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20 November 2018

**Professor Helen Rhoades**  
**Commissioner in Charge**

Review of the Family Law System  
Australian Law Reform Commission

Delivered via email: [familylaw@alrc.gov.au](mailto:familylaw@alrc.gov.au)

Dear Commissioner

**REVIEW OF THE FAMILY LAW SYSTEM**  
**Australian Law Reform Commission Discussion Paper Number 86**

Good Shepherd Australia New Zealand (GSANZ) welcomes the opportunity to contribute to the review of the Family Law System, in particular proposals put forward in the Australian Law Reform Commission Discussion Paper Number 86 (Discussion Paper 86).

**About us**

GSANZ is a community services organisation that has been delivering on its mission to disrupt the intergenerational cycle of disadvantage, with a focus on women and girls since 1864 in Australia and 1886 in New Zealand. We achieve this by challenging disadvantage and gender inequality through services, research, advocacy and social policy development. GSANZ is part of a global network of services and advocates established by the Congregation of Our Lady of Charity of the Good Shepherd, which has had special consultative status with the United Nations Economic and Social Council (ECOSOC) since 1996.

GSANZ delivers services to women and their children impacted by family violence in Victoria and New South Wales. In Victoria we were the launch site for the support and safety hub model—The Orange Door—implemented following recommendations from the Royal Commission into Family Violence.<sup>1</sup> In New South Wales our work extends across a variety of practice areas including case management, counselling and provision of flexible education to young people where family breakdown as a result of family violence presents as a barrier to obtaining an education. Our dedicated Women's Research, Advocacy and Policy Centre regularly engages in gendered research and policy analysis in relation to domestic and family violence.

GSANZ holds significant expertise in the area of family and domestic violence; including early and forced marriage. Our Women's Research, Advocacy and Policy Centre conducted research<sup>2</sup> into the issue in 2014. In 2017, our Policy and Research Specialist, Laura Vidal, dedicated her Churchill Fellowship<sup>3</sup> to exploring best practice solutions in six countries. Ms Vidal has almost a decade of experience working directly with individuals at risk and/or who have experienced forced marriage.

Whilst GSANZ has extensive experience in supporting women, children and families impacted by family violence our comments are limited to the emerging area of practice centred on supporting individuals impacted by forced marriage, acknowledging that many sector advocates will address the broader context of family and domestic violence. We have further narrowed our comments to address specific interventions that would make a practical difference to both the prevention of the practice and the provision of appropriate support.

**Forced Marriage in Australia**

Forced marriage was introduced into the *Criminal Code Act (1995)* (Cth) in 2013. The practice is defined and understood under Australian law as a practice of slavery. The national strategy to

*Disrupting the intergenerational cycle of disadvantage for women and girls.*



address forced marriage is included in Australia's National Action Plan to Combat Human Trafficking and Slavery (2015-2019).

Under the *Criminal Code Act (1995)* (Cth), forced marriage is defined as:

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. The definition applies to legally recognised marriages as well as cultural or religious ceremonies and registered relationships; regardless of age, gender or sexual orientation.

Offences apply to marriages which:

- Occur in Australia (and)
- Outside of Australia involving an Australian Citizen or Resident.<sup>4</sup>

The true extent of the issue is unknown as available data is not comprehensive. The National Children's Youth Law Centre (now Youth Law Australia), in their study on child marriage, reported that between 2011-2013 250 cases were identified by research respondents.<sup>5</sup> Since 2013, the Australian Federal Police report that they have investigated over 230 reports of forced marriage.<sup>6</sup> What we know about forced marriage in Australia is believed to be only the tip of the iceberg.

The common trend concerning forced marriage in Australia involves Australian residents or citizens under or close to the age of 18 being forced into a marriage overseas, with the expectation that the individual will sponsor their spouse for migration to Australia. Often, relatives are alleged to have organised or to be organising a marriage without free and full consent.

Under Australia's current approach, individuals at risk or who have experienced forced marriage must engage with the Australian Federal Police (AFP) in order to access a government funded support program. There have been recent changes to make the support program more accessible to individuals, however, referral to this program continues to be maintained by the AFP.

Anecdotal evidence from both law enforcement and community organisations shows that many individuals do not wish to engage with law enforcement for fear that their family members will face a criminal prosecution; as a consequence they are unable to access appropriate support.

To date, there remain no prosecutions under the criminal legislation. Whilst criminalisation sparked a number of initiatives led by the Australian Government and civil society, there is growing acknowledgement that in order to prevent the practice, legislation is only one part of a complex and comprehensive response to best support individuals and their families. Young people aged 16-18 years represent a significant number of those at risk, and a more nuanced intervention is required.

### **Forced Marriage and Family Violence**

GSANZ made a submission to the Senate Legal and Constitutional Affairs Legislation Committee on the Modern Slavery Bill (2018)<sup>7</sup> stating that the inclusion of forced marriage within the definition of modern slavery is unique to the legislative environment in Australia. Few, if any, other jurisdictions frame forced marriage within the distinct context of slavery and/or modern slavery.

The practice of forced marriage is complex and intersectional. This multilayered status is reflected in several international instruments which outline the rights associated with marriage.<sup>8</sup> A definition of forced marriage couched only within the definition of modern slavery is therefore incomplete.

Emerging evidence on how forced marriage manifests in Australia indicates a need to adapt current approaches to shift toward a response that is targeted, holistic and cross-sectoral. The approach of criminalisation has presented a number of challenges, including limited participation in the system by individuals at risk/forced into a marriage. Particularly pertinent is the reality that the primary offenders in situations of forced marriage are either an individual's parents or close family



members; as such, individuals are reluctant to seek help or make a report which may lead to criminal proceedings.

GSANZ's research, policy and practice wisdom has shaped our view that forced marriage involves many of the elements that constitute the definition of family violence. These elements include: "violent or threatening behaviour, or any other form of behaviour that coerces or controls a family member or causes a family member to be fearful".<sup>9</sup>

Forcing a person to marry is a reflection of gender inequality and an imbalance of power. It is a practice that typically targets and disproportionately impacts women and girls. The UN Secretary General's Report on Violence against Women in 2006 illustrated a definition for family violence which can be applied directly to the experience of forced marriage:

Gender-based violence is a continuum of multiple, interrelated and sometimes recurring forms of physical, sexual and psychological/emotional violence and economic abuse in a range of settings, from private to public...<sup>10</sup>

Whilst it can be argued that Australia's definition of family violence is broadly sufficient to include practices like forced marriage, it is our experience that because it is not explicitly recognised or named, gaps in accessibility to legal mechanisms and associated support services remain. It is for this reason that the Royal Commission into Family Violence in Victoria recognised forced marriage as a distinct form of family violence and recommended this be reflected in the *Family Violence Protect Act (2008)* (Vic).<sup>11</sup> The Act was subsequently amended to list forced marriage as an example of family violence and received Royal Assent in August 2018.

There is increasing recognition that a standalone criminal justice approach to the issue of forced marriage is inadequate. We note and welcome the federal government's intention to introduce Forced Marriage Protection Orders (FMPOs).<sup>12</sup>

An FMPO is a civil measure that would provide for the intervention and protection of individuals facing a forced marriage. As a Commonwealth order, there is recognition that successful implementation and enforcement requires investment by States and Territories. Recognition of forced marriage as family violence will create a level of familiarity amongst law enforcement, legal practitioners and service providers that will ensure the orders are accessible and can achieve what they are intended to do.

Our practice experience has demonstrated a significant disconnect between the various agencies best placed to intervene in situations of forced marriage. The issue is considered to be a Commonwealth matter and as such there are ad-hoc and often unsatisfactory responses from local law enforcement, child protection agencies and mainstream family violence service providers. We assert that the recognition of the practice alongside the family violence intervention framework will afford individuals at risk of forced marriage access to these services and supports and create an impetus for tailored and targeted service provision.

Including forced marriage in the national definition of family violence would ensure that the agencies and organisations responding to family violence are equipped to identify and refer cases of forced marriage efficiently and appropriately.

Additionally, existing Family Law mechanisms such as parenting orders, child-related injunctions, location and recovery orders, interim protective orders and/or orders for the delivery of the child's passport or travel documents can be recognised as appropriate interventions in situations of forced marriage. Increased knowledge about these mechanisms and their value in preventing a forced marriage can consequently be shared through the proposed 'Education, Awareness and Information Package' detailed in Discussion Paper 86.



### **Recommendation:**

Expand the definition of family violence to include forced marriage. In doing so this will:

- Create opportunities for wider multi-sectoral engagement, information and support services for individuals at risk.
- Ensure effective implementation of the proposed Commonwealth Forced Marriage Protection Order.
- Provide scope for forced marriage to be embedded into education, awareness and information initiatives about family violence and family law mechanisms.

### **Special Considerations**

#### **1. Airport Watchlist Orders**

Airport Watchlist Orders (AWOs) have been an instrumental tool in preventing underage forced marriages. There is however a distinct limitation in that AWOs cannot be put in place after an individual turns 18 years of age; existing orders expire when the individual turns 18 years of age. Individuals both under and over the age of 18 continue to be at risk of forced marriage in Australia. Whilst the Australian Federal Police have means to place an airport alert, this alert does not prevent travel and when pressured individuals often agree to travel on the spot despite there being a known risk.

It is important to understand that even when an individual turns 18 family pressure and expectation does not ease the burden of complying with a forced marriage. It is also important to acknowledge that many adults aged between 18 and 25 remain dependant on parents or other community support and this dependence can often influence a decision to enter into a marriage. Forced marriage exists along a continuum of abusive practices where "the pressure to fulfil expected gender roles may, in some cases, deprive women and men the opportunity to freely and fully consent to marriage".<sup>13</sup> That is, within the cultural and familial context, young women (primarily) agree to travel and be married despite having strong reservations.

Practice experience shows that in some cases where an AWO has been ordered for a minor, the day the individual turns 18 and the order is no longer valid travel is arranged and a forced marriage takes place offshore. Extending the age of AWOs will create greater opportunities for the prevention of forced marriage.

### **Recommendation:**

Expand AWOs to include individuals aged over the age of 18. This would provide an additional safeguarding option for adults who are at risk of experiencing violence as a result of a forced marriage.

#### **2. Dispute Resolution**

Under the current response to forced marriage in Australia, typically individuals at risk are required to leave home in order to prevent a forced marriage from taking place. Whilst there are some preventative mechanisms (as noted above) that can be activated through the *Family Law Act (1975)* (Cth) individuals are often too fearful of engaging in mechanisms that may be perceived as 'getting parents into trouble'.

Practice experience and international research shows that in order to achieve the best outcomes for individuals impacted by forced marriage it is crucial that help seeking does not prevent future reconciliation with families, especially parents.<sup>14</sup>

Discussion Paper 86 acknowledges proposals to improve professional practice with regard to dispute resolution particularly in relation to culturally appropriate and safe models of family dispute resolution. Family dispute resolution is not widely accepted as an appropriate method of

intervention in situations of forced marriage. The absence of follow up support and monitoring can increase an individual's risk of harm and retaliation by family members. It is not recommended that dispute resolution in its current form be ordered in situations of forced marriage. However, recent research exploring initiatives being undertaken in Denmark<sup>15</sup> reveals that specifically tailored mediation or dialogue approaches that work with families on changing attitudes and behaviours toward harmful practices can generate positive results in both preventing a forced marriage from occurring and providing an opportunity for individuals to remain living safely at home.

**Recommendation:**

Include a focus on forced marriage when developing culturally appropriate and safe models of family dispute resolution, drawing on models such as those being implemented in Denmark.

**3. Information Sharing**

The nature of forced marriage often means that individuals are travelling within or outside of Australia. The national enforcement of domestic violence orders that came into place in November 2017 is a welcome initiative, however not all individuals at risk of a forced marriage have protection orders in place. Some are known to child protection agencies however the same information sharing mechanisms are not available across each State and Territory child protection system. The lack of coordination and absence of information sharing in relation to forced marriage often means that plans in place in one State/Territory are unknown in another therefore creating an increased risk. For individuals at risk of forced marriage consideration must be given to coordinated information sharing. Given the development of FMPOs simultaneous to the review of the Family Law system it is essential that this framework be looked at as an effective way to implement and enforce the proposed FMPOs.

**Recommendations:**

1. Consider national information sharing across child protection agencies in cases of forced marriage.
2. Incorporate proposed FMPOs in the national enforcement of domestic violence orders scheme.

Thank you for your consideration of our comments and recommendations. For any queries in relation to this submission please contact:

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Yours sincerely



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<sup>1</sup> See: <https://www.vic.gov.au/familyviolence/support-and-safety-hubs.html>

<sup>2</sup> McGuire, M. "The Right to Refuse: Examining Forced Marriage in Australia", Good Shepherd Youth & Family Service, Domestic Violence Victoria and Good Shepherd Australia New Zealand: Melbourne. (2014), [https://www.goodshep.org.au/media/1222/right-to-refuse\\_final-report\\_v2.pdf](https://www.goodshep.org.au/media/1222/right-to-refuse_final-report_v2.pdf)

<sup>3</sup> Vidal, L. "Developing Innovative, Best Practice Solutions to Address Forced Marriage in Australia", Report to the Winston Churchill Memorial Trust of Australia, (2017) <https://www.churchilltrust.com.au/fellows/detail/4179/Laura+Vidal>

<sup>4</sup> Australian *Criminal Code Act (1995)* (Cth), Section 270 and 271.

<sup>5</sup> National Children and Youth Law Centre, "Ending Child Marriage - Australia. Research Report on the Forced Marriage of Children in Australia", University of New South Wales, (2013).

<sup>6</sup> Commander Lesa Gale, "Public Address", *Prevention and Prosecution: Australia's Inaugural Conference on Forced Marriage*, University of Technology Sydney, 18 June 2018.

<sup>7</sup> Good Shepherd Australia New Zealand, "Submission to the Legal and Constitutional Legislation Committee: Modern Slavery Bill 2018, Women's Research, Advocacy and Policy Centre, (2018), <https://www.goodshep.org.au/media/2115/g sanz-ms-bill-introduction-submission-final-20180719-002.pdf>

<sup>8</sup> See *The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery 1956* Article 1 (c), *Universal Declaration of Human Rights 1948* Article 16 (1) (2) (3), *International Covenant on Civil and Political Rights 1976* Article 23, *International Covenant on Economic, Social and Cultural Rights 1954* Article 10 (1), *Convention on the Elimination of All Forms of Discrimination Against Women 1981*, Article 16 (1), *Convention on the Rights of the Child 1990*, Article 6(2), Article 19 (1), Article 27 (1), Article 28 (1), Article 32 (1) , Articles 34, 25 and 26.

<sup>9</sup> Our Watch, "Facts and Figures", accessed on 9 November 2018, <https://www.ourwatch.org.au/understanding-violence/facts-and-figures>

<sup>10</sup> UN Secretary General, "Report on Violence Against Women", (2006) cited in Gill, A and Sundari, A. *Forced Marriage: Introducing a Social Justice and Human Rights Perspective*, London, United Kingdom Zed Books (2014): 39.

<sup>11</sup> State of Victoria, "Royal Commission into Family Violence: Summary and recommendations", *Parl Paper No 132*, (2014-16): Recommendation 156: The Victorian Government amend section 6 of the Family Violence Protection Act (2008) (Vic) to expand the statutory examples of family violence to include forced marriage and dowry-related abuse [within 12 months].

<sup>12</sup> Former Minister for Foreign Affairs, The Hon. Julie Bishop MP, "Media Release - Australian Government National Roundtable on Human Trafficking", 16 August 2018, [https://foreignminister.gov.au/releases/Pages/2018/jb\\_mr\\_180816.aspx?w=tb1CaGpkPX%2FIS0K%2Bg9ZKEg%3D%3D](https://foreignminister.gov.au/releases/Pages/2018/jb_mr_180816.aspx?w=tb1CaGpkPX%2FIS0K%2Bg9ZKEg%3D%3D):

"The Government has also enhanced access to vital support for victims of forced marriage and committed to disrupt and prevent forced marriages by developing a model for a Commonwealth Forced Marriage Protection Order this year... Forced Marriage Protection Orders will complement Australia's existing criminal offences and provide a flexible civil remedy for people in, or at risk of, forced marriage".

<sup>13</sup> Burn. J and Simmons, F. "Without Consent: Forced Marriage in Australia", *Melbourne University Law Review*, 36:970, (2013): 973.

<sup>14</sup> See work by Professor Aisha Gill: [https://pure.roehampton.ack.uk/portal/en/persons/professor-aisha-k-gill-cbe/be142160-125d-4e0c-bc0d-869088d8c5c\).html](https://pure.roehampton.ack.uk/portal/en/persons/professor-aisha-k-gill-cbe/be142160-125d-4e0c-bc0d-869088d8c5c).html)

<sup>15</sup> Vidal, L. "Developing Innovative, Best Practice Solutions to Address Forced Marriage in Australia", Report to the Winston Churchill Memorial Trust of Australia, (2017): 43-47 <https://www.churchilltrust.com.au/fellows/detail/4179/Laura+Vidal>