

Research Brief *Forced marriage in Australia*

Introduction

Forced marriage has received growing attention in the past decade, as it was introduced into the *Criminal Code 1995* (Cth) as part of the suite of trafficking and slavery offences in 2013. This is reflected in the following recent reports:

- [Australia's National Action Plan to Combat Human Trafficking and Slavery 2015–19](#); and
- The 2017 Joint Committee on Law Enforcement [Inquiry into human trafficking, slavery and slavery-like practices](#).

In Victoria, there has been a notable shift in how forced marriage is recognised. The recommendations of the 2016 [Royal Commission into Family Violence](#) suggested the inclusion of forced marriage as a statutory example of family violence in the [Family Violence Protection Act 2008](#) (Vic) (recommendation 156). The [Justice Legislation Amendment \(Family Violence Protection and Other Matters\) Act](#) (Vic) was passed in late 2018.

This research brief provides an overview of forced marriage in Australia – how it's understood, its relationship with family violence, and existing legal and non-legal responses to prevent forced marriage and support those who experience it. It highlights the challenges posed by the federal and state legal definitions and recognition of forced marriage in the context of two very different crime types: family violence and human trafficking and slavery offences.

Defining forced marriage

Lack of consent

Forced marriage is defined in section 270.7A of the [Criminal Code Act 1995](#) (Cth) as:

- (1) A marriage is a forced marriage if one party to the marriage (the victim) entered into the marriage without freely and fully consenting:
- because of the use of coercion, threat or deception; or
 - because the party was incapable of understanding the nature and effect of the marriage ceremony.

Causing a person to enter or being a party of a forced marriage (other than the victim) is an offence under section 270.7B of the Commonwealth Criminal Code, and applies to marriages and relationships registered in Australia or recognised in another country, and that occurred in Australia or overseas ([Home Affairs 2018](#)).

The Criminal Code's definition exemplifies the common characterisation of forced marriage as a lack of (or inability to) consent to the marriage due to coercion, duress or use of force ([McGuire 2014](#): 23; [Simmons & Burn 2013](#): 973; [Jelenic & Keeley 2013](#): 9; [Attorney-General's Department 2010](#): 3).

It is important to emphasise however that there may be practical complexities in identifying a lack of consent, noting that coercion and consent can exist on 'a continuum' so that 'the pressure to fulfil expected gendered roles may, in some cases, deprive women and men of the opportunity to fully and freely consent to marriage' ([Simmons & Burn 2013](#): 973; also see [McGuire 2014](#): 23; [Anitha & Gill 2009](#): 180).

It is also important to note that most often in Australia forced marriage comes to the attention of authorities when young women (generally) indicate that they do not wish to be sent overseas to be married, but they also do not wish for their parents or extended family to be charged with a serious Commonwealth offence (Segrave, Milivojevic & Pickering 2018).

Forced versus arranged marriages

Forced marriages are distinct from 'sham marriages', 'servile marriages' and 'arranged marriages' ([Home Affairs 2018](#)). The former two are governed by separate laws (i.e. fraud and exploitation respectively). Arranged marriages are legal and, although arranged by family members, retain the element of consent by both parties to the marriage ([RCFV 2016](#): 111; [Attorney-General's Department 2010](#): 4; [HM Government 2014a](#): 6).

Segrave et al's submissions to the 2018 Legal and Constitutional Affairs References Committee [Inquiry into the practice of dowry and the incidence of dowry abuse in Australia](#) cautioned against 'slippage' that conflates forced and arranged marriages (and dowry practices), noting that 'Arranged marriages... cannot be assumed to be exploitive and/or abusive' ([2018](#): 12).

It is notable that the question of consent as a key point of difference between a forced and arranged marriage can be complex, not least because of the familial component of pressure and coercion that can be present (see RMIT & the Salvation Army [nd, Anitha & Gill 2009](#): 180). However, as McGuire explains there are both pre-marriage indicators (lack of consent, no ability to withdraw and/or threats associated with not marrying) as well as post-marriage indicators and consequences:

forced marriages tend to result in a range of negative consequences for victims. By comparison, there is little evidence to support the notion that arranged marriages result in partnerships that are less successful than so-called 'romantic' or 'love' marriages. (2014: 25)

Forced marriage and family violence

Family members' motives for forcing a marriage identified in academic and grey literature commonly include ([National Domestic and Family Violence Bench Book \(DFV Bench Book\) 2018](#); [Lyneham & Bricknell 2018](#): 92; [Attorney-General's Department 2010](#): 4):

- Preventing unsuitable (or unacceptable to the family) marriages;
- Protecting family honour and upholding (perceived) cultural or religious traditions;
- Controlling or discouraging behaviour viewed as challenging or unacceptable to cultural or societal norms; or
- Facilitating migration (e.g. residency and citizenship applications).

Reflecting the presence of coercion and lack of 'free and full consent' in forced marriages, RMIT & the Salvation Army explain ([nd](#): 21):

The reasons for forced marriage are all underpinned by the notion of power and control, which is the basis of family violence. In this respect, forced marriage may be viewed as a specific form of family violence that sits within a life-time of family obligation and duty to the home.

Forced marriage can be understood as a 'manifestation of family violence' ([RMIT & Salvation Army n.d.](#): 22), both because family violence behaviours such as actual and threatened physical and psychological abuse may be used to force a party into the marriage ([DFV Bench Book](#)), and because family violence behaviours may continue during the marriage perpetrated by the intimate partner and/or other family members ([Lyneham & Bricknell 2018](#): 92).

Although there remains an 'acute lack of data and information on this topic', and cases of forced marriage are likely under-reported ([Lyneham & Bricknell 2018](#): 1-2; also see [RMIT & Salvation Army n.d.](#): 15), it is apparent that women experience forced marriage at disproportionate rates to men ([DFV Bench Book](#); [Simmons & Burn 2013](#): 975; [RMIT & Salvation Army n.d.](#): 12). And while forced marriage may be rationalised by family members as a means to preserve religious or cultural traditions ([Attorney-General's Department 2010](#): 4), it should be understood as a form of gendered violence against women rather than a 'cultural practice'

(Anitha & Gill 2009: 166). As McGuire notes, 'it is a practice that is not condoned by any major world religion' (2014: 25). Nor is it 'limited to any particular cultural group, religion or ethnicity' (Department of the Attorney-General, cited in RMIT & Salvation Army n.d.: 12).

Existing responses to forced marriage in Australia

Forced marriage is a unique form of family violence requiring specialised and culturally appropriate services and supports. However, there are no specific, targeted responses in Australia to this issue. While there is some international guidance around the issue of forced marriage (see e.g. Home Affairs 2018; Lyneham & Bricknell 2018: 93; also see UK guidance, HM Government 2014a and 2014b) and best practice in dealing with cases of forced marriage, Australia has yet to adopt a specific approach (Vidal 2017).

The federal response: trafficking and slavery, and family law

As noted above, forced marriage is an offence under section 270.7A of the *Criminal Code 1995* (Cth). The trafficking and slavery offences under s270 and s271 of the Criminal Code are connected to a larger federal infrastructure, including most notably the DSS-funded Support for Trafficking People Program established as a referral-based victim-support system for anyone who is identified by the Australian Federal Police as a potential victim (see DSS: nd).

Segrave, Milivojevic & Pickering (2018) have noted that there has been no review of this mechanism in terms of the quality or appropriateness of the support that is provided since its inception. Specifically in relation to forced marriage they have noted three key concerns in relation to forced marriage including the age-appropriateness of the design of this support system given the age of the young women coming forward to seek support, the practice of separating these young women from their parents or guardians as per the operation of the victim support system, and the short-term nature of the support service, which does not recognise the familial and long-term potential consequences for young women who come forward (Segrave, Milivojevic & Pickering 2018: 98-100).

Beyond the Commonwealth offences, children may apply for parenting orders under Commonwealth Family Law, restricting their parents from forcing them into a marriage, however these provisions are not available to adults (DFV Bench Book; Lyneham & Bricknell 2018: 75-76) and their use in this way appears to be very limited.

The Victorian response: family violence law

In terms of family violence, Victoria's recent inclusion of forced marriage as a statutory example of family violence in section 5(1)(b) of the *Family Violence Protection Act 2008* (Vic) has been recognised as an ideal framework as it reinforces that specialist services and practitioners are required to effectively prevent forced marriage (Segrave et al 2018: 12).

Others have highlighted that this system remains inadequate because of the lack of specific training and knowledge pertaining to this particular practice, for example: 'an efficient and effective family violence system is an ideal not yet realised and ... the sense of uniqueness about forced marriage meant that it needed its own understanding and its own funding' (RMIT & Salvation Army n.d.: 22). The adequacy and appropriateness of the family violence sector to deal with forced marriage cases has also been questioned by some academics, as they 'are likely to have a

complex mix of legal and social needs' (Simmons & Burn 2013: 1007; also Vidal 2017).

Responding to forced marriage: beyond the law

There is increasing recognition that for practices such as, but not limited to, forced marriage, there is a need for specialist services and support. These need to be developed, funded and trained to understand legal and non-legal assistance that is available and appropriate, and consequently provide consistent responses (RMIT & Salvation Army n.d.: 10; Vidal 2017: 9-11; RCFV 2016: 112; Lyneham & Bricknell 2018: xiii; Stobart 2008: 28). This has led some to recommend similar information to the UK's *multi-agency guidelines* be developed for Australian family and domestic violence agencies (Lyneham & Richards 2014: 62). A key challenge in Australia remains the absence of robust, independent analysis of the practice and the response across state and national policies.

References

Legislation

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