

Forced marriage is defined as marriage that lacks the consent of one or both people being married.¹ Under Australian and international law, forced marriage is illegal and widely associated with modern forms of slavery. It can also be linked to human trafficking, when a person is taken overseas or interstate to be forcibly married. Human trafficking is defined as “the physical movement of people across and within borders through deceptive means, force or coercion.”²

inTouch works with clients who have experienced forced marriage. Forced marriage can take a variety of different forms. Some of our clients who have experienced this have been forced or coerced to marry through extensive pressure or threats by family members. Other clients have been deceived about who they are marrying. We have also had clients that were taken overseas to be married without their consent.

Forced marriage is not always easy to identify and it’s not unusual for our clients themselves to be unaware that they are victims of this crime. This is particularly the case for those who consented to the marriage as a result of deception or coercion. Importantly, many clients are reluctant to disclose this information, fearing the criminal and legal repercussions for their families.

Forced marriage is a major breach of human rights and is a serious crime in Australia. Often, a person who is a victim of forced marriage also experiences other forms of abuse and oppression. This may include family violence and abuse, domestic servitude, forced labour, sexual assault, and as mentioned earlier, human trafficking.

About inTouch

inTouch provides integrated, culturally responsive services to migrant and refugee communities. Over the past 37 years, we have addressed the specific needs of multicultural communities and helped over 20,000 women experiencing family violence. In the 2019-20 financial year, inTouch provided services to 1311 women from 98 different countries, and 1277 of their children.

We have become a critical piece in Victoria’s family violence response system. In 2016, the Royal Commission into Family Violence in Victoria recommended that the government fund inTouch to better support the sector in meeting the needs of individuals from refugee and migrant backgrounds experiencing family violence. The reach and impact of inTouch’s work has significantly increased due to this support.

inTouch works across the family violence continuum, from prevention and early intervention, to crisis intervention, post-crisis support and recovery. Our services and programs include:

- An integrated, culturally responsive model based on inLanguage, inCulture case management. Our culturally diverse case managers offer direct client services in over 25 languages. They have a unique understanding of a client’s lived migration experience, cultural influences, and the barriers they face when trying to seek help.
- An in-house accredited community legal centre, the only one of its kind in a specialist family violence service, which provides legal advice, court advocacy and immigration support to inTouch clients.

FORCED MARRIAGE IN AUSTRALIA

Position Paper
June 2021

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*If you are experiencing family violence and need immediate support, please call 1800RESPECT on 1800 737 732, or Safe Steps on 1800 015 188. Both services are open 24 hours.

- Capacity building of specialist and non-specialist family violence providers and community organisations to better deliver support to refugee and migrant women experiencing family violence. This includes a public training calendar.
- An early intervention program, Motivation for Change, working directly with men from culturally and linguistically diverse communities who use violence towards their families.
- A recovery program, inSpire, helping women and children to rebuild their lives after experiencing family violence.
- A victim-survivor advisory group called Inspire for Change, comprised of former inTouch clients, who guide and inform many of our programs, policy and initiatives, as well as advocating for sector-wide improvements.

What is forced marriage?

According to the United Nations, forced marriages are “marriages in which one and/or both parties have not personally expressed their full and free consent to the union.”³

Forced marriage is currently legislated under Commonwealth laws relating to human trafficking, slavery and slavery-like offences. The law states that forced marriage is when one or both people entered the marriage “without freely and fully consenting” because they were coerced, deceived or threatened, if the victim was incapable of “understanding the nature and effect of the marriage ceremony, or if either party to the marriage was under the age of sixteen”.⁴

According to the law, a person can be “coerced through obvious means such as force, detention or duress, or through more subtle means like psychological oppression, an abuse of power or taking advantage of the person’s vulnerability.”⁵ Forced marriages are distinct from ‘sham marriages’, ‘servile marriages’ and ‘arranged marriages’.⁶ Arranged marriages are legal and, although organised by family members, are based on consent by both parties to the marriage.⁷

Following the Royal Commission into Family Violence, forced marriage has been included as a type of family violence in the Victorian Family Violence Protection Act 2008 (Vic).⁸

Forced marriage in Australia: the issues

In the 2019-2020 financial year, the Australian Federal Police (AFP) received 92 reports of forced marriage.⁹ In 51 percent of those reports, victims were under the age of 18.¹⁰

It is widely agreed that the rates reported by the AFP are in fact much lower than the instances of forced marriage which take place in our community. Empirical data on the prevalence of forced marriage in Australia is limited. According to the Department of Home Affairs, this is due to the difficulty in identifying cases both nationally and internationally.¹¹ A report written by the Department of Home Affairs (in its previous iteration as the Department of Immigration and Border Protection) states that “the coercion which characterises a forced marriage will in most circumstances also deter victims from reporting their situation to immigration officials.”¹² Furthermore, because forced marriages occur in “closed families, groups, communities or societies, [it] makes it particularly difficult to compile reliable statistics.”¹³

inTouch provides services to victim-survivors of family violence from migrant and refugee communities who are over the ages of 18. This means that our expertise in forced marriage relates specifically to the experiences of adults - including women who were forcibly married either as adults or in the past as children. This next section will outline the ways in which forced marriage occurs and the various issues it intersects with.

Forced marriage and human trafficking

Some of our clients who have experienced forced marriage have also been victims of human trafficking. These clients were deceived, coerced or forced to go overseas or to come to Australia to be married

without their consent. For example, a victim may be told that she is going on a family holiday overseas, not knowing that a marriage that she does not agree to has been organised for her when she gets there.

“Exit trafficking” can also occur – where a victim-survivor is forcibly sent back to her home country against her will. In such cases it is usually the men in the relationship or the man’s extended family who decide they no longer want to sponsor the woman, or don’t want to meet their sponsorship obligations such as tending to her health care needs.¹⁴

inTouch is aware of instances in which women who have been victims of exit trafficking found themselves in dangerous predicaments in their home country. Some were ostracised by their community, and others punished or disowned by their families due to the shame associated with a failed relationship.

Domestic servitude and labour exploitation

Clients who have been victims of forced marriage often become victims of domestic servitude. These women are kept against their will and forced to fulfil household duties for her husband and often, for his family, enduring harsh punishments if they don’t fulfil their “duties”. Labour exploitation can also occur where the victim-survivor is “forced to work in a family business” and “either unpaid or poorly paid and subject to work hours and conditions” that are exploitative.”¹⁵

Case study

Karen came from a very poor family. When she was 20 years old, her uncle forced her to marry a 38-year old Australian man named Ben. Her uncle had made arrangements with Ben’s family, that his son would be sponsored by them to migrate to Australia. Karen’s uncle therefore forced her to marry, and paid for the wedding and dowry.

Karen’s mother was against the marriage, but had been convinced by Karen’s uncle that their lives would change for the better when Karen migrates to Australia. He told them that when Karen moves to Australia, she can help to bring the rest of the family over.

Karen and Ben met on the day of their marriage, and immediately after the wedding, Ben returned to Australia. Karen joined him after a few months.

When she arrived in Australia, Karen lived with Ben, his brother, and his parents. She was subjected to family violence and domestic servitude. She was not allowed to leave the house or call her parents back in her home country. She was made to do all the housework and if she refused, she was beaten by her husband. She was sexually assaulted by both her husband and his father.

When she gave birth to her son, a Maternal and Child Health Nurse referred her to family violence services.

Deception, family and community pressure

Deception, coercion and family pressure can also be characteristics of forced marriage. A woman may have consented to an arranged marriage based on false information she was provided about her future living arrangements and the man that she would be marrying. Arranged marriages are a common custom practiced across many cultures around the world. It is not unusual for some of our clients to have consented to a marriage prior to meeting her partner or coming to Australia. This type of forced marriage can be particularly challenging to identify and prove – the victim-survivor herself may not be aware that being deceived into a marriage can actually constitute forced marriage.

In some situations, victims can experience immense pressure from family and/or community members that may not easily constitute forced marriage in line with Australian law.¹⁶ There may be “no evidence or detail regarding coercion per se, but familial pressure and the cultural impact of not going ahead with the marriage” can produce

“significant pressure to marry.”¹⁷ Some of these clients may have been forced to marry to alleviate poverty or the socio-economic standing of their family. Others may have done so for the sake of family reputation or other similar reasons. Consequently, the victim-survivor may not want to disclose or report the forced marriage, for fear of retribution or prosecution of their parents or other family members.

Case study

Lubna is from overseas. She consented to an arranged marriage with a man in Australia. She was told by her family and his family that he was the same age as her, that he had stable employment, and that they shared many similar interests. Lubna agreed to come to Australia to get to know him and marry him.

When she arrived, she was met with a man who was fifteen years her senior, who had an intellectual disability and mental illness. He required constant support and care. He was not working and lived with his parents. Lubna was forced to marry him, and his family took away Lubna’s passport and other identity documents and forced her to cook, clean and care for the entire family. She was forced to have sex with him.

Lubna did not realise she had been a victim of forced marriage until she met her inTouch case manager, who she had engaged with for family violence support.

Case study

Hulya’s family live in Melbourne. Her parents and extended family members found out that she had a boyfriend. The family were very angry with her as this was considered to be unacceptable in their family and their community.

Hulya’s parents spoke with their faith leaders, who then arranged for Hulya to marry a man from their community. Hulya’s parents told her she had to marry this man of their choice in order to save the family’s reputation and standing in the community.

Challenges to prosecution and justice

The legal system’s response to forced marriage in Australia has been complex. As discussed earlier in this paper, forced marriage is criminalised in federal laws through the Criminal Code Act (1995) (Cth), together with slavery and slavery-like offences. Incidents of forced marriage are generally investigated by the Australian Federal Police and some support is offered to victim-survivors through the Red Cross.

Despite this, forced marriage can be challenging to report to authorities, prosecution is difficult, and many clients are left feeling unsupported. The burden of proof is high for such an offence and establishing evidence of coercion and deception can be particularly difficult. When evidence is required from overseas, investigators may be subjected to time delays, communication barriers, and people overseas may not be willing to cooperate with the investigation. As a result, despite the criminalisation of forced marriage in Australia and in some instances, charges being laid, the successful conviction of perpetrators remains very low.

Charging and prosecuting perpetrators of forced marriage can therefore take extended periods of time. In our experience, this is a significant disincentive for clients. This can be re-traumatising for victim-survivors who are required to give evidence to police and prosecution repeatedly and for extended periods of time. The process can be emotionally distressing and can be seen as a barrier to recovery.

Recommendations

1. Forced marriage should be consistently included in legislation as a form of family violence across all Australian jurisdictions

The overlap and intersection between forced marriage and family violence can be more easily identified if the practice is included as a form of family violence in legislation across Australia. Family violence response services should subsequently be trained to better identify and understand how forced marriage can manifest. Support services should be readily available for victim-survivors in the same way that they are for family violence.

Furthermore, victim-survivors of forced marriage should be able to access support services through organisations such as the Red Cross without having to make a report to the Australian Federal Police.

2. Increase the cultural responsiveness and cultural awareness of specialist family violence services and health services

Increasing the cultural responsiveness and cultural awareness of mainstream family violence and health services are critical to the recognition and response to forced marriage. A thorough, detailed and nationally consistent risk assessment would further assist to identify forced marriage.

Support and information that is offered in different languages by bi-cultural workers can make an incredible difference to the outcomes for women who are seeking support. It is critical to ensure that systems and processes are robust to be able to identify and respond to the multifaceted presentations of family violence, including forced marriage. Offering and expanding programs that are culturally safe and responsive, and linguistically tailored would increase the reach and effectiveness of support services.

3. Increase funding and resourcing allocated to community-led prevention and response strategies

Prevention and response to forced marriage requires an approach beyond law enforcement. Community groups, faith groups, and ethno-specific communities must play a stronger role in identifying the practice, condemning it, and leading initiatives to mitigate the risk factors and vulnerabilities to forced marriage in their communities. In order for this to happen effectively, governments must fund research into best practice prevention programs, must codesign training, programs and implementation strategies together with communities.

4. Better access to support, public health and housing options for newly arrived migrants

Eliminating the barriers for safety and support for newly arrived individuals will provide a better pathway for victim-survivors to seek assistance. New arrivals and in particular women who have been victims of forced marriage and family violence experience significant social isolation. Increasing settlement support for all new arrivals, including optional free English language classes, and providing education on family violence, access to social security and public health, will assist victim-survivors to seek safety and assistance. Currently, many of those on temporary visas cannot access social security payments, free public health or housing support services.¹⁸ The lack of resources and assistance frequently leads victim-survivors to stay in the abusive relationship.

5. Better information should be provided by the Department of Home Affairs and the Department of Social Services throughout the client's migration journey and when she arrives in Australia

Recipients of all types of visas should be made directly aware of their rights and entitlements in Australia. This information should be provided at multiple points within the first five years of their migration to Australia, including at the time of the visa application, when the visa is granted, at the point of arrival in Australia, as well as within six months and twelve months of migration to Australia. For this information to be effective, it must be

provided in simple language, preferably in the language of the visa applicant/holder. Furthermore, Home Affairs must ensure that the information is being received by the visa applicant, and not their sponsor.

6. A new visa subclass be established for temporary visa holders who have experienced family violence and forced marriage in Australia, with access to social security, working rights and free public health

We believe a new visa subclass for temporary visa holders who have experienced family violence in Australia is crucial. The Special Provisions relating to family violence in the Migration Regulations 1994 (Cth) provide victim-survivors who have experienced family violence in Australia with a pathway to leave the abusive relationship and remain in the country.¹⁹ We believe that similar opportunities should be provided to recipients of other visa streams. Women who are on student visas, visitor visas, or temporary work visas should have access to a special visa class that will provide the victim-survivor with the opportunity to move on from the dangerous situation they are in. It is critical that this new visa subclass provides entitlements to support services including health, working rights, and housing. At the conclusion of this visa period, the woman should have the right to apply for a different visa type in Australia in accordance with her needs and eligibility.

7. Expansion of the family violence provisions to include extended family members as perpetrators

The Special Provisions in the Migration Regulations 1994 (Cth) relating to family violence are currently only available to those on some partner visas, who have experienced family violence perpetrated by their sponsor/partner. A significant number of our clients experience family violence that is not perpetrated by the woman's partner sponsor. Many of our clients live with extended family members including their partner's family. Family violence can be perpetrated by multiple people including members of the woman's own family and her husband's family.

¹ Criminal Code Act 1995 (Cth).

² Australian Federal Police, Human Trafficking (Canberra: 2021) <https://www.afp.gov.au/what-we-do/crime-types/human-trafficking>.

³ OHCHR, Child and forced Marriage, including in humanitarian settings

<<https://www.ohchr.org/EN/Issues/Women/WRGS/Pages/ChildMarriage.aspx>>.

⁴ Criminal Code Act 1995 (Cth) section 270.7A

⁵ Australian Government, Forced marriage: Fact sheet for media (Canberra) <<https://www.homeaffairs.gov.au/criminal-justice/files/forced-marriage-fact-sheet-media.pdf>>

⁶ Monash Gender and Family Violence Prevention Centre and inTouch Multicultural Centre Against Family Violence, Research Brief: Forced marriage in Australia (Melbourne: 2018) https://intouch.org.au/wp-content/uploads/2019/03/MonashResearchBrief_ForcedMarriageInAustralia.pdf.

⁷ Ibid.

⁸ Family Violence Protection Act 2008 (Vic) section 5 (b).

⁹ Australian Federal Police, Media release: Stop human trafficking happening in plain site (Canberra: 30 July 2020) <<https://www.afp.gov.au/news-media/media-releases/stop-human-trafficking-happening-plain-sight>>

¹⁰ Ibid.

¹¹ Samantha Lyneham and Samantha Bricknell, "When saying no is not an option: Forced marriage in Australia and New Zealand", Australian Institute of Criminology (Canberra: 2018) <https://www.aic.gov.au/sites/default/files/2020-05/rr11.pdf>.

¹² DIAC cited in ibid.

¹³ Ibid.

¹⁴ Marie Segrave, Temporary Migration and Family Violence: An Analysis of Victimization, Vulnerability and Support (Melbourne, VIC: School of Social Sciences, Monash University, 2017) p 60.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ inTouch Multicultural Centre Against Family Violence, Position Paper: Women on Temporary Visas Experience Family Violence (Melbourne: March 2020).

¹⁹ Migration Regulations 1994 (Cth) Division 1.5.