



Good Shepherd
Australia New Zealand

Opportunities to respond to forced marriage within Australia's domestic and family violence framework

Issues Paper



About us

Good Shepherd Australia New Zealand was established to address the critical, contemporary issues facing women, girls and families. We work to advance equity and social justice, and to support our communities to thrive. We aspire for all women, girls and families to be safe, well, strong and connected.

A central part of our purpose is to challenge the systems that entrench poverty, disadvantage and gender inequality. The Women's Research, Advocacy and Policy (WRAP) Centre does this through a range of research, policy development and advocacy activities.

Good Shepherd has had special consultative status with the United Nations Economic and Social Council (ECOSOC) since 1996.

Author

Laura Vidal

Women's Research, Advocacy and Policy (WRAP) Centre
Good Shepherd Australia New Zealand
Email: laura.vidal@goodshep.org.au

Acknowledgements

Baker McKenzie provided research regarding forced marriage and family violence legislation. Louise Kesterson, Social Work student at the University of Sydney, also provided research support.



Contents

Summary	4
1. Background: Forced marriage in Australia	4
1.1 The relationship between forced marriage and family violence	5
1.2 Defining forced marriage	5
1.3 Family violence.....	6
2. Drivers and impacts	6
2.1 Drivers.....	6
2.2 Impacts.....	8
3. The gendered nature of family violence and forced marriage	8
4. Policy responses	9
5. Legislative responses.....	10
5.1 General trends in legislative responses	11
5.2 Existing intervention orders and the proposed forced marriage protection order scheme	11
6. Conclusion	14
References	34



Summary

This Issues Paper highlights opportunities within existing domestic and family violence law and policy to prevent and respond to individuals impacted by forced marriage. It identifies possibilities for reshaping government and civil society responses to forced marriage away from a singular criminal justice lens and towards a more holistic response.

Given that empirical evidence on Australia's response to forced marriage is currently lacking, this paper does not seek to develop a definitive framework for understanding forced marriage as family violence. Instead, it highlights areas within existing legislation that could be explored further to shape improved legal, policy and practice responses.

1. Background: Forced marriage in Australia

The Australian response to the practice of forced marriage is heavily embedded within a criminal justice framework. The true extent of forced marriage is unknown in Australia as available data is not comprehensive, and only refers to reported cases. The Australian Federal Police have received 325 reports¹ of forced marriage following its criminalisation in the *Commonwealth Criminal Code Act (1995)* (Cth) in 2013. While not the only way forced marriage occurs in Australia, the common trend reported involves Australian residents or citizens under the age of 18 being forced into marriage overseas, with the expectation that the individual will sponsor their spouse for migration to Australia. Often relatives are alleged to have organised or be organising a marriage without full and free consent (Australian Government, 2016). Anecdotal reports from civil society organisations responding to forced marriage show that those commonly affected include females aged between 16 and 21 years of age, and most reports are received before the marriage has taken place. Access to dedicated victim support services is contingent on cooperation with law enforcement through a referral from the Australian Federal Police. To date, there have been no prosecutions under Australia's federal law.

While criminalising forced marriage in Australia has sparked several initiatives led by the Commonwealth Government and civil society organisations, there is growing acknowledgement that criminal justice legislation is only one among many responses required to comprehensively support individuals and their families.

¹ Australian Federal Police briefing to the Western Australia Forced Marriage Network, 23 July 2019.



1.1 The relationship between forced marriage and family violence

A review of the literature on forced marriage and family violence shows that there are significant parallels between the definitions, drivers and impacts of forced marriage and family violence. However, family violence literature is largely centred on abuse and violence perpetrated by an intimate partner. By contrast, available information shows that forced marriage in Australia is primarily perpetrated by parents or relatives prior to a forced marriage taking place, while following a forced marriage, an individual may be subjected to violence and abuse by their spouse, and/or extended family members.

Forced marriage and family violence are both understood as a crime and a violation of human rights. However, unlike responses to forced marriage that are heavily embedded within a criminal justice framework, responses to family violence do not always require victims to engage in the criminal justice system in order to access support.

1.2 Defining forced marriage

Legal definitions of forced marriage vary around the world and are shaped by local social norms and practices. Although international law does not provide an authoritative definition of forced marriage, rights in relation to marriage are enshrined in a number of instruments² and the principle that marriage must be entered into with “free and full consent” of one of both parties is made explicit.

Australia’s definition of forced marriage within the *Criminal Code (1995)* (Cth) is:

A marriage entered into without free and full consent of one, or both of the parties involved, as a result of coercion, threat or deception, or because the victim was incapable of understanding the nature and effect of the marriage ceremony. The definition applies to legally recognised marriages as well as cultural or religious ceremonies and registered relationships, regardless of age, gender or sexual orientation.

Australia’s interpretation of forced marriage as slavery is unique to Australia (Vidal, 2017). While there are some situations where forced marriage overlaps with slavery, research suggests that framing the practice as slavery and limiting responses within this criminal justice framework creates barriers to service engagement. Frameworks that address slavery fall short of recognising the complex familial relationships at the heart of the practice.

² Universal Declaration of Human Rights (1954); International Covenant on Civil and Political Rights (1976); International Covenant on Economic, Social and Cultural Rights (1954); Convention on the Rights of the Child (1990); Slavery Convention (1926); Supplementary Convention on the Abolition of Slavery, Slave Trade and Institutions and Practices Similar to Slavery (1956); Convention on the Elimination of All Forms of Discrimination Against Women (1981).



1.3 Family violence

Definitions of family violence have evolved over time out of initial conceptualisations of violence against women and gender-based violence. Violence against women and/or gender-based violence is considered one of the most prevalent forms of human rights violations in Australia (Department of Social Services, 2016; Australian Human Rights Commission, 2018; Heward-Bell, Laing, Humphreys & Toivonen, 2018).

Internationally there are several agreed standards relating to ending violence against women and/or gender-based violence. In 1979 the Convention on the Elimination of All Forms of Discrimination Against Women was adopted, and in 1993 the UN Declaration on the Elimination of Violence against Women became the first international instrument explicitly addressing violence against women, described as:

Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. This definition includes violence at the level of the family (such as domestic violence, sexual violence 'traditional' forms of violence such as dowry-related violence and female genital mutilation) at the level of the community (rape, sexual harassment, trafficking) and at the level of the State (Articles 1 and 2, 1993).

In Australia, family violence is defined in Commonwealth, State and Territory legislation. Broadly, most States and Territories adopt the definition of family violence set out in the *Family Law Act (1975) (Cth)*:

Violent, threatening or other behaviour, by a person that coerces or controls a member of the persons family (the family member), or causes the family member to be fearful.

Importantly, this definition highlights that there can be multiple perpetrators of violence in addition to intimate partners.

2. Drivers and impacts

2.1 Drivers

The causes of forced marriage and family violence are multifactorial and are framed differently across the academic literature depending on the various different theoretical frameworks that researchers and practitioners subscribe to. Of these theoretical perspectives it is psychological, sociological and feminist perspectives which hold the strongest support with respect to family violence (Straka & Montminy, 2008; see also: Our Watch, 2015, p. 23).



Psychological (Straka & Montminy, 2008)	Locates drivers within individual pathology and personality.
Sociological (Lawson, 2012)	Adopts a structural or ecological lens to analyse how various social systems and structures contribute to violence.
Feminist (Straka & Montminy, 2008)	Argues that the concept of power and control and the role of gender is central; these factors are often omitted from other theoretical frameworks.

Specific drivers in relation to forced marriage are reported in more tangible terms, and are largely situated within economic and social conditions such as low education, limited employment and poverty. Across the literature the most commonly cited drivers include: protecting family honour and tradition; strengthening family and community links; patriarchal values; gender inequality; avoiding the stigma of previous divorce; marriage as a rite of passage for young women; and financial gain.

 <p>Protecting family honour or tradition</p>	 <p>Gender inequality and patriarchal values</p>
 <p>Strengthening family and community links</p>	 <p>Avoiding the stigma of previous divorce</p>
 <p>Marriage as a rite of passage for young women</p>	 <p>Financial gain</p>

The practice of forced marriage cannot be reduced to any one causal factor. Forced marriage involves many of the elements that constitute family violence, including:



assault; denying a family member financial autonomy; withholding financial support; preventing a family member from making or keeping connections with his or her family; friends or culture; and unlawfully depriving the family member or any related member, of his or her liberty.

2.2 Impacts

The impacts of both forced marriage and family violence are devastating and have consequences for individuals across their lives. The most common impacts of both family violence and forced marriage reported include (Baker, 2015; Timmerman, 2015; Swegman, 2016; Vidal, 2017; Girls Not Brides, 2017; The Salvation Army, 2017):

- Denial of education
- Economic abuse
- Sexual violence
- Physical violence
- Isolation or estrangement from family
- Early sexual activity and pregnancy
- Greater risk of infant and maternal morbidity and mortality
- Higher risk of developing sexually transmitted diseases
- Higher risk of developing depression, anxiety, self-harm—including attempted suicide
- Intergenerational trauma.

In countries such as Australia, additional drivers are connected to migrant diaspora and include:

- Controlling unwanted behaviour
- Controlling unwanted sexuality
- Preventing unwanted relations
- The belief that marriage is a cure for mental health issues
- Migration benefits
- Peer pressure from the community (RMIT and The Salvation Army, 2018).

3. The gendered nature of family violence and forced marriage

There is growing international recognition that the experience of forced marriage is gendered in nature (Chantler, Gangoli & Hester, 2009; Anitha & Gill, 2009; Chantler, 2012; Klein, 2013). While both men and boys can experience forced marriage, the practice disproportionately impacts women and girls with only one fifth of the number of boys forcibly married compared to that of girls (Murray Gaston, Misunas, Cappa, 2019). In this context, forced marriage is understood as a form of gender-based violence perpetrated by immediate and extended family members and to a lesser extent broader community networks.



The significance of gender and gender inequality is identified as central to understanding the context of both forced marriage and family violence. Feminist perspectives position forced marriage and family violence as located in patriarchal structures that perpetuate gender inequality and provide the context for violence against women to occur (Stark, 2007, 2009, 2012; Chantler, Gangoli & Hester, 2009; Anitha & Gill, 2009; Chantler, 2012; Klein, 2013; Laing, Humphreys, Cavanagh, 2013). Power, control and coercion are central to definitions of both forced marriage and family violence (*Commonwealth Criminal Code Act (1995)* (Cth); *Family Law Act (1975)* (Cth)).

4. Policy responses

Policy responses to forced marriage have continued to emerge since its criminalisation in 2013. The initial response to forced marriage is contained within the National Action Plan on Trafficking and Slavery (2015-2019). This plan sets out a series of activities including dedicated funding to non-government organisations focused on raising awareness both in communities and within schools; building a website with information, links to services and online legal advice; research support for scoping the presentation and support needs of those impacted by forced marriage; and training for service providers. This approach situates forced marriage squarely within Australia's response to human trafficking and slavery, which has seen challenges in the provision of support – as a federal system it is not often well understood by State and Territory frontline service providers, including law enforcement; participation in the available support system is also contingent on report to federal law enforcement.

The challenges in implementation have led to increased advocacy for the recognition of forced marriage within the family violence framework, starting with acknowledgement of the practice within the Fourth Action Plan of the National Plan to Reduce Violence against Women and their Children (2019-2022). The plan includes forced marriage as one of 20 national priorities:

Better equip the service system and communities to address complex forms of violence and harmful cultural practices including early and forced marriage, female genital mutilation/cutting, dowry abuse and human trafficking (Australian Government, 2019, p. 6).

The question remains as to how this inclusion will be funded, understood and translated by States and Territories into practical initiatives that prevent the practice from occurring and offer meaningful service responses.

The final policy area of relevance is the response by child protection agencies. Naturally, their focus remains those under the age of 18, and as the below analysis shows, legislatively there are mixed responses to the recognition of forced marriage (and in this instance, child or underage marriage) and family violence more broadly. In addition to legislative recognition a number of States and Territories have developed specific practice guidance (See Victoria, New South Wales and Western Australia, for example)



which provide some principled measures with respect to responding to forced marriage. However, the challenge remains in the interpretation of risk given the age of the young people who are presenting (The Salvation Army, 2017, p. 22). Individuals are typically over the age of 16 years, and practice experience shows that individuals over the age of 16 years are rarely prioritised; depending on the State or Territory these individuals are also considered independent and, for example, can self-place outside of their homes without the involvement of a statutory agency. Child protection systems are not designed to be responsive to this issue or cohort of young people unless they are very young in age.

The difficulty is that with forced marriage, unlike other child protection concerns, risk increases with age and young people are saying to service providers that they require support to both leave their homes (if that is what they determine to be the safest option) and/or work with their families to create a safer environment.

5. Legislative responses

As previously established, the dominant legislative response in Australia sits within the *Commonwealth Criminal Code (1995)* (Cth) whereby forced marriage is considered a criminal offence under section 270. Under this legislation, any person impacted by forced marriage can access support and assistance via the Australian Federal Police. With consent, the Australian Federal Police can refer individuals to the Australian Red Cross Support for Trafficked People Program (STPP), administered by the Department of Social Services. This program is available to individuals for up to 200 days. As this is a federal framework, challenges exist with regard to frontline police and service providers identifying and responding to the issue. Furthermore, intervention and support mechanisms that may otherwise be applied in family violence situations are not readily accessible to this cohort, simply because it is not explicitly referenced and/or there is not the capacity of frontline workers to argue for its inclusion based on the presentation of facts. Good Shepherd's practice experience within the family violence sector suggests that explicit references to forced marriage within the family violence field would open up opportunities for support, including ready access to intervention orders, eligibility for crisis and/or other accommodation and mandated responses from child protection authorities.

The tables on page 16-32 outline where forced marriage is situated within current legislation and the potential opportunities for legislative recognition in three other areas of State and Territory legislation—family violence, child protection and victims compensation. This analysis suggests that strengthening existing laws rather than introducing standalone offences and schemes offers practical and tangible solutions that would ensure responses are embedded within already existing intricate systems.

These areas of law have been selected given their potential intersection with the behaviours associated with forced marriage, and because of the practical interventions that could be made available to individuals at risk if forced marriage was to be formally



recognised. Suggestions regarding various legislative amendments are made with the view that it is both time and resource efficient to extend existing provisions, where appropriate, in preference to creating new legislative schemas. The analysis recognises that specificity within these amendments is required in order for interventions to be best tailored to meet the needs of those individuals impacted by forced marriage.

5.1 General trends in legislative responses

With the exception of Victoria and South Australia, no State or Territory explicitly defines forced marriage (as it is currently defined within the *Commonwealth Criminal Code (1995)* (Cth)) within legislation on family violence, child protection or victims compensation. It is noted that New South Wales attempt to codify forced marriage through the introduction of the *Modern Slavery Act (2018)* (NSW) has been stalled as the Act has been referred for review and its implementation status is unclear at the time of this publication. The interpretation of the law in most States and Territories is open to the inclusion of forced marriage in general terms such as in the description of harm, abuse, coercion, control or inciting fear. The challenge that has been identified by this generalist approach is that without specific training on recognising a practice like forced marriage, it is not readily applied or successfully argued. Explicit reference to forced marriage within broad definitions of family violence and child abuse would increase opportunities for individuals to gain access to protective mechanisms without equivocation.

Furthermore, explicit reference to forced marriage within broad definitions will provide an impetus for targeted and specialised policy and practice responses, particularly with regard to age limitations that are applied within the context of child protection and family law.

While it may be argued that existing protection mechanisms may not be specific enough for the target group, Good Shepherd's research and practice experience demonstrates that the opportunities outweigh the limitations—and adding more options to a suite of protections available to individuals impacted by forced marriage can only serve as a strength. This approach also presents an opportunity to increase the capacity of a greater number of frontline responders, in turn providing improved responses that increase the chance of people getting the support that they need, when they need it.

5.2 Existing intervention orders and the proposed forced marriage protection order scheme

By suggesting that most definitions of family violence can be argued to include forced marriage it should readily provide access to one of the most common forms of legal interventions in family violence matters—intervention, protection or restraining orders. While we accept the critique about the limitation of this tool, particularly in the follow up of breaches (Wangmann, 2014), they remain a principled tool that can activate further mechanisms for assistance. Further, in a NSW Bureau of Crime Statistics and Research



Study (1997) – the last available comprehensive evaluation – 98 per cent of women who experience physical violence no longer did after taking out an Apprehended Violence Order (AVO). This study also reported that AVOs significantly reduced stalking, intimidation and violence.

Current practice experience shows mixed results regarding the application of intervention, protection or restraining order schemes toward the issue of forced marriage. The argument of forced marriage as family violence has varied levels of success, and the injunctive powers available may not be the most suitable for the presentation of behaviours within particular forced marriage cases.

The Commonwealth Government announced in June 2018³ that they were committed to the development and implementation of a Forced Marriage Protection Order Scheme (FMPO). Such a scheme is in place within the United Kingdom and includes several practical measures to intervene in forced marriage matters inclusive of marriages that are yet to take place, and those that have already taken place. The model in Australia remains at consultation and design phase, and naturally needs to take the Australian context into account, rather than adopting the model as it stands within the United Kingdom.

In considering the benefits of FMPOs over family violence protection, we make the following conclusions:

- An FMPO system avoids placing the issue of forced marriage in any particular paradigm, such as the modern slavery paradigm, or the family violence paradigm. Avoiding this paradigm question improves the chance of better developing and implementing access to informed and coordinated support.
- An FMPO could make Family Law Watch List orders a condition of the order (inclusive of individuals over the age of 18 years), rather than a standalone order currently made under *the Family Law Act (1976)* (Cth) for persons under 18 years only.
- There may be a lower threshold when applying for an FMPO compared to accessing FV protections. This is because when applying for an FMPO, an actual event or incident of violence may not be required. A “threat” may be sufficient to obtain an FMPO, as it may a reasonable suspicion of a forced marriage. This is because when applying for an FMPO, an actual event or incidence of violence may not be required. For example, fear of a future threat may be sufficient to obtain an FMPO as may a reasonable suspicion of a forced marriage, which is not the case in some family violence jurisdictions in Australia currently.

³ Commonwealth Government. (2018, June 15). Strengthening Australia’s response to forced marriage. [Media release]. Retrieved from https://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/6291592/upload_binary/6291592.pdf;fileType=application%2Fpdf#search=%22media/pressrel/6291592%22



- FMPO legislative provisions could specify who may apply for an FMPO, with leave of the court (rather than having to depend on the specific dictates of each piece of family violence legislation).
- An FMPO may apply to Australian citizens and non-citizens alike, whereas family violence protections may be limited to Australian citizens only.
- An FMPO could provide that the courts have wide discretion to formulate non-exhaustive terms and conditions of FMPOs rather than relying on the types of existing orders available under family violence protection.

To the contrary, valuable considerations can also be made about family violence protection over the introduction of FMPOs:

- A major advantage and possibly one that supersedes other considerations is that the family violence legal framework in Australia may already provide adequate forced marriage protections or may be easily amended to include forced marriage protections (for example, by specifically including forced marriage into existing definitions of family violence).
- In many instances where an FMPO scheme might appear to have an advantage over family violence protection, this could be mitigated or countered by inserting certain provisions into family violence protection orders.
- It is unclear which courts in Australia will have jurisdiction over the FMPO scheme. One aspect of the FMPO model in Scotland is that courts considering issues relating to forced marriage also have the power to make declaration of nullity of forced marriages at the same time as hearing an application for an FMPO. This may be problematic under Australian law because a declaration of nullity of marriage is only available under the *Family Law Act (1976)* (Cth), on the ground that the marriage has been void under the *Marriage Act (1961)* (Cth). It is unclear whether the same courts that might have jurisdiction under the FMPO scheme would be the same courts with jurisdiction under the *Family Law Act* and *Marriage Act (1961)* (Cth).
- In many cases, family violence protection would trigger a child protection response, whether voluntary or mandatory. Child protection law in Australia is multi-faceted and complex, and the interaction between child protection laws and family law has been described as an “especially fragmented system [where]...the boundaries between the various parts of the system are not always clear and jurisdictional intersections and overlaps are an inevitable, but, unintended consequence” (Australian Law Reform Commission, 2010). Using an existing family violence framework with established child protection reporting and response requirements would provide a strong alternative to introducing another stand-alone scheme where any child protection response needs to be embedded into the intricate system.



6. Conclusion

There are benefits in expanding existing family violence protections and the introduction of a forced marriage protection order. In considering which legislative approach would be more effective in addressing forced marriage as a form of family violence it should be noted that the advantages that come from the specificity of an FMPO, for example, may be outshined by implementation challenges which may render it ineffective. The value of any legal intervention lies within its implementation. It is therefore critical to ensure that a new pathway to legal protection is adequately resourced and that the necessary system changes are also put in place.

Those working within systems responsible for implementation must receive adequate training about the practice of forced marriage including the tools available within and outside of legislative responses. As with other forms of family violence, legislative changes on their own are not enough to ensure adequate prevention, intervention and response. Any legislative and policy change in relation to forced marriage needs to be underpinned by investment in specialised service responses, including dedicated services and capability building within existing family violence services to ensure that victim survivors are held at the centre of our response.



Table 1:
Where is forced marriage recognised within current legislation?

Commonwealth	
<p>Family violence</p> <p>There is no specific reference to forced marriage contained within the <i>Family Law Act (1975)</i> (Cth).</p>	<p>Child protection</p> <p>N/A</p>
<p>Victims compensation</p> <p>N/A</p>	<p>Other</p> <p><i>Criminal Code Act (1995)</i> (Cth); sections 270.7A and 270.7B include the definition of forced marriage and the crimes associated with forcing or attempting to force an individual into marriage.</p> <p>The <i>Modern Slavery Act 2018</i> (Cth) includes forced marriage in its definition of modern slavery, ensuring that forced marriage is a modern slavery issue that must be reported on in the modern slavery statements of reporting entities.</p>



New South Wales

<p>Family violence</p> <p>The definition of “domestic violence offence” under the <i>Crimes (Domestic and Personal Violence) Act (2007)</i> (NSW) includes an offence under the <i>Criminal Code Act (1995)</i> (Cth) and as forced marriage is an offence under this Act; the Act includes forced marriage. The offence is applicable to child and adult victims alike.</p>	<p>Child protection</p> <p>There is no specific reference to forced marriage or family violence within the <i>Children and Young Persons (Care and Protection) Act (1998)</i> (NSW).</p>
<p>Victims compensation</p> <p>There is no specific reference to forced marriage in the <i>Victims Rights and Support Act (2013)</i> (NSW) (VRSA).</p> <p>However, the <i>Modern Slavery Act 2018</i> (NSW) (MSA) introduces amendments to the VRSA which will ensure that victims of modern slavery, including forced marriage, will be eligible for support under the VRSA. The MSA has been referred for review and implementation status remains unknown at the time of this publication.</p>	<p>Other</p> <p>The <i>Modern Slavery Act (2018)</i> (NSW) (MSA) introduces a new offence of “child forced marriage” into the <i>Crimes Act 1900</i> (NSW). This reflects the definition of forced marriage within the <i>Criminal Code Act (1995)</i> (Cth) with the exception that victims must be under 18 years. This MSA has been referred for review and the implementation status remains unknown at the time of publication.</p>



Australian Capital Territory

<p>Family violence</p> <p>There is no specific reference to forced marriage within the <i>Family Violence Act (2016)</i> (ACT).</p>	<p>Child protection</p> <p>There is no specific reference to forced marriage within the <i>Children and Young People Act (2008)</i> (ACT).</p>
<p>Victims compensation</p> <p>There is no specific reference to forced marriage in the <i>Victims of Crime (Financial Assistance) Act (2016)</i> (ACT).</p>	<p>Other</p> <p>N/A</p>

Victoria

<p>Family violence</p> <p>Forced marriage is included as a statutory example of family violence under the <i>Family Violence Protection Act (2008)</i> (Vic).</p>	<p>Child protection</p> <p>The <i>Children, Youth and Families Act (2005)</i> (Vic) utilises the definition of family violence in the <i>Family Violence Protection Act (2008)</i> (Vic) therefore, forced marriage is included in one provision of this Act.</p>
<p>Victims compensation</p> <p>There is no explicit reference for forced marriage in the <i>Victims of Crime Assistance Act (1996)</i> (Vic).</p>	<p>Other</p> <p>N/A</p>



Queensland

<p>Family violence</p> <p>There is no specific reference to forced marriage within the <i>Family Violence Protection Act (2012)</i> (Qld).</p>	<p>Child protection</p> <p>There is no specific reference to forced marriage within the <i>Child Protection Act (1999)</i> (Qld).</p>
<p>Victims compensation</p> <p>There is no specific reference to forced marriage within the <i>Family Violence Protection Act (2012)</i> (Qld).</p>	<p>Other</p> <p>N/A</p>

Northern Territory

<p>Family violence</p> <p>There is no specific reference to forced marriage within the <i>Domestic and Family Violence Act (2007)</i> (NT).</p>	<p>Child protection</p> <p>There is no specific reference to forced marriage within the <i>Care and Protection of Children Act (2007)</i> (NT).</p>
<p>Victims compensation</p> <p>The <i>Victims of Crime Assistance Act (2006)</i> (NT) (VCAA) does not define “family violence” or “forced marriage” explicitly but a “violent act” under the VCAA may include the commonwealth criminal offence of forced marriage, making a forced marriage victim eligible for VCAA assistance.</p>	<p>Other</p> <p>N/A</p>



Western Australia

<p>Family violence</p> <p>There is no specific reference to forced marriage within the <i>Restraining Orders Act (1997)</i> (WA) which includes protections for individuals experiencing family violence.</p>	<p>Child protection</p> <p>There is no specific reference to forced marriage within the <i>Children and Community Services Act (2004)</i> (WA).</p>
<p>Victims compensation</p> <p>There is no specific reference in <i>Criminal Injuries Compensation Act (2003)</i> (WA) to forced marriage.</p>	<p>Other</p> <p>N/A</p>



South Australia

Family violence

The prevention of domestic and non-domestic abuse is contained within the *Intervention Orders (Prevention of Abuse) Act (2009) (SA)*; which does not define family or domestic violence explicitly, rather, it defines “abuse” in both domestic and non-domestic settings. There is no specific reference to forced marriage within this Act.

Child protection

The *Children and Young People (Safety) Act 2017 (SA)* establishes a nexus with offences under the *Criminal Code Act (1995) (Cth)* noting that a child is considered at risk of harm and consequently entitled to protection if: they take part in a marriage ceremony that would be a void marriage or otherwise invalid under the *Marriage Act (1961) (Cth)*; or enabling a young person to take part in an activity that would constitute an offence against the *Criminal Code Act (1995) (Cth)* Section 270.7B. The limitation here is that it only applies in situations where the child is to be removed from South Australia for these purposes.

Victims compensation

While family violence and/or forced marriage is not defined in the *Victims of Crime Act (2001) (SA)* the Act does include violence or a threat of violence experienced by an immediate family member, which extends to spouse, parent, grandparent, child, grandchild or sibling. There is scope within this Act to extend compensation to individuals impacting forced marriage without explicit inclusion.

Other

The Criminal Law Consolidation Act (1935) (SA) Division 8A criminalises child marriage. It is therefore an offence to bring a child into South Australia or remove a child from South Australia with the intention of causing the child to be married. The Division applies irrespective of whether the child concerned, or a parent or guardian of the child, consents to the marriage.



Tasmania

<p>Family violence</p> <p>There is no specific reference to forced marriage within the <i>Family Violence Act (2004)</i> (Tas).</p>	<p>Child protection</p> <p>There is no specific reference to forced marriage within the <i>Children, Young Persons and Their Families Act (1997)</i> (Tas).</p>
<p>Victims compensation</p> <p>There is no specific reference to forced marriage or family violence within the <i>Victims of Crimes Assistance Act (1976)</i> (Tas), however, there is nothing in the Act that would prevent forced marriage from being an "offence" rendering a forced marriage victim eligible for assistance.</p>	<p>Other</p> <p>N/A</p>



Table 2:

Where are the opportunities for forced marriage to be recognised within existing legislative frameworks where there is currently no explicit recognition?

Commonwealth

<p>Family violence</p> <p>The definition of family violence as it currently stands is open to arguing that forced marriage is a behaviour that may constitute family violence. Explicit reference to forced marriage within the definition of family violence under the <i>Family Law Act (1975)</i> (Cth) removes the need to argue for recognition of forced marriage and has the potential to:</p> <ul style="list-style-type: none"> - Form part of the definition of 'abuse' within the Act (as well as forming part of the definition of family violence) - Become an occurrence covered by a Family Violence Order - Enable explicit protection under parenting orders, injunctions and other court orders. 	<p>Child protection</p> <p>If forced marriage was included in the definition of family violence, and therefore 'abuse', under the <i>Family Law Act (1975)</i> (Cth) there would be a positive impact on provisions relating to child welfare or protection—e.g. obligations to report allegations of family violence and abuse is expected in each State and Territory, therefore, it would naturally extend to forced marriage.</p>
<p>Victims compensation</p> <p>N/A</p>	<p>Other</p> <p>[See Table 1 - existing recognition.]</p>



New South Wales

<p>Family violence</p> <p>[See Table 1 - existing recognition.]</p> <p>As noted above, forced marriage is already included in the <i>Crimes (Domestic and Personal Violence) Act (2007)</i> (NSW) by a catch-all inclusion of crimes contained within the <i>Criminal Code Act (1995)</i> (Cth). This means that all provisions of the Act may be utilised to protect persons from domestic and personal violence, including any circumstance of forced marriage of a child or adult. The Modern Slavery Amendment Bill (2019) (NSW) currently being considered suggests an amendment to the <i>Crimes (Domestic and Personal Violence) Act (2007)</i> (NSW) which would include specific reference to the offences of forced marriage under the <i>Commonwealth Criminal Code (1995)</i> (Cth) definitions of “<i>personal violence</i>” and “<i>serious offence</i>”.</p>	<p>Child protection</p> <p>Despite there being no specific definition of forced marriage or family violence within the <i>Children and Young Persons (Care and Protection) Act (1998)</i> (NSW) behaviours and conduct associated with forced marriage may fall within the definition of a child or young person being at risk of harm. For the threat of forced marriage to explicitly trigger the care and protection provisions of the Act where a child or young person was taken to be at risk of significant harm, forced marriage would need to be included as a circumstance listed under Section 23 of the Act.</p>
<p>Victims compensation</p> <p>The <i>Victims Rights and Support Act (2013)</i> (NSW) will be significantly impacted should the <i>Modern Slavery Act (2018)</i> (NSW) be implemented; this Act broadens the victim support scheme in NSW to provide support to victims of an act of violence and an act of modern slavery.</p>	<p>Other</p> <p>N/A</p>



Australian Capital Territory

<p>Family violence</p> <p>The definition of family violence within the <i>Family Violence Act (2016)</i> (ACT) is arguably broad enough to include forced marriage and associated behaviours or conduct. If argued successfully, the provisions within the Act would apply, all of which are designed as protective measures. Like other jurisdictions an explicit inclusion would mean that those impacted by forced marriage would be automatically recognised as being covered by the protections within the Act. Any potential disadvantages of the explicit inclusion of forced marriage have been assessed as being outweighed by the protections offered.</p> <p>Explicit inclusion could be made under Section 8(1) of the Act.</p>	<p>Child protection</p> <p>The <i>Children and Young People Act (2008)</i> (ACT) includes the broad definition of family violence contained within the <i>Family Violence Act (2016)</i> (ACT). Like other jurisdictions, conduct already defined as family violence could arguably include forced marriage. A potential limitation regarding the explicit inclusion of forced marriage in the Act lies with the necessity of the child protection agency requiring agreement of at least one parent, and notification to the other parent that an assessment of their situation will be carried out—this has the potential to create an increased risk for individuals impacted by forced marriage. Any explicit inclusion of forced marriage would have to consider this implication and necessity of additional amendments to remove this risk.</p> <p>Explicit inclusion could be made under Section 459 of the Act (and/or amendments to the <i>Family Violence Act 2016</i> (ACT)).</p>
<p>Victims compensation</p> <p>N/A</p>	<p>Other</p> <p>N/A</p>



Victoria

Family violence

[See Table 1 - existing recognition].

As stated above, forced marriage is already included in the definition of family violence contained within the *Family Violence Protection Act (2008)* (Vic). As such all of the provisions of this Act extend to those impacted by forced marriage. A particular strength of the Victorian approach is the recognition of the broad range of offenders that may be captured under this Act including family members, relatives and members of a family's wider network that are not directly related. This means that in making an intervention order, it can include an associate of the original respondent which is significant in forced marriage matters as the violence and abuse often comes from a wider range of family members and other community connections.

Child protection

Forced marriage is confined to the section in the *Children, Youth and Families Act (2005)* (Vic) relating to the management of child protection proceedings where a court may ask any person connected to the proceeding whether that person considers that a child has been or is at risk of being subjected to or exposed to abuse, neglect and family violence.

Forced marriage is not an explicit criteria for determining that a child is in need of protection. However, the definition of a child in need of protection may include the type of conduct associated with forced marriage. Forced marriage could be explicitly included under the Act so as to activate a child protection response and the making of child protection orders. This in turn would trigger a mandatory child protection response.

Explicit inclusion could be made under Section 162(1) and Section 184(1) of the Act.

Victims compensation

Neither forced marriage nor family violence is explicitly included within the *Victims of Crime Assistance Act (1996)* (Vic) and the scope of the definition of an act of violence remains narrow: "criminal act or a series of related criminal acts...that has occurred in Victoria; and...directly resulted in injury or death to one or more persons". For forced marriage to be recognised under this Act, an amendment is required under

Other

N/A

**Victims compensation**

section 3's definition of a relevant offence, which could include an offence against section 270.7B of the *Criminal Code Act (1995)* (Cth).



Queensland

<p>Family violence</p> <p>The broad definition of family violence contained within the <i>Domestic and Family Violence Protection Act (2012)</i> (Qld) could apply to forced marriage particularly as the definition includes behaviour that is threatening or coercive. Explicit recognition of forced marriage would be possible by expanding the definition of domestic violence to include forced marriage as a specific example, or behaviour. This would allow ready access to protective mechanisms and would also have a carryover effect on the <i>Criminal Code (1899)</i> (Qld) which makes domestic violence a criminal offence.</p> <p>Explicit inclusion could be made under section 8(1) or Section 8(2).</p>	<p>Child protection</p> <p>Despite there being no specific reference to forced marriage in the <i>Child Protection Act (1999)</i> (Qld) the definition of “harm” is significantly broad and could capture conduct associated with forced marriage. If forced marriage were included explicitly, it would render a child “in need of protection” where the harm is significant and no parent is able or willing to protect the child, also triggering voluntary and mandatory reporting.</p> <p>Explicit inclusion could be made under Section 9(3), Section 13E and Section 13F of the Act.</p>
<p>Victims compensation</p> <p>Despite there being no specific reference to forced marriage within the <i>Victims of Crime Assistance Act (2009)</i> (Qld), the definition of domestic violence contained within the Act covers behaviours associated with forced marriage. In addition, the Act notes that an individual is entitled to apply for a financial assistance if they have been a victim of an act of violence that is a crime. Depending on the nature and circumstances surrounding the forced marriage, there is a likelihood that the forced marriage behaviours are considered a crime against the person occurring within the <i>Criminal Code Act (1995)</i> (Cth).</p>	<p>Other</p> <p>N/A</p>



Victims compensation

Explicit inclusion could be made under the Schedule 3 Dictionary definition of domestic violence.

Northern Territory

Family violence

Forced marriage could arguably fall within the current definition of “domestic violence” within the *Domestic and Family Violence Act (2007)* (NT). Explicit recognition would ensure ready access to protective mechanisms such as Domestic Violence Orders (DVO) without having first to argue forced marriage within the context of family violence, as the current requirement of a “domestic relationship” may make it difficult to be granted a DVO without explicit recognition.

Explicit inclusion could be made under Section 4 and Section 5 of the Act.

Child protection

[See Table 1 - existing recognition.]

Depending on the nature of the case, an individual may be eligible to apply for compensation under the definitions of “violent act”. Recognising injuries specific to forced marriage within the *Victims of Crime Assistance Act (2006)* (NT) would create an opportunity for impacted individuals to apply for compensation more directly.

Explicit inclusion could be made under regulation 3 and regulation 5(1) of the *Victims of Crime Regulations 2007* (NT).

Victims compensation

The *Victims of Crime Assistance Act (2006)* (NT) (**VCAA**) does not define “family violence” or “forced marriage” explicitly but a “violent act” under the VCAA may include the commonwealth criminal offence of forced marriage, making a forced marriage victim eligible for VCAA assistance.

Other

N/A



Western Australia

Family violence

The definition of family violence as it stands within the *Restraining Orders Act (1997)* (WA) is open to arguing that forced marriage is a type of behaviour that may constitute family violence under this Act.

Forced marriage could be explicitly included in the Act by following a similar approach to Victoria, adding specific statutory examples. This explicit reference removes the need to argue for its inclusion within the existing definition and provides ready access to the protection mechanisms available including restraining orders.

Explicit inclusion could be made under Section 5A and section 6A of the Act.

Child protection

It is arguable that the current definition of family violence accepts forced marriage. If so, the full raft of protections that exist for a child at risk would be extended to individuals impacted by forced marriage. It would also provide increased protections if the child or young person was removed from the State under Section 156-187 which provides for the transfer of child protection orders and proceedings between Western Australia and other States. There remains scope to ensure explicit inclusion of forced marriage within the Act, and this would be best noted in the expansion of the definition of family violence.

Explicit inclusion could be made under Section 3 and by amendments to the *Restraining Orders Act (1997)* (WA).

Victims compensation

There is nothing specific in the definition of "offence" within the *Criminal Injuries Compensation Act (2003)* (WA) that would prevent the inclusion of forced marriage from being considered. If forced marriage is accepted as a relevant offence under the act it would provide grounds for an award of compensation. The challenge within this Act is that in order to be eligible for compensation an offender must be charged with an offence, further the Act also requires a victim to assist in the identification, apprehension or prosecution of the person who committed the offence. As such, beyond explicit inclusion of forced marriage, an amendment to remove the necessity of

Other

N/A



Victims compensation

charges to be placed would be necessary to best serve this group of at-risk individuals.

Explicit inclusion could be made under Section 3's definition of "offence".



South Australia

Family violence

The opportunity to explicitly recognise forced marriage exists under Section 8 of the *Intervention Orders (Prevention of Abuse) Act (2009)* (SA). This recognition would provide grounds for issuing intervention orders for both children and adults which includes a raft of valuable conditions which may actively prevent a forced marriage—including cessation of contact, harassment, threatening or intimidating behaviour.

Child protection

[See table above - existing recognition.]

The provisions in South Australia would be strengthened by removing the requirement that in order for a forced marriage to apply, the child must be being removed from the State. This would ensure that all children at risk of forced marriage in South Australia would benefit from the protective mechanisms set forth in the *Children and Young People (Safety) Act 2017* (SA).

Explicit inclusion could also be made under Section 17(3) and Section 18(1) of the Act.

Victims compensation

Including specific reference to forced marriage within the *Victims of Crime Act (2001)* (SA) would provide stand-alone eligibility rather than the award of compensation being dependant on a person proving that forced marriage fits within existing definitions.

Explicit inclusion could be made under Section 17(1)(b) of the Act.

Other

The limitation of the criminal law provisions in the *Criminal Law Consolidation Act (1935)* (SA) is that they only apply to children (that is, any person under the age of 18). This provision could be strengthened by removing the age limitation, therefore recognising marriages of force regardless of age. Consideration also must be given to how the State and Federal criminal justice systems will interact to ensure efficient and consistent responses toward the individual at risk. This includes eligibility for the STPP if it is the State that will prosecute the crime, rather than the Commonwealth.



Tasmania

<p>Family violence</p> <p>Despite forced marriage not being included in the definition of family violence within the <i>Family Violence Act (2004)</i> (Tas), conduct related to forced marriage could arguably fall within the definition of family violence. As with other jurisdictions, adding forced marriage explicitly to the definition of family violence would mean that all protections under the Act could be extended to individuals impacted by the practice, including the protection afforded by Police Family Violence Orders and Family Violence Orders. It would be important to include extended family members as potential perpetrators of family violence (and therefore forced marriage), not just intimate partners.</p> <p>Explicit inclusion could be made under Section 7(b) and Section 4 of the Act.</p>	<p>Child protection</p> <p>The <i>Children, Young Persons and Their Families Act (1997)</i> (Tas) includes reference to protective provisions offered to children who experience family violence. It could be argued that behaviours associated with forced marriage fall within the Act's definition of abuse and neglect. However, explicit reference to forced marriage could be added to section 4 and section 3 of the Act, which would activate all of the existing child protection provisions, including the recognition of risk that this poses to both children and young people.</p>
<p>Victims compensation</p> <p>[See Table 1 - existing recognition.]</p> <p>There is nothing within the <i>Crimes Assistance Act (1976)</i> (Tas) that would preclude an offence of family violence or the offence of forced marriage from being included as an offence under the Act for which a person may be compensated. However, a further restriction may apply here as the criminal conduct leading to the offence is required to have been committed already, in which case situations of forced marriage where the individual is at risk, but has not been forcibly married may not satisfy the</p>	<p>Other</p> <p>N/A</p>

**Victims compensation**

criteria for compensation. Other injuries sustained as a result of associated violence may however continue to be recognised.

Explicit inclusion could be made under Section 2(1)'s definition of offence under the Act.



References

Anitha, S., & Gill, A. (2009), Coercion, Consent and the Forced Marriage Debate in the UK. *Feminist Legal Studies*, 17(2), 165–184.

Australian Government. (2016). Trafficking in Persons: The Australian Government Response. The Eighth Report of the Interdepartmental Committee on Human Trafficking and Slavery. Canberra: Commonwealth of Australia. Retrieved from <https://www.homeaffairs.gov.au/criminal-justice/files/report-anti-people-trafficking-interdepartmental-committee-july-2015-june-2016.pdf>

Australian Government. (2019). Fourth Action Plan: National Plan to Reduce Violence against Women and their Children 2010-2022. Canberra: Commonwealth of Australia. Retrieved from <https://plan4womenssafety.dss.gov.au/the-national-plan/the-fourth-action-plan-2019-2022/>

Australian Human Rights Commission. (2018). About family and domestic violence. Retrieved from <https://www.humanrights.gov.au/our-work/family-and-domestic-violence/about-family-and-domestic-violence>

Baker, J. (2015). Forced Marriage: A Review of the Literature. *Ending Violence Association of BC*. Retrieved from: <http://endforcedmarriages.ca/wp-content/uploads/2015/03/FORCED-MARRIAGE-lit-review-11-March-2015-2.pdf>

Chantler, K., Gangoli, G & Hester, M. (2009). Forced marriage in the UK: Religious, cultural, economic or state violence? *Critical Social Policy*, 29(4), 587-612.

Chantler, K. (2012). Recognition of and Intervention in Forced Marriage as a Form of Violence and Abuse. *Trauma, Violence & Abuse*, 13(3), 176-183.

Department of Social Services. (2016). Third Action Plan 2016-2019 of the National Plan to Reduce Violence against Women and their Children 2010-2022. Canberra: Commonwealth of Australia. Retrieved from https://www.dss.gov.au/sites/default/files/documents/10_2016/third_action_plan.pdf

Girls Not Brides. (2014). A Theory of Change on Forced Marriage. Retrieved from <https://www.girlsnotbrides.org/theory-change-child-marriage-girls-brides/>

Heward-Belle, S., Laing, L., Humphreys, C., & Toivonen, C. (2018). Intervening with children living with domestic violence: is the system safe? *Australian Social Work*. 71(2), 135-147.

Klein, R. (2013). Post-secondary Education Responses to Forced Marriage and Gendered Abuse against Students. *Children Australia*, 38(4), 162-170.

Laing, L., Humphreys, C., & Cavanagh, K. (2013). *Social work and domestic violence: developing critical and reflective practice*. London: Sage.

Lawson, J. (2012). Sociological Theories of Intimate Partner Violence. *Journal of Human Behaviour in the Social Environment*, 22(5), 162-170.

Murray Gaston, C., Misunas, C., & Cappa, C. (2019). Child marriage among boys: a global overview of available data. *Vulnerable Children and Youth Studies*, 14, 2219-2228.

New South Wales Bureau of Crime Statistics and Research. (1997). An evaluation of the New South Wales Apprehended Violence Order Scheme. Sydney: Attorney-Generals Department. Retrieved from <http://www.austlii.edu.au/au/journals/NSWBCSARLES/1997/11.pdf>



Our Watch, Australia's National Research Organisation for Women's Safety (ANROWS), & VicHealth. (2015). *Change the Story: A shared framework for the primary prevention of violence against women and their children in Australia*. Melbourne: Our Watch. Retrieved from <https://www.ourwatch.org.au/getmedia/0aa0109b-6b03-43f2-85fe-a9f5ec92ae4e/Change-the-story-framework-prevent-violence-women-children-AA-new.pdf.aspx>

RMIT University & The Salvation Army. (2018). *Without Choice: An Examination of Forced Marriage in Australia*, Sydney: The Salvation Army. Retrieved from <https://endslavery.salvos.org.au/wp-content/uploads/2018/05/Social-Forced-Marriage-Report- SINGLES-min-1.pdf>

Stark, E. (2007). *Coercive Control: How Men Entrap Women in Personal Life*. New York: Oxford University Press.

Stark, E. (2009). Rethinking coercive control. *Violence Against Women*, 15(12), 1509-1525.

Stark, E. (2012). Coercive control. In N. Lombard & L. McMillan (Eds.), *Violence against Women: Current Theory and Practice in Domestic Abuse, Sexual Violence and Exploitation* (pp. 17-32). London: Jessica Kingsley.

Straka, S.M., & Montminy, L. (2008). Family violence through the lens of power and control. *Journal of Emotional Abuse*, 8(3), 225-279.

Swegman, C. (2016). The intersectionality of forced marriage with other forms of abuse in the United States. *National Resource Center on Domestic Violence*. Retrieved from <https://vawnet.org/material/intersectionality-forced-marriage-other-forms-abuse-united-states>

The Salvation Army. (2017). *Hansard*. NSW Parliament Legislative Council Select Committee on Human Trafficking. Retrieved from <https://www.parliament.nsw.gov.au/committees/listofcommittees/Pages/committee-details.aspx?pk=250#tab-hearingsandtranscripts>

The Salvation Army. (2017). Submission to the NSW Legislative Council Select Committee on Human Trafficking: Inquiry into Human Trafficking. Retrieved from <https://www.parliament.nsw.gov.au/Idocus/submissions/57221/0016%20The%20Salvation%20Army.pdf>

Timmerman, R. (2015). Responses to Early or Forced Marriages. *International Centre for Criminal Law Reform and Criminal Justice Policy*. Retrieved from <https://icclr.law.ubc.ca/wp-content/uploads/2017/06/Child- Forced-Marriage-Final-Revised-2.pdf>

Vidal, L. (2017). Developing Innovative, Best Practice Solutions to Address Forced Marriage in Australia. *Winston Churchill Memorial Trust of Australia*. Retrieved from <https://www.churchilltrust.com.au/fellows/detail/4179/Laura+Vidal>

Follow us

Twitter: @GoodAdvocacy

Web: goodshep.org.au

Email: info@goodshep.org.au



Good Shepherd
Australia New Zealand