United Nations, that country takes on an obligation to uphold this view of human rights, as Australia did in 1945. The UN now has 193 members including almost all countries in the world.

Response:

4. **What are the immediate/early responses likely to be needed?**

Involvement of the Australian Federal Police is very likely to be necessary, and legal advice from Anti-Slavery Australia is crucial to obtain as soon as possible. Depending on the parents’ response, S may well require safe haven which will be problematic given her age.

5. **What types of information and/or advice might those involved need to make some choices?**

S will need to be advised in regard to her visa status since she came with her father on his 457 work visa. If she is unable to stay with her parents, this will make her situation all the more complex.

6. **Who else could contribute to a holistic response to those involved beyond the immediate term?**

The employer may well need to be advised if the father’s visa status is impacted. The school attended by S and/or her two younger sisters will definitely need to be involved to ensure that their presence and welfare are monitored.
Situation:

1. **What are the main issues of this case?**

To an observer such as J, Z is clearly an adult and probably from a non-English speaking background even though of unknown age and uncertain citizenship/residency status. In fact, she is nearly 30 and from another country, and came to Australia for a marriage arranged through a broker. She thinks that she was married to the man who is now exploiting her, but without papers of any kind her situation is very unclear. She faces ongoing severe violence and exploitation and needs a place of safety and support as an immediate priority.

**Background:** The legislation allows for both forced marriage and forced marriage like relationships, but how best to proceed will depend on details of these arrangements and the extent of consent that is seen to exist in these particular circumstances. Z initially consented to the brokering of this marriage, and may be seen by some as ‘complicit’ in her situation as a result. However, in effect Z appears to have been deceived by desire for an arranged marriage as a ‘mail order bride’. This proved to be a thin veneer for much more dubious conduct, possibly for Z effectively being trafficked. It is not yet whether any registerable marriage actually took place. That aside, she is now trapped by isolation in this highly violent situation which the law does not require her to endure.

2. **What, if any, type of forced marriage situation may be involved?**

Assuming that there was a marriage at all, it may not be a forced marriage as such and if no registerable marriage actually took place, it may not prove to be a forced marriage like relationship. The situation is very unclear, because Z is an adult and both consented to come to Australia and then later possibly consented to going for whatever ceremony took place. However, she is clearly being coerced and working/living under constant violence and duress, which the law does not require her to endure no matter what the specifics of the arrangements or their legality.

**Background:** The Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2012 (Cth) criminalizes a range of conduct around forced marriage, forced labour and other exploitative practices. There may be other offences involved, some under other parts of the recent amendments to the Crimes Act, such as domestic servitude, but there are no cases decided yet in Australia that would help interpret these circumstances.

3. **What other issues arise in the circumstances described in this case?**

On the facts given, Z faces continual violence and exploitation but has a very unclear legal status – not only in terms of her relationship but her migrancy status. It is possible that the purported marriage was a thin cover for tricking her into being trafficked into Australia, and that she has no valid visa at all. She may require a protection visa ASAP.
**Background:**

Those who assist the Australian Federal Police with their enquiries may be eligible for support through the Australian Red Cross Support. There is little established practice yet, so engaging with the AFP as soon as possible is crucial.

**Response:**

4. **What are the immediate/early responses likely to be needed?**

   Z needs a place of safety and support as an immediate priority, but has no means to find this. Experiencing continual violence and severe exploitation, Z feels trapped and isolated in a foreign country - so the tipping point of this situation may well be around the co-worker J. In these circumstances, what is called the ‘one chance rule’ in the UK may be relevant – if J reaches out to Z, Z may speak up and ask for help. But if J lets the opportunity pass, there may not be another.

5. **What types of information and/or advice might those involved need to make some choices?**

   They both needed to know that Z is the victim and that the law is there to help her. The expertise and immediate advice of Anti-Slavery Australia will be instrumental to putting this into perspective for all concerned, and then pursuing Z’s right to protection.

6. **Who else could contribute to a holistic response to those involved beyond the immediate term?**

   The Australian Federal Police, a women’s refuge and the Australian Red Cross all have a strong and positive part to play. Experience suggests that relocation to a safe place of anonymity will probably be required.