SUBMISSION

Consultation on Enhancing Civil Protections and Remedies for Forced Marriage

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Acknowledgements

We acknowledge the Traditional Custodians of the lands on which our collective campuses stand. We acknowledge their continuing cultural, spiritual, and educational practices which offer rich and grounding perspectives to research, policy and practice in Australia. We recognise that sovereignty has never been ceded and where we live and work is, was and always will be, Aboriginal land.

The authors acknowledge the immense privilege of working alongside individuals who have been impacted by forced marriage both in Australia and overseas. It is the trust that they have placed in us that position us to share insights and recommendations in this submission.

We acknowledge that we do not speak for those with lived experience but embed their voices as they are told to us for the benefit of strengthening law and policy. We continue to advocate for direct engagement with those who have lived experience as part of holistic and comprehensive knowledge gathering.

List of Abbreviations

ADVO	Apprehended Domestic Violence Order
AFP	Australian Federal Police
CALD	Culturally and linguistically diverse
DFV	Domestic and family violence
DSS	Department of Social Services
DVO	Domestic Violence Order
FV	Family violence
FMPO	Forced Marriage Protection Order
STPP	Support for Trafficked People Program

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1. Introduction

We welcome the opportunity to respond to the *Enhancing Civil Protections and Remedies for Forced Marriage Consultation Paper* (referred to hereafter as the Consultation Paper) (Commonwealth of Australia, 2024). This submission is founded upon research that suggests the major opportunity we have as a nation is: **to rethink the forced marriage policy and legal framework.**

In this submission we provide responses to the consultation questions based on two principles:

1. The importance of rigorous and independent research.
2. The necessity of transparent and available data regarding existing practice.

We draw on our research and other credible evidence to provide informed responses. We begin first, by noting our concern that in Australia there has been significant funding over the past decade to respond to the issue of forced marriage, but this has not produced evidence that provides a strong foundation for analysis and evidence-based responses to the consultation. For example:

- For over a decade **'community campaigns'** against forced marriage have been funded. There is no data on the reach or impact of these campaigns – including an evaluation as to whether such campaigns are achieving their stated intent: to prevent forced marriage.

- For over a decade **an outreach/legal response service** for 'victims of forced marriage' has been in operation. There is no publicly available data on the reach and impact of this investment, or any independent analysis that offers insights into the strengths or limitations of this service. This includes an assessment as to whether what is provided through such an avenue of support is meeting the needs of those who are navigating the response to forced marriage in their lives.

- Publicly available data on referrals to the Australian Federal Police (AFP) as the primary investigative body responding to forced marriage, and the Australian Red Cross Support for Trafficked People Program (STPP) is limited. Coupled with this is that the only independent review of the STPP as it relates to responding to forced marriage was only partially released in the public domain.

Despite the significant investments, there is no commensurate commitment to independent comprehensive review of the system response to forced marriage. This has direct consequences for understanding how well this system is working and for considering how improvements and/or new introductions to such a system can and will operate – which is ultimately what this consultation is seeking to do. This impacts first and foremost, those seeking not to be forced into a marriage and those seeking to leave a marriage they were forced into. It also impacts all of those working to support them.

1.1 Unintended consequences of consultation without evidence or data

We preface our response to the consultation in the spirit of supporting better efforts to address forced marriage and a deep concern with this consultation process. At the outset we note some specific issues which underpin the ways in which forced marriage is being understood and in turn conceptualised with regard to thinking through responses. We note specifically:

- There are **multiple areas where the paper suggests there are clear lines of distinction between 'arranged' and 'forced' marriage**: we would argue this does not reflect emerging evidence in Australia about the experience *and* risks missing key points of intervention to respond to these risks (see, Vidal 2023; Tan & Vidal 2023; Simmons & Wong 2022; Zeweri & Shinkfield 2021).

- There is a **persistent focus on the legal definition of forced marriage** – which our research and that of others, has identified the critical need to move beyond 'crime' and 'victim-perpetrator' binaries (Vidal 2023; Simmons & Wong 2022). This includes the way framing forced marriage as a 'point-in-time' offence limits understanding and responses. Engaging more expansively with the context in which a forced marriage occurs and moving beyond the legal definition of forced marriage offers an opportunity to move toward systems and conditions that are focused on safety.

- The Consultation Paper **makes multiple references to evidence to inform solutions and to research, however there are no specific references to the research that has informed the Consultation Paper.** We remain concerned that there is no commitment to independent or rigorous research as critical to both informing reform and mapping its impact.

- While the **consultation questions appear to be designed to elicit points of agreement or otherwise, our strong primary position is that a major impediment to the proposals is that there is no evidence that Commonwealth, State and Territory governments and departments are well placed to implement what is being proposed.** Recent research from Victoria (Tan & Vidal 2023) highlights that State recognition of forced marriage as a statutory example of family violence has not translated into service response for a range of reasons. As such, the premise of two areas of inquiry for this consultation that a) recognition of forced marriage will improve

access to services and b) that States and Territories can adopt responses to forced marriage within existing frameworks is fundamentally challenged.

As this submission will outline, domestic and family violence (DFV) and forced marriage are both forms of gendered violence that manifest within a familial setting. However, forced marriage manifests in a myriad of ways that are not well reflected by current definitions of DFV which form the basis of law and policy responses. We are deeply concerned that the view to 'add' forced marriage as *also* falling within the remit of DFV responses is occurring with little engagement about: (a) the distinct differences between current understandings of DFV as they relate to forced marriage; (b) what this means for the scope of service delivery, and; (c) the reality of specialist frontline DFV service demands.

While the *National Plan to End Violence Against Women and Children 2022-2032* (Commonwealth of Australia 2022), and the *National Action Plan on Modern Slavery 2020-2025* (Commonwealth of Australia 2020) both place forced marriage as the issue where these two national policy plans intersect/overlap: **the overlap is uninterrogated in both plans and neither engage with the complexity regarding what this means in relation to practice *or* funding.**

Our firm position is that there is a need to move beyond the current conceptualisations and responses to forced marriage. We welcome the focus on approaches which respond to over a decade of calls for a decoupling of the issue from a singular criminal justice response (Burn et al 2012; El Matrah 2012; McGuire 2014; Vidal 2017; The Salvation Army & RMIT 2018; Triggs & Vidal 2018). This consultation serves as an opportunity to rethink the current strategy and proposals to achieve this. **A more comprehensive review of the impact of the last decade of responding to forced marriage in Australia is a necessary starting point. Reform of this nature requires drawing on deep knowledge and careful consideration: we strongly encourage not mistaking action for positive reform.** Moving too quickly on a civil mechanism may result in unintended consequences.

We add to our concern that this consultation is happening at the same time that the Department of Social Services (DSS) is seeking to implement a Forced Marriage Specialist Support Program (FMSSP) which by design will need to draw on the DFV service sector to respond to victim-survivors. This is before the considerations being raised by this consultation process have been adequately addressed. It is also occurring at the same time as the Standing Committee on Social Policy and Legal Affairs is holding an *Inquiry into Family Violence Orders*. This Inquiry is gathering significant evidence about the operation of family violence orders across the country, evidence which no doubt will be of relevance to this consultation. Recommendations adopted from this inquiry will also have an impact on the potential design of civil mechanisms to respond to forced marriage.

1.2 Establishing the context: Forced marriage in Australia

Forced marriage manifests in a myriad of ways. Whilst the following section will canvas the ways forced marriage is understood and has been documented in Australia and elsewhere, we begin by presenting a number of key scenarios to highlight the dynamics of forced marriage as they relate to the focus of this consultation. We refer to these scenarios throughout our submission

as they illuminate the complexity of response mechanisms within the systems that currently exist. These scenarios have been adapted from research undertaken by one of the submissions' authors (see, Vidal 2023). The scenarios that we present are not exhaustive of the different ways in which a forced marriage takes place. They also do not account for the number of variables that may also be present – not least the ways in which the various responses will alter based on the age of the person, the jurisdiction in which the individual resides and whether the person is a permanent resident or citizen of Australia. Each of these scenarios would have an additional complexity added should they occur under the age of 18 years and over the age of 16 years – which from our experience and knowledge presents a 'grey' area for many statutory child protection responses across all State and Territory jurisdictions. They can also become challenged by temporary visa status. We detail some of these specific complexities in part three and five of this submission.

Sam

- Sam is a 21-year-old female who has lived in Australia for approximately 10 years. Sam came to Australia with her mother, father and siblings. Sam and her family members are not permanent residents or citizens of Australia.
- At 13, Sam was 'engaged' to marry a man living in India.
- At 17, Sam was informed that she would be sent to India to marry the man she had been engaged to
- Sam did not want the marriage to proceed
- Sam applied for civil (Family Law) order which included an Airport Watch List Order
- After applying for the order, violence and aggression from her parents escalated which resulted in her no longer being able to live in the family home.

Sam was first introduced to the idea of marriage when she was 12 years old. When she was 13 years old, she travelled with her family to visit relatives in India. During this trip she attended several large parties and learned afterward that these gatherings were her engagement. On return to Australia, Sam's parents insisted that she maintain contact with the man she was engaged to via phone. Sam told her parents that she did not want to be married however she was ignored. Sam's resistance to the marriage expedited marriage plans. Sam sought support from her school who referred her to legal advice. The pathway Sam went on to access was to have a civil (Family Law) order in place, which included an airport watch list order to prevent her from being able to travel overseas. Sam was unable to live at home with her parents as a result of having the order in place – something Sam had not anticipated when first applying for the order. Sam also didn't understand the full gravity of what it would mean applying for the order – including that she would have to attend court 'against' her parents. The impact of Sam applying for the order was immense. Notably, Sam was not a permanent resident or citizen of Australia which restricted eligibility for services and support - including long term accommodation support in the state in which she resided. Sam shared that had she had known what the possible implications would be for putting such an order in place, she would have reconsidered this pathway. Sam experienced a range of support following having the order in place, including temporary accommodation, case management and counselling support - most of which were not fit for purpose and limited based on her residency status. Sam has been estranged from her family since this time.

Layla

- Layla is a 25-year-old Australian citizen
- At 17, a marriage was planned for Layla overseas. Layla's parents subjected her to physical and psychological violence to pressure her to marry
- Layla agreed to travel overseas to 'meet' the person she was supposed to marry: she did not intend to marry him
- On arrival, Layla was deceived into marriage - her family members told her that she had to participate in an engagement ceremony. Layla stayed in the country for several months living with her husband and then negotiated to return to Australia. On her return to Australia, Layla was living with her parents and requested to be able to leave the marriage- this was met with violence
- State police attended and supported Layla to leave her family home.

Layla is one of nine children, all of whose siblings, outside of one, are either engaged or married – arrangements that were all made by her parents. Layla has grown up being exposed to expectations around marriage. She witnessed her older sisters get married via arrangements made by her father. She recalls vividly the expectations that were imposed on both boys and girls in her family – albeit different. For example, in her community boys have more choice about marriage because they are permitted to choose their spouse, this is not the same for girls. Layla experienced pressure around marriage and received active proposals from age 14 until age 17. At age 17 she agreed to travel overseas to meet the man her father had arranged for her to marry. Layla experienced both physical and psychological violence in relation to marriage and did not feel like the proposal for her to marry was a choice. Layla understood that there would be significant consequences if she refused to marry including increased violence and estrangement from her family and community. Layla agreed to travel overseas to meet the person her father had arranged for her to marry but she did not intend to marry. On arrival Layla was deceived into marriage. Layla spent several months living overseas, during which time she negotiated with her family to come back to Australia. When she was eventually allowed to return to Australia she experienced increased violence from her family. She called local police to help her to leave her family home. The police gave her information about what she could do in response to her parents' violence – primarily that Layla would need to report the forced marriage, and her parents may face gaol. Layla chose not to engage further with the police because she did not want her family to 'get into trouble'. As a result, she relied on friends and some community services – although many of them were not able to provide her the housing and financial support she needed to rebuild her life.

Jane

- Jane is a 25-year-old Australian citizen. At 15 years old Jane became homeless
- She was offered accommodation in the home of a family who attended the mosque where she was sheltering
- At 16 years old, this family organised a marriage for her
- Jane was married to an Islamic Sheikh. This occurred in Australia and was a religious marriage as Jane was not old enough for a registered legal marriage
- Jane's husband perpetrated physical, sexual and psychological violence against her.
- She gave birth at 16 years old. No maternal health practitioner inquired about her wellbeing or the safety of her circumstances.
- She wanted to leave the marriage and made several attempts to do so.
- Jane eventually left her marriage after reconnecting with her estranged parents.

Jane was born in Australia to Anglo-Saxon parents. At the age of 13 years old Jane went through a religious conversion. As a result of this her parents objected which resulted in Jane becoming homeless at the age of 15 years. Jane attended a mosque and was sleeping there. A member of the Islamic community also attending the mosque befriended Jane and offered for her to stay in her home. This family arranged for Jane to be married as it was not acceptable within the community for a person of her age to be 'alone' or 'unchaperoned' in the community. Jane did not ever meet the man she was to marry until the day of the wedding. Jane said that she had told the family she did not wish to be married, but she also felt vulnerable, and was also raised to 'respect her elders'. Jane was married via a religious ceremony. The marriage was performed by her husband who was also a religious official. Jane said that there was a moment during the ceremony where she was asked if she consented and she said she did not. Everybody spoke over her and confirmed that she was willing to be married, and the ceremony continued. Jane described experiencing significant physical psychological and sexual violence within her marriage. The police were called to her residence by neighbours on multiple occasions. She reports that she was not offered support and was never in a safe position to disclose her forced marriage. Jane has two children, one of whom she gave birth to not long after she was married, as a minor. She gave birth in a public hospital and was never asked or was referred for support despite being underage. Jane left her husband without the support of services, friends, family or law enforcement. She reconnected with her estranged parents and later the family court ordered her to remain living there as a result of the safety concerns held due to her husband's violence.

Aisha

- Aisha is a 27-year-old Australian citizen.
- At 20 years old Aisha's parents, grandparents and family friends suggested it was time for her to marry
- Aisha voiced her concerns/uncertainty about marriage at this time
- A husband was identified for Aisha and marriage plans went ahead in Australia
- At 20 years old, Aisha married the man, as she felt she had no choice
- Some months after the marriage, Aisha negotiated with her parents and her husband's family to leave the marriage
- Aisha did not engage with external services and support at any stage: she feared seeking intervention would get her parents 'into trouble' and or result in her having to sever ties with her family.

Aisha came to Australia with her parents as a baby. She spent all of her childhood and early adulthood in Australia, attending a local public primary and secondary school along with her sister. Aisha describes her family as 'strict' and 'sheltered' with a strong influence of religion. When Aisha was 20 years old a friend of her parents introduced them to a family who lived overseas in the home country of Aisha's parents. The family shared that they had a son. Aisha did not experience strong messages or expectations about marriage. This however changed when Aisha's family was introduced to the family who lived overseas when they were in Australia for a holiday. Aisha met them and their son at a dinner hosted by her family. She later learned that it was being proposed that she marry the son. Aisha told her parents that she did not wish for this to happen. Initially her parents said that she would not have to do this, however, over time this expectation changed, and she experienced increasing pressure to marry. Aisha succumbed to the pressure, she was married via a legal ceremony and both families were planning a religious ceremony to take place later in the year. Because she was not yet married via religious ceremony she did not have to live with her new husband. She used this time to try and get to know him, but in her view, they were incompatible, and she did not wish to remain married to him. Aisha chose to negotiate with her family a way out of her marriage and at no point did she consider it an option to report what happened to her to the police. Aisha said that she risked losing her whole family when she 'hadn't done anything wrong' – so it was both safer and more productive for her to negotiate with her family. Eventually, conflict ensued between the two families as a result of the incompatibility of the match and Aisha's parents agreed for her to initiate a divorce.

2. Recommendations

Proposal for Consultation

Recommendation 1: For a response to be both holistic and effective we need both Option A (integration into existing) and Option B (new protections). To reflect the nature of forced marriage and the current law, policy and program infrastructure across the nation, options need to be inclusive of protections available within State and Territory frameworks and there needs to be new protections introduced through Commonwealth legislation for protections which are unable to be covered by State and Territory jurisdictions.

Part 1: Building a shared understanding of forced marriage as a form of family and domestic violence to improve victim-survivors access to family and domestic violence services

Recommendation 2: Commission an external rapid review by an organisation with research expertise to:

a. review the existing case load of all services providing support to those experiencing forced marriage. This will build an empirical evidence base about the diverse needs of those navigating forced marriage in their lives and provide a basis on which to understand appropriate and necessary intervention and support mechanisms.

b. review DFV specialist support organisations and their preparedness to include forced marriage into their scope of work – inclusive of existing infrastructure, opportunities and limitations, training and resourcing needs.

Recommendation 3: No civil mechanism designed to respond to forced marriage that requires the involvement of the DFV law, policy and program framework is implemented, without first having full financial investment in the DFV service infrastructure that will be required to respond to forced marriage.

Part 2: Enhancing education and awareness raising

Recommendation 4: Independent evaluation of all education and awareness raising initiatives be commissioned to understand the focus, target audience and impact to date. Over $4 million has been invested over 10 years into such initiatives: there is no publicly available evidence that the prevention and intervention strategies have had a demonstrable impact on prevention and intervention. The evidence drawn from this evaluation should direct future focus of such initiatives moving forward.

Part 3: Strengthening civil protections and remedies

Recommendation 5: The consultation is seeking input from a sector on a suite of questions that speak to the design of the civil mechanism and its operation within existing law, policy and program frameworks (Questions 8-29). The consultation must recognise the way contributions to consultation processes such as this are constrained by the perceived impact this may have on funding outcomes. It is pertinent for this consultation as it is occurring in parallel to a funding process being led by DSS for the delivery of the FMSSP. We recommend that expertise, independent of competitive funding processes, be identified and engaged with in a dedicated way to shape responsive and evidence-based mechanisms.

3. Part 1: Building a shared understanding of forced marriage as a form of family violence to improve victim-survivors access to family and domestic services

Question 2: *Should forced marriage be recognised as a form of family and domestic violence? Why?*

3.1 Conceptualising forced marriage as DFV

Australia has centrally focused the conceptualisation of forced marriage as a practice of 'modern slavery' – a direct result of its placement in the Commonwealth *Criminal Code 1995* (Cth) as a 'slavery-like-practice'. There have been attempts to expand this conceptualisation – specifically to recognise forced marriage as a form of DFV. For example, forced marriage is included within the National Domestic and Family Violence Bench Book (Douglas et al 2023) and in Victoria, following a recommendation by the Royal Commission into Family Violence, forced marriage was added as a statutory example of family violence to the *Family Violence Protection Act 2018* (Vic). These attempts reflect the evidence to suggest that it is insufficient for forced marriage to be recognised as an issue of modern slavery and for protection and response mechanisms to be predominantly provided via a criminal justice framework (Vidal 2023; Vidal 2018; Patton 2018; Anti-Slavery Project 2011). Whilst the insufficiency of modern slavery conceptualisations is identified, it has also been noted that the connection between modern slavery and DFV more broadly is not well understood (Segrave et al 2020; Simmons & Wong 2022).

In response to consultation question **two,** we draw on a range of empirical research undertaken by the authors to offer a consideration of the ways in which existing evidence points to how forced marriage may be understood as DFV. We also highlight the ways in which current conceptualisations of forced marriage do not account well for the unique dynamics present in situations of forced marriage – not least the distinctions between intimate partner violence and violence experienced by broader familial members.

At the outset, we note on a point of accuracy, that the discussion paper for this consultation indicates that forced marriage is recognised in DFV legislation in New South Wales (NSW), Victoria and South Australia (Commonwealth of Australia, 2024: 2). **This is not an accurate depiction of legislation across Australia as it relates to the inclusion of forced marriage as**

a specific form of DFV. Victoria remains the only state in Australia that has explicitly included forced marriage within legislation that deals with DFV. To note:

- In NSW the introduction of the *Modern Slavery Act 2018* (NSW) created provisions for the inclusion of forced marriage within the Apprehended Domestic Violence Order Scheme (ADVO). However, forced marriage is not explicitly included in the definition of 'domestic abuse' (introduced by the *Crimes Legislation Amendment (Coercive Control) Act 2022* (NSW), see too, NSW Government 2024) or 'domestic violence' under the *Crimes (Domestic and Personal Violence) Act 2007* (NSW). Forced marriage is considered to be a 'personal violence offence' and therefore a 'domestic violence offence' for the purpose of making an ADVO. At the time of drafting this submission, however, forced marriage had yet to be included explicitly in any definition of 'domestic abuse' or 'domestic violence'.

- In South Australia amendments to the *Children and Young People (Safety) Act 2017* (SA) and the *Criminal Law Consolidation Act 1935* (SA) saw the introduction of a new offence of 'child marriage' in 2018. As the name suggests, this is an offence limited to children and the way the offence is written, is limited to children who are removed from the state of South Australia for the purposes of child marriage. It has not introduced it as a form of DFV, it does not include adults impacted by forced marriage and has not been extended to marriages that may occur within South Australia.

Outside of these two updates to the law since publication, Vidal's (2018) analysis of the opportunities for forced marriage to be responded to as a form of DFV remains an accurate analysis of the ways in which forced marriage does or does not feature in State/Territory legislation; and/or the ways in which existing State/Territory legislation may be able to respond to forced marriage in its current form. What we see are both opportunities but fragmentation in the ways in which forced marriage is conceptualised and understood across Australia.

Internationally, forced marriage is recognised as a form of gender-based violence occurring within familial settings (Anitha & Gill 2011). In the United Kingdom (UK), civil protections in the form of Forced Marriage Protection Orders (FMPOs) was created in 2007, and more recently in 2014, it was recognised as a criminal offence following concerns around the effectiveness of civil injunctions. Recent reviews of the operationalisation of FMPOs have highlighted the need to engage with the dominant patriarchal norms within the family and community as well as a stronger understanding of the range of coercive pressures in a familial context, which can continue even after a FMPO is served (Anitha et al 2023; Noack-Lundberg et al 2021; Aguiar 2018). Some scholars have argued that domestic and family violence frameworks have sometimes fallen short of recognising issues like forced marriage, due to the tendency to view all domestic and family violence within the context of 'white, heterosexual' women in intimate relationships with men (Gill & Harvey 2017). Others have nonetheless pointed to the utility of considering forced marriage within expansive understandings of DFV, especially as people who are affected by forced marriage can experience it alongside other forms of familial violence. The need for

coordinated safeguarding responses has also identified that DFV services are central to offering expertise, advocacy and support for victim-survivors (Noack-Lundberg et al 2021). Studies in the UK have also consistently emphasised the need not to sideline forced marriage as a matter for culturally and linguistically diverse (CALD) communities (Noack-Lundberg et al 2021; Anitha et al 2023).

The insights from the UK are reflected in emerging research about forced marriage in the Australian context. Research led by Vidal (2023) highlighted that Australia's overreliance on the legal definition of forced marriage has limited understanding about what forced marriage is and how it occurs. Supporting similar assertions by others (See, Simmons & Wong 2021; Sowey 2018) Vidal's (2023) findings suggest that forced marriage is best understood as something that occurs beyond a single moment in time and is often the result of a period of lifelong social, economic, cultural and gendered conditioning within families and across communities – all dynamics which have been illustrated through the case examples of Sam, Layla, Jane and Aisha at the beginning of this submission (p.7-10)

In other research that we have undertaken (see, Tan & Vidal, 2023; Vidal, 2023) we found that there are parallels between the experience of forced marriage and DFV. What we know is that forced marriage occurs as a process within a familial setting and can involve multiple family members (Vidal 2023; Simmons & Wong 2021) – which to an extent suggests that it can fit within definitions and conceptualisations of DFV which are used across Australia (Vidal 2023; Vidal 2018). There are however some limitations to the ways in which DFV is currently defined and understood, in Australia, as it relates to forced marriage – which is the traditional emphasis on intimate partner violence, and being framed as an issue experienced primarily by women in some CALD communities (Tan & Vidal 2023).

These findings support international analysis which also contends with the way 'policy documents are careful to distinguish between arranged marriages (consensual) and marriages that are forced or coerced' (Noack-Lundberg et al. 2021: 371) which is not truly reflective of the 'spectrum' of behaviours encountered around a forced marriage. This Includes the pressure and coercion that occurs involving physical and psychological violence centred on familial and cultural expectations around marriage (See, Anitha & Gill 2009; Enright 2009; Gill & Gould 2020). This is highlighted in the case study of Aisha (p.10) in this submission. The full continuum of behaviours alongside the context in which they occur, needs to be better understood and conceptualised in order to best design interventions and/or responses. This includes, within the scope of this consultation, how understandings of forced marriage are needed to assess the utility of civil protections and the location of forced marriage within existing or potentially expanded DFV frameworks.

What we know about forced marriage is that it is different to other forms of DFV. Overall, there is a lack of clarity about what it means for forced marriage to be understood as a form of DFV particularly in relation to practice and service provision. **Given this, it is our view that the question for inquiry need not be *'Should forced marriage be recognised as a form of family and domestic violence?'*** (Question 2, Commonwealth of Australia, 2024: 11) **but rather, *'How' should a forced marriage be recognised as a form of DFV?***

3.2 Improving access to DFV services for those impacted by forced marriage

Question 3: *What legal, policy changes or additional guidance is needed to better recognise forced marriage as a form of family and domestic violence?*
Question 4: *What enhancements or additional guidance might be needed to help family and domestic violence services consistently recognise forced marriage as a form of family and domestic violence?*

It is our understanding and experience that current DFV frameworks and support services do not sufficiently capture or respond to the complexities of forced marriage. We note that adjusting definitions and/or relevant legislation is not enough to create pathways of access to support services or that the DFV services have the necessary frameworks and resources required to effectively meet the needs of those who are impacted. The consultation proposes that by including forced marriage as a form of DFV there will be improved access to services. There are a number of challenges with this:

- While eligibility may be created, the reality of DFV service resourcing and delivery is a system already under pressure and with limited expertise to address the very specific needs that can arise in the context of forced marriage. **Suggesting that these services can simply be extended is problematic and is unlikely to result in increased access and availability for people experiencing forced marriage.**

- Many of those who seek intervention or support in relation to forced marriage are **under the age of 18 years: this cohort cannot independently access DFV services as they are currently set up.**

These are major and significant gaps, and we reiterate that considerations being made in the context of this consultation are seemingly without engagement with current demands on the DFV sector. **We suggest that there is a real risk of inefficiency and ineffectiveness of any civil mechanism without a deep and substantial commitment to resourcing of the DFV sector to respond to forced marriage**. This includes but is not limited to training for practitioners so that they are able to accurately identify the risk factors and presence of forced marriage, especially considering the complexities in determining coercion and consent.

3.2.1 Case Study: Forced marriage as a statutory example of family violence in the state of Victoria

Evidence from Victoria (Tan & Vidal 2023) as the only State in Australia that has substantively recognised forced marriage as a form of DFV stands as an example of some of the complexities that emerge when there are no substantive commitments to resourcing and embedding responses that emerge from legislative change. For example, in Tan and Vidal's (2023) study it was observed, that:

- The Family Violence Multi-Agency Risk Assessment and Management Framework (MARAM) included information and resources on forced marriage for DFV services. This information is based on limited research about forced marriage, and it is unclear how well the MARAM is being utilised or implemented by DFV services to improve and develop practitioner expertise on forced marriage.

- There is a gap in understanding the role and participation of extended families: a unique dynamic to that of other situations of DFV that services have been set up to respond to.

- There has not been dedicated funding or support for DFV services to expand their remit to respond to the specificities of forced marriage – including the requisite support needs that present in preventing a forced marriage from occurring and when a forced marriage has already occurred.

- Frontline practitioners are unsure how and whether law enforcement should be involved due to conflicting agendas in the response to DFV and forced marriage.

The evidence from Victoria has shown that there is significantly more to do to enable existing DFV service systems to recognise and respond to forced marriage, and to ensure that pathways to these systems are accessible for everyone who is impacted.

Both the research from Victoria and others (See for example: Vidal 2023; Simmons & Wong 2021; Zeweri & Shinkfield 202) makes clear that many persons affected by forced marriage do not always want to be separated from their families and there is a need to map approaches for working with families in response to risk assessment, harm minimisation and behaviour change. Whilst we acknowledge that the scope for the new FMSSP includes provisions for working with families and we are supportive of this approach in principle, we are concerned that the frameworks for this work to be done safely are underdeveloped and require specific investment. We note that the considerations of working with families, who may be considered 'perpetrators' of violence, are not always in the remit and expertise of DFV services (Tan & Vidal 2023). Other considerations pertaining to support which may arise in the context of civil mechanisms, as illustrated by Sam, Layla and Jane's examples (p.7-9) must include adequacy, appropriateness

and availability of accommodation which has been documented to be a critical need and key protective factor (Vidal 2023; Mebalds & Garcia-Daza 2021; Stacey & Boniface 2018; The Salvation Army & RMIT 2017).

It is also important to reiterate here that DFV services are also not currently equipped and resourced to respond to situations where the person affected by forced marriage is under the age of 18 years. For example, many of the DFV accommodation providers are not set-up to house and accommodate for the needs of youth and children. DFV support services are also designed to respond to victim survivors after violence has occurred, however, in the case of forced marriage, access to services is also necessary to prevent the marriage from occurring; an area which is largely outside the scope of existing support services. In these cases where the person affected by forced marriage is under the age of 18, depending on the respective state or territory, child protection may also be involved, which adds another layer of complexity within DFV cases, as illustrated by Zara's case study (p. 22-27). As such, additional frameworks and considerations around complementary legislative changes are required for DFV services to work effectively in this space.

3.3 Complexities of intersecting forced marriage with DFV for temporary visa holders

It is necessary to highlight the added complexities that emerge for individuals who are temporary visa holders. For example, if a person comes to Australia on a spousal visa: and how the context in which the marriage occurred was forced. We support calls that highlight that the requirement under the *Family Violence Provisions* to demonstrate a 'genuine and continuing relationship' is restrictive if domestic and family violence has been established (See, 'Blueprint for Reform', National Advocacy Group on Women on Temporary Visas Experiencing Violence 2018; 2022). A related issue is limited access to support services for temporary visa holders (see Segrave 2017; 2020; Blueprint for Reform 2022): accessibility to services within and outside of the DFV service sector are limited because of temporary visa status, as identified by Sam's case study (p.7).

4. Part 2: Enhancing education and awareness raising

Question 5: *What topics could education or awareness raising focus on?*
Question 6: *Who should be involved in education and raising awareness in communities affected by forced marriage?*
Question 7: *Which groups in the community required education and increased awareness of forced marriage (e.g. front-line workers such as police, child protection and/or specific cohorts within the community?)*

In response to **question five**, we note that to date there has been a significant investment made by the Australian Government on 'education' and 'awareness raising' initiatives to address the issue of forced marriage. In some jurisdictions, such as in NSW as part of the Anti-Slavery Commissioners functions under the *Modern Slavery Act 2018* (NSW) education and training and community awareness initiatives form part of the mandate. **Appendix A** provides an overarching summary of the overall investment in law, policy and program initiatives across Australia to respond to the issue. This shows that there are both activities that are exclusively about education and awareness raising and other law, policy and program initiatives that are coupled with an education and awareness raising objective. This was recently observed, for example, in the Opportunity Guidelines which were released for organisations wishing to tender for the FMSSP (Australia Government, 2024) which included deliverables not only for direct victim-survivor support but also for education and awareness raising.

What we aim to highlight by bringing these key developments in one place under the focus of 'education and awareness raising' is the piecemeal approach to the ways in which forced marriage has both been understood and responded to. Publicly available information about these activities (Australian Government 2016; 2020; 2021) illustrates that there is an overall objective about 'identification' and 'response' to forced marriage and the audience is diverse, inclusive of both those who may be at risk of forced marriage and those who may come into contact with those at risk. We have however observed that there is not any publicly available information about any accountability measures that have been built into education and awareness raising – including any overarching framework about the objectives and target audiences of such activities. As a result, **what is observed across these developments and investments is that good intent is unfortunately not being met with necessarily effective outcomes for those requiring intervention and support. Understanding the impact of investment in such initiatives is essential to ensure that such an investment is translating into tangible outcomes – and that there is a diversity of perspectives which are genuinely considered and contributing to shifting forward our response.**

The Consultation Paper is not clear about the focus of further education and awareness raising. Whilst the discussion questions are seeking input about what education and awareness should focus on and who the target audience should be, we suggest that **the first step must be an independent evaluation which includes mapping education and awareness raising activities that have been or are currently being delivered and understanding the impact or outcomes of these initiatives against stated objectives.** The evaluation must also determine both what information is being delivered and who it is being delivered to. We emphasise the importance of ensuring that future initiatives related to education and awareness raising are evidence-informed and link to clear and strategic goals about the intent of such activity.

Question six asks who should be involved in education and awareness in communities affected by forced marriage. Here, we refer to a study by Segrave et al (2021) which engaged with almost 1,400 migrant and refugee women across Australia about their experiences of safety and security – with a specific focus on experiences of DFV. **A key area of inquiry in this research was *'Help-Seeking and Trust in Institutions'*, where a noteworthy finding was the lack of trust migrant and refugee women have in religious leaders.** 20% of the sample reported that they have no trust in religious community leadership and only 23% reported a 'great deal' or 'a lot of' trust in the same (Segrave et al 2021:56). **Younger people reported lower levels of trust as compared with older people: with just under a third of participants aged under 44 years reported 'no trust' in religious leadership** compared with 17% of those over the age of 65 years (Segrave et al 2021:56). These are important findings when making considerations about or investments in who *delivers* and who *receives* information about issues relating to the safety of migrant and refugee women.

We link our response to **question seven** to the focus of the consultation on including forced marriage within definition and/or responses to DFV. Tan & Vidal's (2023) aforementioned research found that for the legislative change to be effective, there needs to be systematic and comprehensive delivery of training for all specialist family violence practitioners and front-line service providers. This training needs to be focused on strengthening capabilities for identifying and responding to forced marriage. This research highlighted that training should at a minimum include:

- Ensuring a foundational level of knowledge and understanding of forced marriage – not least how it affects different groups such as children, young persons and those who are already in such marriages.

- An understanding of how to navigate the intersecting support frameworks including that of DFV, human trafficking, modern slavery and child protection.

However, as this consultation has also suggested that by including forced marriage within the definition of DFV it will 'improve victim-survivor access to domestic and family violence services', we note that training alone is insufficient to enhance service delivery support and we refer to recommendation two of our submission which emphasises the need for full scale investment in the DFV response system in order to respond to forced marriage.

5. Part 3: Strengthening civil protections and remedies

The proposals for the design of civil protections and remedies within this consultation are complex. This is particularly so for the option for civil protections and remedies to be led by individual States and Territories. As indicated in part three of this submission, research by Vidal (2018) inquired into opportunities to respond to forced marriage within existing DFV, child protection and victims' compensation frameworks. We provide summative tables of the findings of this research at **Appendix B** this includes existing provisions and opportunities for reform**.** We encourage review of the findings of this research within the context of this consultation.

In reviewing the existing legislative opportunities across states and territories, we highlight that it will be necessary to consider the intersections between various State, Territory and Commonwealth mechanisms – namely, the child protection, criminal law, apprehended violence/intervention order, and family law systems. This should include an identification of the limitations that exist within state and territory jurisdictions to perform what may be determined are necessary protections in the unique context of forced marriage: for example, states and territories not having jurisdictions over travel.

There is not scope to provide detailed individual jurisdictional analysis – however, we offer by way of example Vidal and Dominguez's (2023) submission to the New South Wales (NSW) consultation on the design of the ADVO scheme, as it may relate to forced marriage. This is a provision which was introduced by the *Modern Slavery Act 2018* (NSW). The submission can be accessed online and we recommend a review of this submission as part of considerations being made by this consultation. **Appendix C** is provided for ease of reference as it is the section from Vidal and Dominguez's (2023) submission which deals with opportunities for a state and/or territory scheme as compared with a federal scheme (such as an FMPO) which is the overarching proposal of this consultation.

To highlight these issues in a practical way, we begin by taking the case study of Zara, provided in the Consultation Paper (Commonwealth of Australia, 2024: 8). We map what the response might look like in two different States, NSW and Queensland (QLD) alongside the Commonwealth. We do this to illustrate the complexities of responding to forced marriage, and, to highlight the ways a response may currently be operationalised and vary between jurisdictions.

5.1 Case Study: Zara

Zara is 17 and is due to finish Grade 12 in a few months.

Zara's father is very strict and controlling and she is fearful of him. When Zara was 15, her father arranged for her to be marriage to a man from her country of origin. Zara pleads with her father and convinces him to wait until she has at least completed her high school education.

Now that Zara is close to completing high school, Zara's father begins making arrangements for Zara to travel to her home country to marry the man her has chosen for her. Zara feels she will not be able to convince her father again and she does not want to go ahead with the marriage.

As her travel date nears, Zara confides in her teacher. As Zara is based in NSW and is 17, it is not mandatory to report this conduct to child protection services, so the school reports to NSW Police. Police meet with the teacher and family and as a result, assessed that Zara is at risk of forced marriage.

NSW Legislation

1. The Department of Communities and Justice [DCJ] (the relevant statutory child protection authority) is not required to have any initial involvement as Zara is 17 years old. The teacher who received the initial disclosure is not required to make a mandatory report.

Zara's school made a report to NSW police where the following could become an option:

2. The application for an ADVO could be explored but there may be some difficulties:
    a. While the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) includes the NSW and Commonwealth offences of forced marriage as a 'personal violence' offence (and therefore a domestic violence offence which can be grounds for making an ADVO) – this option may need to rely on reframing forced marriage as DFV to seek and gain protection. A demonstration of 'domestic abuse' which includes conduct related to but not explicitly mentioning forced marriage may be required.

    b. The *Crimes (Domestic and Personal Violence) Act 2007* (NSW) defines a 'child' as somebody under the age of 16 years. As Zara is 17 years old DCJ cannot make an application on her behalf. Zara will need to rely on herself, police or a guardian to apply

    c. There are limits on the type of conditions that police under a provisional ADVO can impose under s35(1)(a) -(e) of the Crimes *(Domestic and Personal Violence) Act 2007* (NSW), which do

not include the general provision at s35(2)(f) or forced marriage provision at s 35(2A). This means the conditions in a provisional ADVO may not help to prevent or protect the actual forced marriage or the removal of Zara from Australia for forced marriage.

3. Zara's parents who are identified in the case study to be responsible for facilitating the forced marriage may be liable for criminal charges under NSW law. It is however noted that the offence of 'Child forced marriage' - that came into effect because of the *Modern Slavery Act 2018* (NSW) which introduced s93AC of *Crimes (Domestic and Personal Violence) Act 2007* (NSW) - may only apply where a forced marriage has already taken place. Such a pathway is focused on prosecution of Zara's parents and would not necessarily be focused on assistance and protection of Zara. The STPP as the current support pathway would not necessarily be offered outside of involvement in a Commonwealth criminal justice prosecution.

Commonwealth Legislation

1. It is unclear as to whether the Commonwealth criminal justice system would be utilised in this situation. In the first instance as the initial report has been made to the NSW police, engagement with the Commonwealth would depend on how the NSW police view the situation, including:

2. Identification that it is a forced marriage situation and there is a Commonwealth criminal offence where a referral to the AFP is required to trigger a potential response.
    a. There is a query as to how this may unfold with the NSW 'child forced marriage' offence as mentioned earlier – including discretion to keep it within the NSW jurisdiction.

    b. It is unclear at what point NSW police will or must refer to the AFP. It may be at the discretion of the NSW police: it is understood there are policing guidelines which govern the agreement between States, Territories and the Commonwealth however these are not publicly available.

3. Currently under the *Family Law Act 1975* (Cth) as Zara is under the age of 18, she would be eligible to make an application for a Family Law Watchlist Order which would limit her from being able to leave Australia and may include the surrender of her passport (see for example: *Kandal v Khyatt and Ors; DHS v Brouker and Anor; Madley v Madley*). The application for such an order will require an agency

representing Zara to seek actions and orders against her parents. It would also only be effective until she is 18 years old (as is the current limit of the Act) meaning that she could be exposed to a forced marriage risk again at this point.

   a. There are however limitations to this pathway: there are no specific powers under *the Family Law Act 1975* (Cth) to issue an order explicitly preventing a forced marriage (but rather the behaviours or circumstances associated with a forced marriage that may fall within the ambit of the provision.

4. The AFP could explore potential charges under the *Criminal Code Act 1995* (Cth), including: forced marriage offences, 'exit trafficking' offences. Where the AFP become involved, the following opportunities exist:
   a. AFP can refer to the STPP for case management support.

   b. A child referred to the STPP is also referred to child protection services, meaning in NSW that DCJ would receive a notification of the risk of forced marriage. This in theory is a comprehensive and/or holistic response, however practice experience has shown that an alert to DCJ of a 17-year-old does not always trigger a response.

5. There are limits to AFP powers: for example, they cannot apply for an ADVO on behalf of Zara in NSW (due to the definition of 'police officer' under the Crimes *(Domestic and Personal Violence) Act 2007* (NSW) and the *Interpretation Act 1987* (NSW) being restricted to NSW police only).

QLD Legislation

1. The Department of Child Safety, Seniors and Disability Services [Child Safety] is required to be notified for children under the age of 18. School teachers are mandatory reporters where there is reasonable suspicion that a child is at risk, but only where the significant harm is caused by physical or sexual abuse (See: s13E (2) of the *Child Protection Act 1999* (Qld))

2. If the teacher voluntarily reports to Child Safety as Zara is under the age of 18 years and may still be considered a child in need of protection, the report may not be prioritised as 'forced marriage' as there is no explicit inclusion of forced marriage within the *Child Protection Act 1999* (Qld). The Act covers behaviour which may be involved in a forced marriage including emotional and psychological harm, sexual abuse and exploitation.

3. If the case is, however, prioritised there is a chance that Zara may be immediately removed by Qld police and or Child Safety.
    a. Under the *Child Protection Act 1999* (Qld) the Children's Court can make a child protection order. Though these orders are not designed to explicitly prevent forced marriage they may include protective factors (for example, it might direct a parent to do or refrain from an action, restrict parental contact with Zara and other similar provisions).

4. An application for a DVO under the *Domestic and Family Violence Protection Act 2012* (Qld) may be possible, where DFV has been committed or a threat exists. However, challenges may emerge:
    a. The DFV definition under s8 of the *Domestic and Family Violence Protection Act 2012* (Qld) does not specifically include forced marriage though some behaviours may be captured (for example, behaviour that is "emotionally or psychologically abusive" s8(1)(b), "threatening" (s8(1)(d), "coercive" (s8(1)(e), or "in any other way controls or dominates" the person and causes them to fear for their safety or wellbeing (s8(1)(f)).

    b. It might be possible for the Qld Children's Court hearing a child protection matter to make a DVO.

5. It may also be possible for Qld Police to seek a 'Police Protection Notice' which would immediately protect Zara; however, the police must reasonably believe that DFV has been committed (revealing that the complexities of DFV definition not including forced marriage may present a barrier).
6. Zara's parents who are identified in the case study to be responsible for facilitating the forced marriage may be liable for criminal charges under the *Criminal Code Act 1899* (Qld), specifically offences of child exploitation as they relate to parental duties may be extended to a situation of forced marriage. Similarly to the analysis from NSW, such a pathway is focused on prosecution of Zara's parents and would not necessarily be focused on assistance and protection of Zara. The STPP as the current support pathway would not necessarily be offered outside of involvement in a Commonwealth criminal justice prosecution.

Support needs

Outside of 'legal provisions' there are several additional considerations which need to be made regarding Zara's support needs. This illustrates the need for a complementary suite of protections to be considered as necessary alongside the introduction of any civil mechanisms.

At the outset we note that the powers under State, Territory and Commonwealth legislation is the protection of child welfare / wellbeing – rather than explicitly preventing or intervening in a forced marriage. This becomes even more acute in situations where the person is over the age of 18 years where there is a void in terms of tools to support women to protect their welfare / wellbeing. Returning to Zara, questions emerge about her support needs including:

- ***Where will Zara live?*** If an order through the *Family Law Act 1975* (Cth) is made, as was the case with Sam (p.7) the practicality of continuing to reside with her parents becomes challenging if not a heightening risk to safety. DFV services are limited when it comes to minors. Documented experience of living within youth accommodation services which are not aware and/or tailored to respond to victim-survivors of forced marriage is also challenged (Mebalds & Garcia-Daza 2021; Vidal 2023)

- ***How will Zara's education continue to be supported?*** This includes safety of being able to reside at the same school; coverage of school related costs; disruption to final years of school (e.g. HSC)?

- ***What access to financial support will Zara have?*** As a minor, depending on visa status Zara may be eligible for Youth Allowance. This payment is limited in terms of meeting all practical financial needs should she leave the family home – including being able to pay for alternative accommodation (issues of financial difficulty are illustrated in Layla's case study, on p.8)

    - It is noted that there is no national compensation scheme that may assist Zara in any recovery or with financial support post-situation. There are different statutory state and territory support schemes which respond uniquely and were not established to support victims of modern slavery (even including in NSW where the relevant legislation explicitly includes them but is operationally deficient)

- ***Are there wellbeing and counselling options available to Zara?*** This includes addressing the impact of short and/or long-term estrangement from family, friends and community.

At present, consideration of all these support options is contingent on eligibility, accessibility and suitability. Existing support options by and large are constrained to their own target groups, and situations of forced marriage may not and at times should not *fall* within this remit without dedicated and tailored resources and expertise (Illustrated again by Sam's case study [p.7] and Layla's case study [p.8]).

Whilst raised explicitly in the question about financial support above, there is also an added complexity which must be considered around Zara's visa status – as eligibility for support across States, Territories and the Commonwealth varies based on visa status. It is unclear if Zara is a resident or citizen of Australia. If not, Zara may not be covered by parenting or injunctive orders under the *Family Law Act 1975* (Cth) (See: s69E) precluding her from accessing the Commonwealth supports discussed above.

5.2 Consultation Questions (Part 3)

The consultation is built on the assumption that civil mechanisms will seek to resolve some of the challenges being experienced by people facing forced marriage. As we suggest at the opening of this submission, **the distinct opportunity of this consultation is to rethink Australia's response to forced marriage starting with understanding both the ways in which forced marriage may occur and the impact and effectiveness of existing legal, policy and service delivery frameworks.** Our responses to remaining questions:

- Point to existing assertions made in the submission – to create illustrative links between what is being proposed and what needs to be considered.

- Refer back to existing analysis that is relevant to review – to highlight where these considerations have already been made.

- Indicates where there is not enough evidence available to adequately respond – further highlighting the need to start from a place of evidence and data.

Q8 – Do you think there are gaps in the existing legal protections available to respond to and prevent forced marriage in Australia? If so, what are those gaps?	The gaps in the existing legal protections to respond to and prevent forced marriage in Australia are well documented. The mapped case studies provided in this submission (p. 7-10 and 22-27) offers a summative view of these gaps. We also refer to the following publications for review as part of this consultation: ▪ Vidal (2018) ▪ Tan & Vidal (2023) ▪ Vidal (2023) ▪ Vidal & Dominguez (2023) ▪ Vidal & Segrave (2024)
Q9 – This paper discusses two options to strengthen civil protections: Option A (enhance existing legislation, possibly through shared principles) and Option B (introduce standalone Commonwealth legislation). Which of these two implementation options would be most effective and why? What are the key risks? Are there other options that should be considered?	We express concern about an approach that is built on 'shared principles' over tangible law, policy and program investments. As this submission highlights, there are complex intersections between law and policy at State, Territory and Commonwealth levels that need to work in concert with one another to be effective. A reliance on 'shared principles' does not provide the adequate authorising environment and/or impetus to invest in the necessary infrastructure to enhance safety and options for people who are at risk of or who have experienced forced marriage. We refer again to the submission by Vidal & Dominguez (2023) as an example which shows what is required for existing legislation to account for forced marriage in an operational way. This submission also indicates what a federal scheme would offer in addition or in lieu of State and Territory schemes.
Q10 – Under Option A, are there civil protection frameworks alternatives to family and domestic violence frameworks that could be used to strengthen forced marriage civil protections?	It is our view that State and Territory child protection frameworks need to be reviewed and considered as a pathway of response to forced marriage. The publication by Vidal (2018) maps how this is currently reflected across Australia (with the exception of South Australia which has since been updated, see page 14 of this submission). Vidal (2018) identifies opportunities for strengthening child protection frameworks to provide options for those who are under the age of 18 years old to access support.

	We note that in a review of child protection frameworks emerging practice in relation to working with families - the view of the nature of forced marriage and the overwhelming desire of young women to remain connected with their families (Vidal, 2023) must remain in view. That is, a default position cannot be the removal of young women from their families but rather considering approaches for strengthening families in ways that are safe and appropriate and that work with families to eliminate the risk of forced marriage or harm that emerges from these contexts. That is to say, in considering child protection responses to forced marriage - we urge a tailored and targeted approach that draws on the evidence about the context in which a forced marriage takes place (Simmons & Wong, 2021; Vidal, 2023; Vidal & Tan, 2023; Zeweri & Shinkfield, 2021) and use this as a starting point for considering how child protection systems across Australia recognise and respond to the issue.
Q11 – What evidence, or other types of actions, risks or harms connected to forced marriage should be considered as grounds for seeking a civil protection order for forced marriage?	Please see the case studies presented on pages 7-10 of this submission which offer a range of narratives of the actions, risks and harms involved in forced marriage. Please see part three of this submission which details the parallels between forced marriage and DFV which further illustrate the actions, risks and harms involved in forced marriage and considerations that need to be made when planning responses. We also refer to the submission by Vidal & Dominguez (2023) pages 9-13, 37-38 which discusses the ways in which forced marriage is conceptualised and understood and emphasises the importance of understanding forced marriage beyond a 'single moment in time': therefore, encompassing a broad and non-exhaustive set of behaviours in the development of any civil mechanism as it relates to forced marriage.
Q12 – Do the proposed protections listed above address the most common and significant risks and harms faced by people in or at risk of forced marriage, including	As noted in part three of this submission there is an absence of evidence to suggest that the pathways of support proposed or attempted (for example in Victoria) address common and/or significant risks of harm faced by those experiencing forced marriage. This is due to an absence of both understanding common and/or significant risks outside of the current legal framing of forced marriage; gaps in

children? If not, what else should be addressed?	understanding how existing services and supports are responding to forced marriage and only emerging evidence about what the support needs are (Simmons & Wong, 2021; Vidal, 2023; Vidal & Tan, 2023). Without an investment in understanding this experience - this question cannot be adequately and appropriately answered. We return to the assertion that we made at the outset of this submission which is to urge an investment in understanding the experience of forced marriage and the impact of Australia's investments to date in identification and response.
Q13 – Are there any other risks or unintended consequences of the proposed protections that should be considered?	Without a detailed design of the proposed protections an assessment of unintended consequences is not possible. We recommend further consultation occur following the design of the scheme to consider such issues with greater specificity.
Q14 – Are there any additional people or organisations who should be able to apply for a civil protection order for forced marriage? If yes, who and why?	Documented evidence shows the barriers that exist by limiting or restricting intervention and support in situations of forced marriage to the criminal justice system. As asserted in Vidal & Dominguez (2023) we hold the view that a condition should be created for an 'interested party to be able to make an application with the consent of the person in need of protection' (p.8). This is however a principled view and without a detailed design of the proposed mechanism the intended and unintended consequences cannot be considered. We recommend further consultation occur following the design of the scheme to consider such issues with greater specificity.
Q15 – Are there risks associated with giving particular individuals or organisations the ability to apply for a protection order? If so, what are these risks and how could they be mitigated?	Without a detailed design of the proposed protections an assessment of risks associated with giving particular individuals or organisations the ability to apply for a protection order is not possible. We recommend further consultation occur following the design of the scheme to consider such issues with greater specificity.
Q16 – Should there be any limits on who can be a respondent for forced marriage civil protections? If so, how should they be defined (e.g. family members only?)	On principle, no. They should not be defined as anything other than those 'party' to forcing a marriage. Research shows that it is not only family members involved in making arrangements for / creating the conditions of a forced marriage. Vidal (2023) documents situations that have involved members of the community, religious officiants and employers. Limiting respondents to family members and/or naming

	specific 'respondents' would limit the opportunity to reflect the diversity of how a forced marriage may come to be and extend protection to all persons who may be at risk of forced marriage.
Q17 – How can the risk of victim-survivors being coerced into abandoning orders be addressed?	We acknowledge the dynamic across all forms of violence against women and girls regarding attrition rate for reports of violence and abuse and disengagement from legal processes. We also acknowledge, again, that more needs to be understood about this specific dynamic as it relates to forced marriage. We recommend that detailed research is undertaken to examine experiences of people with State, Territory and Commonwealth legal systems and responses. We suggest that without this evidence it is not possible to determine how risks impacting those facing forced marriage and interacting with the legal system can be adequately addressed. We note that the complexities of forced marriage primarily involving family members has been well documented in Australia (Nielsen & Burn 2024; Vidal 2023; Tan & Vidal 2023; Simmons & Wong 2021; Zeweri & Shinkfield, 2021; Vidal 2018; The Salvation Army & RMIT 2018; Lyneham & Bricknell 2018; Jelenic & Keeley 2013; McGuire 2014) and this presents a primacy for considering how pressure may lead to the abandonment of an order or engagement in a legal process. We argue, again, that more consideration needs to be given to the way forced marriage is understood and responded to in Australia - as arguably civil mechanisms need to be paired with a full complement of support to be effective - including that a person feels sufficiently supported in their decision to pursue legal intervention. This includes exploring support which does or does not engage safely and proactively with families and provides the necessary safeguards that may reduce the risk of a person disengaging. We encourage review of the experience from the UK regarding 'Retraction' of orders and/or disclosures of forced marriage (See, Anitha et al, 2023: 108-116). This analysis goes some way to suggesting the knowledge that Australia needs to be built before considering such a question.

Q18 – How can the views of victim-survivors, including children, be best sought and incorporated into the process for hearing and issuing civil protections for forced marriage?	Without detailed design of the proposed protections including whether the scheme would be implemented in States / Territories or the Commonwealth this is a complex consideration - one that requires specific review of State, Territory and Commonwealth provisions in relation to victim-witness provisions and child-inclusive practice. For example, recent changes to the *Family Law Act 1975* (Cth) have introduced a requirement for an Independent Children's Lawyer to represent the best interests of a child in family law proceedings. This is one mechanism which may support the views of children being centred - but is only relevant should the proposed civil mechanism be introduced within that particular legal framework. This is one example of the intersecting legal and policy issues that need to be specifically mapped and considered. On a principled level, views of victim-survivors including children should be centred and form the primary basis on which decisions around civil protections are made. These views need to be centred in a way which is safe and does not exacerbate or create additional risk. We return to our point that it is imperative to ensure that there is an investment in a full complement of support alongside the introduction of a civil scheme. As is the example with Sam (p.7) - her application for a civil (Family Law) order resulted in increased risk from her parents. There was no long-term or sustainable option for accommodation outside of her family home. The implications of engaging with a civil mechanism, such as safe alternative accommodation, must be considered as critical when considering how victim-survivors (adults or minors) participate in the process.
Q19 – What other supports should be available to people in or at risk of forced marriage, including children, to support them through the civil protection order application process? For example, additional supports through the application process, or additional courtroom protections?	See response to Question 18.

Q20 – What grounds should be relevant to making interim orders where a person is in or at risk of a forced marriage? **Q21** – Should interim orders be limited to include some but not all of the proposed scope of orders (outlined in Scope of Orders)? If so, what protections should be included or excluded and why? **Q22** – What kind of evidence could point to a risk of forced marriage and be considered by police when considering the grounds for an interim order where a person is in or at risk of forced marriage?	Again, without a detailed design proposal for any protection scheme - including whether or how it will exist within a Commonwealth and / or State/Territory jurisdiction - specificity about the grounds and scope of interim orders is not possible. The potentially detrimental and ostracising consequences for a victim-survivor of forced marriage means that great care should be taken when establishing interim order grounds, as shown through the cases of Sam and Aisha (p.7;10). Further, without an investment in understanding the context, experiences, and extent of forced marriage there is not enough evidence to empirically inform recommendations about interim order grounds and conditions, nor what type of evidence police could or should rely upon in interim order proceedings, particularly without creating unintended consequences. We also point to well-established concerns about the problem of proof in forced marriage and coercive control cases, which would require further investigation and mapping to inform any interim order implementation. While in principle we might support a broad and non-exhaustive set of behaviours as grounds, the provisions would also require essential education and capacity building among practitioners, law enforcement and the judiciary to ensure effective understanding and implementation. The difficulties in contending with the current variability between Australian jurisdictions and systems is demonstrated by the case study of Zara above. Therefore, even where there may be benefits to increasing the specificity of existing prohibitions and restrictions in current protection order schemes to ensure orders recognise and respond to forced marriage appropriately and comprehensively, it is not possible to make clear recommendations.
Q23 – Are there any circumstances where personal service orders should not be required? (for example, via electronic service)? If so, what are those circumstances?	Without a detailed design of the proposed protections an assessment of these circumstances are not possible. We agree that considerations need to be made about the risks and consequences of personal service orders and the mechanism in which they are delivered - however, this will be dependent on other interrelated decisions including the investment of support alongside the civil mechanism scheme, its jurisdiction for delivery and scope of inclusions within the scheme.

Q24 – Are there remedies, in addition to civil protections, for people in or at risk of forced marriage that should be considered?	See response to Question 10, 17, 18.
Q25 – Currently, do forced marriage victim-survivors face barriers or difficulties when seeking a declaration of nullity in relation to their forced marriage? If yes, how could these barriers or difficulties be addressed?	It is our view that an analysis of applications for nullity on the grounds of a forced marriage needs to be undertaken. To our knowledge there is not available documented evidence about the experience of applying for nullity and this would be needed to inform the view how this can be addressed moving forward. What we do understand from our theoretical review of the relevant provisions of the *Marriage Act 1961* (Cth) and the *Family Law Act 1975* (Cth) is that a victim-survivor may face some similar evidentiary barriers and issues common to victim-survivors accessing the criminal justice system (See **Appendix D** for a summary of this theoretical review).
Q26 – What are the risks and barriers for seeking support for people at risk of or in a forced marriage? What strategies could be considered to address these? **Q27** – What risks and barriers might a person face if they seek protection through legal systems? How can these be mitigated?	The risks and barriers for help seeking in response to forced marriage are well documented - both within and outside of the legal system. This includes recommendations for strategies and approaches that need to be considered to strengthen Australia's response. We refer to the following publications for review as part of this consultation: ▪ Vidal & Segrave (2024) ▪ Vidal (2023) ▪ Vidal & Dominguez (2023) - specifically, p. 37 discussing the barriers of minors accessing civil protections ▪ Simmons & Wong (2021) ▪ Zeweri & Shinkfield (2021) ▪ RMIT & The Salvation Army (2018) ▪ Lyneham & Bricknell (2018)

Q28 – Engaging with support systems and legal systems may heighten risks for people facing forced marriage. Are there any actions that should not be undertaken by frontline responders or legal services when a person may be at risk of forced marriage?	This question points to the concerns that we hold regarding the ways forced marriage is understood and responded to in Australia: including the gaps in knowledge and the absence of evidence-based frameworks to respond. The question also reiterates concerns raised in this submission about including forced marriage within broader responses to DFV which have not been designed with the specificities of forced marriage in mind. Not least, a recognition of the disconnect between how violence occurs and/or is experienced and what victim-survivors in each of these unique contexts want and need. We recommend that an investment is made to build the necessary evidence required to underpin the development of targeted legal, policy and support systems. Among other things this will offer best practice guidance for stakeholder responses across the support system.
Q29 – What additional supports and protections should be considered to help children to access the proposed legal protections and to assist them through applications, courtroom and other legal processes?	See response to Question 19.

Appendix A

Adapted from: Vidal, L. (2023). Young women impacted by forced marriage in Australia: an examination of marriage, gender, and harm. Monash University. [Thesis]. **(pp. 152-155)** https://bridges.monash.edu/articles/thesis/Young_women_impacted_by_forced_marriage_in_Australia_an_examination_of_marriage_gender_and_harm/22682224

It is noted that this is not an exhaustive list. As Vidal (2023) documents, a number of civil society organisations have been self-funding and initiating both support and education and awareness programmes on forced marriage. Publicly available information is not available about all of these initiatives and reiterates the need to ensure that a comprehensive review and evaluation of impact of all efforts underpins future efforts to respond to the issue.

2010–11	Public consultation on possible reforms to address forced and servile marriage within Australia, led by the AGD.
2013	Introduction of the criminal offence of 'forced marriage', under Section 271.A of the *Criminal Code Act (1995)* (Cth).
2013	Expansion of the STPP to include individuals impacted by forced marriage; funding provided to support the development and training of STPP staff and improve understanding of the specific support needs of victim-survivors of forced marriage.
2014	The National Action Plan to Combat Trafficking and Slavery was released, including a number of initiatives to address forced marriage.
2014	A 'Community Pack' with resources for service providers, the community and the media on forced marriage was released.
2014–17	Almost $500,000 in funding was provided to three non-government organisations (NGOs) to raise awareness and support communities responding to forced marriage: 1- Anti-Slavery Australia – the development of My Blue Sky, an online information hub and legal service ($355,393) 2- Australian Catholic Religious Against Trafficking in Humans – the development of an education curriculum and the roll-out of a pilot within selected state and Catholic schools ($61,000) 3- Australian Muslim Women's Centre for Human Rights – delivery of a multi-layered education and training program for frontline welfare organisations, law enforcement and focus groups with young women and their mothers ($69,532)
2015	Roll-out of a postcard campaign – distributing 80,000 postcards to student-frequented locations such as schools, universities and cafes, to raise awareness.

2015	Additional legislative amendments made to the *Criminal Code Act (1995)* (Cth), increasing the penalty and introducing a rebuttable presumption that effectively expands the definition of forced marriage to include scope to argue that any person under the age of 16 years cannot consent to marriage.
2014–15	The AGD worked to train marriage celebrants, introducing a compulsory professional development training program.
2014–15	The Operational Working Group continued the development of an operational protocol to ensure that all children on the STPP are afforded appropriate protections. This arose out of the increase in the number of minors accessing this program, who had not previously been clients of the program.
2015	The AGD partnered with Anti-Slavery Australia to deliver awareness raising workshops in each state and territory in Australia.
2014–15	The Department of Foreign Affairs and Trade (DFAT) introduced an SMS reporting system to support Australians overseas seeking consular assistance in situations of forced marriage.
2014–15	Australia co-sponsored a specific resolution at the 69th Session of the United Nations General Assembly that calls for States to develop coordinated responses to eliminate child, early and forced marriage.
2014–15	The Australian Institute of Criminology Human Trafficking Research Program commenced a study on forced marriage (later released in 2018).
2017	The Victorian Government funded the Australian Red Cross to undertake a community consultation project to better understand forced marriage and engage communities in social/behavioural norm change around the practice of forced marriage.
2017–18	The Australian Government provided four $125,000 grants, with two specifically targeted responses to forced marriage: 1- Funding to maintain and improve My Blue Sky, Anti-Slavery Australia's website to 'prevent' and 'address' forced marriage. 2- Funding to the Australian Muslim Women's Centre for Human Rights to 'address socio-cultural root causes of early and forced marriage', specifically within the Muslim community in Victoria.

2018–19	The Australian Government provided four $125,000 grants, with one specifically targeted response to forced marriage: 1- Funding to the Australian Muslim Women's Centre for Human Rights to continue addressing the root causes of early and forced marriage within the Muslim community.
2018	The Australian Government provided funding for Australia's inaugural Forced Marriage Conference, hosted by Anti-Slavery Australia.
2018	$500,000 of funding provided by the DSS to the Australian Red Cross to pilot an expansion of the STPP: providing 200 days of support to individuals facing forced marriage, before having to agree to ongoing participation in a criminal justice process (later announced that this support would be continuing and part of the ongoing delivery of the STPP).
2018	The DSS provided $750,000 in funding to the Lighthouse Foundation to develop and deliver a tailored supported accommodation service to individuals facing forced marriage.
2018	*Modern Slavery Act (2018)* (Cth) was passed following extensive national consultation, which requires eligible entities to report on the risks of modern slavery in their operations and supply chains, inclusive of forced marriage.
2018	Victoria amended the *Family Violence Protection Act (2008)* (Vic) to include forced marriage as a statutory example of family violence.
2018	New South Wales passed the *Modern Slavery Act (2018)* (NSW) which includes the introduction of a standalone criminal offence of 'child forced marriage', which was later rescinded for an amended version.
2018	South Australia amended both the *Children and Young People (Safety) Act (2017)* (SA) and the *Criminal Law Consolidation Act (1935)* (SA) to criminalise child marriage.
2019	The Child Exploitation Amendment Bill (2019) was brought forward, and passed, which included amendments to the offence of forced marriage. Specifically, it removed the 'rebuttable presumption' which means that all marriages for individuals under the age of 16 years are considered to be forced.
2019	The New South Wales Modern Slavery Amendment Bill (2019) was brought forward and passed in January 2022. This includes a standalone offence of 'child forced marriage' and an expansion of Apprehended Domestic Violence Orders to include grounds of forced marriage.

2019	The Fourth National Action Plan to Reduce Violence against Women and their Children (2010–2022 (2019-2022) recognises forced marriage as a 'complex form of violence' in the context of gendered violence in Australia.
2019	Pilot of 'Operation Skywarp', an awareness raising initiative in partnership with Sydney International Airport.
2020	The Australian Government hosted training for consular staff within the DFAT, including a dedicated session on forced marriage. DFAT's website was updated to include information about preventing a potential forced marriage and referral pathways to the AFP.
2021	The Australian Government released the National Action Plan to Combat Modern Slavery 2020–2025 with identified priorities for responding to forced marriage, particularly with respect to prevention.
2021	Anti-Slavery Australia awarded $400,000 in funding by the DSS under the National Plan to Reduce Violence against Women and their Children 2019–2022, focused on preventing forced marriage and 'other forms of modern slavery in the home' – leading to the establishment of the 'Speak Now' project.
2021	Human Rights sub-committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade, advocating for the elimination of child and forced marriage report was tabled. The Australian Government responded to this report agreeing in full or in principle with all recommendations, which included the need to collect gender-disaggregated data and improve the publication of data.
2021	Announcement of more than $1.67 million in government funding to seven organisations working to address modern slavery, three of which will specifically address forced marriage, valued at $140,000 per project (specific information about the projects is not publicly available).
2023	Announcement of $2.7 million in government funding for 13 organisations working to address modern slavery, at least two of these projects have a focus on forced marriage, however information about the nature, scope and funding committed to these projects has not been published.

2023	Announcement of $12.1 million for the establishment of a new Forced Marriage Specialist Support Program (FMSSP) inclusive of $2.2 million to extend the 'Speak Now' Project delivered by Anti-Slavery Australia. This announcement indicated links to objectives under both the National Plan to End Violence against Women and Children 2022-2032 and the National Action Plan to Combat Modern Slavery 2020-2025 Note – the 'Opportunity Guidelines' for the FMSSP included a focus on both the delivery of support and education and awareness raising initiatives.
2024	Commencement of the 'Additional Referral Pathway Pilot' facilitating access to the STPP through referral from select community providers, removing the need to engage with law enforcement
2024	Commencement of consultation on civil mechanisms to respond to forced marriage following an initial announcement to commit to the establishment of an FMPO scheme in 2018

Appendix B

Vidal, L. (2018). Opportunities to respond to forced marriage within Australia's Domestic and Family Violence Framework. Report. Good Shepherd Australia New Zealand. Melbourne: Australia. https://goodshep.org.au/wp-content/uploads/2020/12/gsanz-issues-paper_opportunities-to-respond-to-forced-marriage-within-australias-domestic-and-family-violence-framework.pdf

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

	Family Violence	Child Protection	Victims Compensation	Other
Commonwealth	There is no specific reference to forced marriage contained within the *Family Law Act (1975)* (Cth).	N/A	N/A	*Criminal Code Act (1995)* (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. The *Modern Slavery Act 2018* (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.

New South Wales	The definition of "domestic violence offence" under the *Crimes (Domestic and Personal Violence) Act (2007)* (NSW) includes an offence under the *Criminal Code Act (1995)* (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.	There is no specific reference to forced marriage or family violence within the *Children and Young Persons (Care and Protection) Act (1998)* (NSW).	There is no specific reference to forced marriage in the *Victims Rights and Support Act (2013)* (NSW) (**VRSA**). However, the *Modern Slavery Act 2018* (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.	The *Modern Slavery Act (2018)* (NSW) (**MSA**) introduces a new offence of "child forced marriage" into the *Crimes Act 1900* (NSW). This reflects the definition of forced marriage within the *Criminal Code Act (1995)* (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.
Australian Capital Territory	There is no specific reference to forced marriage within the *Family Violence Act (2016)* (ACT).	There is no specific reference to forced marriage within the *Children and Young People Act (2008)* (ACT).	There is no specific reference to forced marriage in the *Victims of Crime (Financial Assistance) Act* (2016) (ACT).	

Victoria	Forced marriage is included as a statutory example of family violence under the *Family Violence Protection Act (2008)* (Vic)	The *Children, Youth and Families Act (2005)* (Vic) utilises the definition of family violence in the *Family Violence Protection Act (2008)* (Vic) therefore, forced marriage is included in on provision of this Act.	There is no explicit reference for forced marriage in the *Victims of Crime Assistance Act (1996)* (Vic).	
Queensland	There is no specific reference to forced marriage within the *Family Violence Protection Act (2012)* (Qld).	There is no specific reference to forced marriage within the *Child Protection Act (1999)* (Qld)	There is no specific reference to forced marriage in the *Victims of Crime Assistance Act (2009)* (Qld).	
Northern Territory	There is no specific reference to forced marriage within the *Domestic and Family Violence Act (2007)* (NT).	There is no specific reference to forced marriage within *the Care and Protection of Children Act (2007)* (NT).	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.	

Western Australia	There is no specific reference to forced marriage within the *Restraining Orders Act (1997)* (WA) which includes protections for individuals experiencing family violence.	There is no specific reference to forced marriage within the *Children and Community Services Act (2004)* (WA).	There is no specific reference in *Criminal Injuries Compensation Act (2003)* (WA) to forced marriage.	
South Australia	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.	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	Whilst 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.	*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.

		limitation here is that it only applies in situations where the child is to be removed from South Australia for these purposes.		
Tasmania	There is no specific reference to forced marriage within the *Family Violence Act (2004)* (Tas).	There is no specific reference to forced marriage within the *Children, Young Persons and Their Families Act (1997)* (Tas).	There is no specific reference to forced marriage or family violence within the *Victims of Crimes Assistance Act (1976)* (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.	

Table 2: Where are the opportunities for forced marriage to be recognised within existing legislative frameworks where there is currently no explicit recognition?

	Family Violence	Child Protection	Victims Compensation	Other
Commonwealth	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 *Family Law Act (1975)* (Cth) removes the need to argue for recognition of forced marriage and has the potential to: - 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,	If forced marriage was included in the definition of family violence, and therefore 'abuse', under the *Family Law Act (1975)* (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.	N/A	[See table above - existing recognition].

	injunctions and other court orders.			
New South Wales	[See table above - existing recognition]. As noted above, forced marriage is already included in the *Crimes (Domestic and Personal Violence) Act (2007)* NSW by a catch-all inclusion of crimes contained within the Criminal *Code Act* (1995) (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.	Despite there being no specific definition of forced marriage or family violence within the *Children and Young Persons (Care and Protection) Act (1998)* (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.	The *Victims Rights and Support Act (2013)* (NSW) will be significantly impacted should the *Modern Slavery Act (2018)* (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.	
Australian Capital Territory	The definition of family violence within the *Family Violence Act (2016)* (ACT) is arguably broad enough to include forced marriage and associated behaviours or conduct. If argued	The *Children and Young People Act (2008)* (ACT) includes the broad definition of family violence contained within the *Family Violence Act (2016)* (ACT). Like other	The purpose of the *Victims of Crime (Financial Assistance) Act* (2016) (ACT) is to provide financial assistance to people affected by acts of violence and does not include a	

	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. Explicit inclusion could be made under Section 8(1) of the Act.	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. Explicit inclusion could be made under Section 459 of the Act (and / or amendments to the *Family Violence Act 2016* (ACT), see over).	stand-alone definition of family violence or forced marriage. The behaviours associated with forced marriage however may fall within conduct that constitutes an offence under the Act. This would however be strengthened by complementary amendments to the *Family Violence Act (2016)* (ACT)—as compensable injuries can include "Family violence offences". As with other areas of this analysis, the lack of specificity may render an individual ineligible if a successful argument regarding an offence cannot be mounted, or if the behaviour the individual has experienced does not fall under any of the existing criteria for compensation. Explicit inclusion could be made under Schedule 1 of the Act or amendment to the *Crimes Act 1900* (ACT).	

Victoria	[See table above - 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.	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 criterion 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.	Neither forced marriage or 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 section 3's definition of a relevant offence, which could include an offence against section 270.7B of the *Criminal Code Act (1995)* (Cth).	

		Explicit inclusion could be made under Section 162(1) and Section 184(1) of the Act.		
Queensland	The broad definition of family violence contained within the *Domestic and Family Violence Protection Act (2012)* (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 *Criminal Code (1899)* (Qld) which makes domestic violence a criminal offence. Explicit inclusion could be made under section 8(1) or Section 8(2).	Despite there being no specific reference to forced marriage in the *Child Protection Act (1999)* (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. Explicit inclusion could be made under Section 9(3), Section 13 E and Section 13F of the Act.	Despite there being no specific reference to forced marriage within the *Victims of Crime Assistance Act (2009)* (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 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 *Criminal Code Act (1995)* (Cth). Explicit inclusion could be made under the Schedule 3	

			Dictionary definition of domestic violence.	
Northern Territory	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.	Forced marriage could arguably fit within the current definition of "harm" under the *Care and Protection of Children Act (2007)* (NT) and would therefore trigger the need for child protection. Explicit reference would ensure that reports of forced marriage unequivocally activate the protections held within the Act including intervention by a statutory authority to ensure safety. Explicit inclusion could be made under Section 15 of the Act.	[See table above - 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).	
Western Australia	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	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	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	

	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.	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), see over.	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 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	The opportunity to explicitly recognise forced marriage exists under Section 8 of the *Intervention Orders*	[See table above - existing recognition]. The provisions in South Australia would be strengthened by removing	Including specific reference to forced marriage within the *Victims of Crime Act (2001)* (SA) would provide stand-alone	The limitation of the criminal law provisions in the *Criminal Law Consolidation Act (1935*) (SA) is that they only apply

	(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.	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.	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.	to children (i.e. 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	Despite forced marriage not being included in the definition of family violence within the *Family Violence Act (2004)* (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	The *Children, Young Persons and Their Families Act (1997)* (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,	[See table above - existing recognition]. There is nothing within the *Crimes Assistance Act (1976)* (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	

	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. Explicit inclusion could be made under Section 7(b) and Section 4 of the Act.	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.	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 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.	

Appendix C

Vidal, L. & Dominguez, R. (2023). Submission: Review of the NSW legal protections for victim-survivors of forced marriage. https://www.westernsydney.edu.au/content/dam/digital/pdf/Vidal-Dominguez-NSW-FM-Law-Review-Submission-Final-20231201.pdf (pp. 67-68)

3. Consideration of stand-alone FMPO scheme versus amendments to existing family violence provisions in Australia

Benefits of FMPOs over Family Violence (FV) protection

Based on research undertaken by these authors separate to this Review (for a summary see, Vidal, 2018), the potential advantages of FMPOs over FV protection include the following.

- An FMPO system avoids placing the issue of forced marriage in any paradigm, such as the modern slavery paradigm or the family violence paradigm and embeds the issue of forced marriage as its own, specific issue.

    - Avoiding this paradigm question improves the chance of better developing and implementing access to informed and coordinated support for forced marriage and establishing central points of coordination, such as the Forced Marriage Unit that has been established in the UK and considered crucial to the success of the UK FMPO scheme. Other specialty or central units might include a specialty police unit to monitor and deal with breaches of FMPOs and the establishment of a central register of FMPOs, accessible by police, courts, child protection authorities, and welfare and support agencies accredited or nominated by the court.

- An FMPO could make Family Law Watchlist orders a condition of the order, rather than a standalone order made under the Family Law Act 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 may a reasonable suspicion of forced marriage.

- 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 FV legislation).

- An FMPO may apply to Australian citizens and non-citizens (residing in Australia on visas such as temporary or bridging visas) alike, whereas FV protections may be limited to Australian citizens only[1].

- An FMPO could provide that the courts have a wide discretion to formulate non-exhaustive terms and conditions of FMPOs rather than relying on the types of existing orders available under FV protection. However, a counter argument is that it has been shown that the vast majority of protections afforded or theoretically afforded by FMPOs under the UK Act and Scottish Act are already available under the existing family violence framework in Australia.

Benefits of Family Violence (FV) protection over FMPOs

Based on research undertaken by these authors separate to this Review (for a summary see, Vidal, 2018) the potential advantages of FV protection over FMPOs include the following.

- A major advantage, and possibly an advantage that supersedes other considerations, is that the family violence framework in Australia across all jurisdictions may already exist to provide forced marriage protections, or may be amended to include forced marriage protections This could be done through the amendment or inclusion of "forced marriage" into the definition of "family violence" (or "harm", "abuse" or otherwise, as noted) across legislation, as outlined in the accompanying family violence legislation research.

- In many instances where an FMPO scheme might appear to have an advantage over any FV protection, this could be mitigated or countered by inserting certain provisions into FV protection. For example,

    - an FMPO could make Family Law Watchlist orders a condition of the order. Family violence legislation could be amended so that a court has the power to include a Family Law Watchlist order in any FV protection orders.
    - there may be a lower threshold for applying for an FMPO than accessing FV protections. This could be changed by amending the access provisions for FV protections, where applicable.

- It is unclear which courts in Australia have jurisdiction over the FMPO scheme. One aspect of the FMPO model in the Scottish Act[2] is that courts considering issues relating to forced marriage also have the power to make declarations 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 a nullity of marriage is only available under the *Family Law Act 1975* (Cth)(Family Law Act),[3] on the ground that the

[1] For example, under section 69E of the Family Law Act, proceedings for protective or injunctive orders are only allowed if the child or the parent or party to proceedings is an Australian citizen or ordinarily resident in Australia.
[2] Scottish Act Part 2.
[3] *Family Law Act 1975* (Cth) s 44.

marriage has been found void under the *Marriage Act 1961* (Cth)(Marriage Act).[4] 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.

- In many cases, FV 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".[5] Utilising an existing FV framework with established child protection reporting and response requirements may be a better alternative than introducing another stand-alone scheme where any child protection response needs also be embedded into the intricate system.

[4] *Family Law Act 1975* (Cth) s 51; *Marriage Act 1961* (Cth) s 23B.
[5] Australian Law Reform Commission *Family Violence - A National Legal Response*, ALRC Report 114 (October 2010) 52.

Appendix D

Theoretical Review of Nullity Provisions of the *Marriage Act 1961* (Cth)

In principle the *Marriage Act 1961* (Cth) contains protections for minors and adults who are in a forced marriage by deeming a marriage to be void where the consent of either party was not 'real' consent (s 23B(1)(d)). For child victims of forced marriage, another ground on which to void the marriage is not being of marriageable age (*Marriage Act 1961* (Cth), s 23B(1)(e). In order for a marriage to be recognised as void under Australian law, a court must make a declaration of nullity in respect of the marriage. This would require a victim-survivor to seek a declaration of nullity of the marriage under section 51 of the *Family Law Act 1975* (Cth) by filing an Initiating Application for nullity stating the facts and grounds relied on for the annulment and details of the marriage ceremony (*Family Law Act 1975* (Cth) s 44).

The consent provisions under s 23(1)(d) and 23B(1)(d) of the *Marriage Act* provide that the consent of either of the parties is not a real consent where:

- the consent was obtained by duress or fraud;
- a party is mistaken as to the identity of the other party or as to the nature of the ceremony performed, or
- a party is mentally incapable of understanding the nature and effect of the marriage ceremony.

Precedents used in case law relating to these provisions reveal that where it is alleged that a party's consent to a marriage was not 'real' consent due to duress, courts have traditionally spoken of the need for convincing evidence that the party's mind was" unhinged", "*paralysed"* or "*overborne*" by fear or terror induced by threats of immediate danger to "*life or limb or liberty*"[6]. In particular instances, threats of death or physical injury[7], imprisonment and political persecution[8], have been sufficient enough for the court to declare the marriage void. The fear must be genuinely entertained[9], although it is not clear whether the party's response to the threat must also be "reasonable" in the circumstances. In addition to this, the threat need not necessarily arise from the other spouse, but may be made by third parties, such as a spouse's parents, or result from external circumstances[10].

More recent case law suggests that the courts are prepared to move away from traditional stringency and declare marriages void where the duress and threats were emotional and psychological rather than physical in nature, such as parental pressure to enter an arranged

[6] *Szechter v Szechter* [1970] 3 All ER 905
[7] *Di Mento v Visalli*[1973] 2 NSWLR 199
[8] *Parojcic v Parojcic* [1959] 1 All ER 1.
[9] *Szechter v Szechter* [1970] 3 All ER 905
[10] *Di Mento v Visalli*[1973] 2 NSWLR 199

marriage[11]. In the 2011 case of *Kreet & Sampi*[12] an Australian born woman petitioned the Family Court of Australia for orders that her marriage in India in 2009 be void for duress. The Court was satisfied that Ms Kreet's "*physical state at the time of the ceremony was such that she was physically and mentally overborne"* and that her consent was not real as it was obtained by duress[13].

It is noted that even where courts are prepared to nullify such marriages, clear evidence – such as the emotional and psychological pressure experienced by the victim-survivor – would be required which may be a significant barrier or difficulty.

A potential avenue to be explored in Australia in relation to nullity provisions is the operation of the *Forced Marriage etc (Protection and Jurisdiction) (Scotland) Act* 2011 (the Scottish Act) which authorises the making of forced marriage protection orders (FMPOs) for victims and persons at risk of a forced marriage and establishes the offence of breaching an FMPO. The Scottish Act appears to allow the Scottish Sheriff Court hearing FMPO proceedings in relation to applications or breaches also to make a declaration of nullity, (see also **Appendix C**) which could be an interesting consideration for Australia and address some of the logistical (e.g. related proceedings in different jurisdictions), evidentiary or otherwise onerous burdens on victim-survivors.

[11] *In the Marriage of S* (1980) 5 Fam LR 831, 838
[12] *Kreet & Sampir* [2011] FamCA 22 (8 January 2011)
[13] *Kreet & Sampir* [2011] FamCA 22 (8 January 2011) [43]-[44]

References

Aguiar, M. (2018). Arranging marriage: Conjugal agency in the South Asian diaspora. University of Minnesota Press.

Anitha, S., & Gill, A. (2009). Coercion, consent and the forced marriage debate in the UK. *Feminist Legal Studies, 2*(17), 165-184.

Anitha, S., & Gill, A. (2011). Reconceptualising consent and coercion within an intersectional understanding of forced marriage. In A. Gill and S. Anitha (Eds.), *Forced marriage: Introducing a social justice and human rights perspective* (pp. 47–66). Zed Books.

Anitha, S., Gill, A., Noack-Lundberg, K. (2023). *Understanding Protection and Prevention Responses to Forced Marriage in England and Wales*, University of Lincoln, and University of Bristol. https://research-information.bris.ac.uk/en/publications/understanding-protection-and-prevention-responses-to-forced-marri

Anti-Slavery Project. (2011). Forced and service marriage: Anti-Slavery Project submission in response to the Australian Government Attorney-General's Department Discussion Paper. https://opus.lib.uts.edu.au/handle/10453/36771

Australian Government. (2016). *Trafficking in persons: The Australian Government response – The eigth report of the Interdepartmental Committee on Human Trafficking and Slavery*. Commonwealth of Australia. https://www.homeaffairs.gov.au/criminal-justice/files/interdepartmental-committee-human-trafficking-and-slavery-07-2016-06-2017.pdf

Australian Government. (2020). *Trafficking in persons: The Australian Government response – The ninth report of the Interdepartmental Committee on Human Trafficking and Slavery*. Commonwealth of Australia. https://www.homeaffairs.gov.au/criminal-justice/files/interdepartmental-committee-human-trafficking-and-slavery-07-2016-06-2017.pdf

Australian Government. (2021). *Trafficking in persons: The Australian Government response – The tenth report of the Interdepartmental Committee on Human Trafficking and Slavery*. Commonwealth of Australia. https://www.homeaffairs.gov.au/criminal-justice/files/report-of-the-interdepartmental-committee-on-human-trafficking-and-slavery-2017-2020.pdf

Australian Government. (2024). Forced Marriage Specialist Support Program Grant Opportunity Guidelines. Department of Social Services. https://www.grants.gov.au/Go/Show?GoUuid=eebc65a5-5661-41ba-83f5-56d5b5d5d700

Burn, J., Simmons, F., Hollonds, J., Stewart, P., & Watson, N. (2012). *Hidden exploitation: Women in forced labour, marriage and migration*. https://goodshep.org.au/publications/hidden-exploitation-women-in-forced-labour-marriage-and-migration/

Commonwealth of Australia. (2020). *National action plan to combat modern slavery 2020-2025*. https://www.homeaffairs.gov.au/reports-and-publications/submissions-and-discussion-papers/combat-modern-slavery-2020-25

Commonwealth of Australia. (2022). *National Plan to End Violence against Women and Children 2022-2032*. Commonwealth of Australia, Department of Social Services. https://www.dss.gov.au/sites/default/files/documents/10_2023/national-plan-end-violence-against-women-and-children-2022-2032.pdf

Commonwealth of Australia. (2024). Enhancing Civil Protections and Remedies for Forced Marriage: Consultation Paper. Attorney General's Department. https://consultations.ag.gov.au/integrity/forced-marriage/user_uploads/forced-marriage_public-consultation-paper-2024.pdf

Douglas, H., Chapple, K., Ehler, H. (2023). National Domestic and Family Violence Bench Book. Online resource. https://dfvbenchbook.aija.org.au/

El Matrah, J. (2012). *Forced marriage: Muslim women treated like entertainment fodder*. Crikey. https://www.crikey.com.au/2012/04/05/forced-marriage-muslim-women-treated-like-entertainment-fodder/

Enright, M. (2009). Choice, culture and the politics of belonging: The emerging law of forced and arranged marriage. *Modern Law Review*, *72*(3), 331–359.

Gill, A., & Gould, D., The role of family coercion, culture, expert witnesses and best practice in securing forced marriage convictions. *Journal of Gender-Based Violence 4*(1), 89-105

Gill, A., & Harvey, H. (2017). Examining the impact of gender on young people's views of forced marriage in Britain. *Feminist Criminology*, *12*(1), 72–100.

Jelenic. T., & Keeley, M. (2013). *End child marriage: Research report on the forced marriage of children in Australia*. National Childrens and Youth Law Centre. https://yla.org.au/wp-content/uploads/2019/01/End-Child-Marriage-NCYLC-Research-Report.pdf

Lyneham, S., & Bricknell, S. (2018). *When saying no is not an option: Forced marriage in Australia and New Zealand*. https://www.aic.gov.au/sites/default/files/2020-05/rr11.pdf

Mebalds, G., & Garcia-Daza, L. (2021). *Barriers in accommodating survivors of modern slavery: Working towards safe, suitable and sustainable housing*. Australian Red Cross. https://ade.redcross.org.au/globalassets/corporatecms-migration/migration-support/support-for-trafficked-people/barriers-in-accommodating-survivors-of-modern-slavery.pdf

McGuire, M. (2014). *The right to refuse: Examining forced marriage in Australia*. https://goodshep.org.au/publications/the-right-to-refuse-examining-forced-marriage-in-australia-1-of-2/

National Advocacy Group on Women on Temporary Visas Experiencing Violence. (2018). Blueprint for Reform: Removing Barriers to Safety for Victims/Survivors of Domestic and Family Violence who are on Temporary Visas (Version 1). Online. https://awava.org.au/wp-content/uploads/2019/10/Blueprint-for-Reform_web_version.pdf

National Advocacy Group on Women on Temporary Visas Experiencing Violence. (2022). Blueprint for Reform: Removing barriers for victims/survivors of domestic and family violence who are on temporary visas (Version 2). Online. https://iarc.org.au/wp-content/uploads/2023/01/Blueprint-for-reform-2022-v071222.pdf

Noack-Lundberg, K., Gill, AK., Anitha, S. (2021). Understanding forced marriage protection orders in the UK. *Journal of Social Welfare and Family Law 43*(4), 371-392

Nielsen, J., Burn, J. (2024). Forced marriage in Australia: Building a Social Response with Frontline workers. *Social & Legal Studies*, Online first.

NSW Government. (2024). Legal definition of 'domestic abuse': Factsheet for people working children and young people. Department of Communities and Justice. Online Resource. https://dcj.nsw.gov.au/content/dam/dcj/dcj-website/documents/children-and-families/family-domestic-and-sexual-violence/police-legal-help-and-the-law/factsheet-for-people-working-with-children-and-young-people.docx

Patton. C. (2018). Racialising domestic violence: Islamaphobia and the Australian forced marriage debate. *Race and Class*, *60*(2), 21–39.

Segrave, M. (2017). *Temporary migration and family violence: An analysis of victimisation, vulnerability and support*. Monash University. https://www.monash.edu/arts/gender-and-family-violence/research-and-projects/completed-projects/temporary-migration-and-family-violence

Segrave, M., Hedwards, B., & Tyas, D. (2020). Family violence and exploitation: Examining the contours of violence and exploitation. In J. Winterdyk, & J. Jones (Eds.), *The Palgrave international handbook of human trafficking*. Palgrave Macmillan.

Segrave, M., Wickes, R., Keel, C., (2021). Migrant and refugee women in Australia: The safety and security study. Report. Monash University. Migration and Inclusion Centre. https://bridges.monash.edu/articles/report/Migrant_and_refugee_women_in_Australia_The_safety_and_security_study/14863872?file=28632192

Simmons, F., & Wong, G. (2021). Learning from lived experience: Australia's legal response to forced marriage. *University of New South Wales Law Journal*, *44*(4), 1619–1662.

Sowey, H. (2017). From an emic perspective: Exploring consent in forced marriage law. *Journal of Criminology*, *51*(2), 258–274.

Stacey, K., & Boniface, S. (2019). *Australian Red Cross forced marriage stream trial evaluation: Final evaluation report (summary)*. Beyond: Kathleen Stacey and Associates. https://www.dss.gov.au/sites/default/files/documents/09_2019/forced-marriage-stream-trial-final-evaluation-report-summary.pdf

Tan, SJ. & Vidal, L. (2023). Forced Marriage as a Form of Family Violence in Victoria. Report. Monash University Gender and Family Violence Prevention Centre. https://www.monash.edu/arts/gender-and-family-violence/research-and-projects/forced-marriage-as-a-form-of-family-violence-in-victoria

The Salvation Army & RMIT. (2018). *Without choice: Examining forced marriage in Australia*. https://endslavery.salvos.org.au/wp-content/uploads/2018/05/Social-Forced-Marriage-Report-SINGLES-min-1.pdf

Triggs, G., & Vidal, L. (2018). *Forced marriage in Australia: Looking beyond the law*. https://www.powertopersuade.org.au/blog/forced-marriage-in-australia-looking-beyond-the-law/31/7/2018

Vidal, L. (2017). *Developing innovative, best practice solutions to address forced marriage in Australia*. Winston Churchill Memorial Trust. https://www.churchilltrust.com.au/fellow/laura-vidal-nsw-2016/

Vidal, L. (2018). *Opportunities to respond to forced marriage within Australia's domestic and family violence framework: Issues Paper*. Good Shepherd Australia New Zealand. https://apo.org.au/node/257336

Vidal, L. (2023). Young women impacted by forced marriage in Australia: an examination of marriage, gender, and harm. Monash University. [Thesis].

https://bridges.monash.edu/articles/thesis/Young_women_impacted_by_forced_marriage_in_Australia_an_examination_of_marriage_gender_and_harm/22682224
Vidal, L., & Dominguez, R. (2023). Submission: Review of the NSW legal protections for victim-survivors of forced marriage. https://www.westernsydney.edu.au/content/dam/digital/pdf/Vidal-Dominguez-NSW-FM-Law-Review-Submission-Final-20231201.pdf
Vidal, L., & Segrave, M. (2024). Australia's response to preventing forced marriage should begin with listening to the needs of young women. Power to Persuade. https://www.powertopersuade.org.au/blog/australias-response-to-preventing-forced-marriage-should-begin-with-listening-to-the-needs-of-young-women/5/7/2024
Zeweri, H., & Shinkfield, S. (2021). Centring migrant community voices in forced marriage prevention social policy: A proposed reframing. *The Australian Journal of Social Issues*, *56*(3), 1–21.

Legislation

Children and Young People (Safety) Act 2017 (SA)
Child Protection Act 1999 (Qld)
Criminal Code Act 1995 (Cth)
Criminal Code Act 1899 (Qld)
Crimes (Domestic and Personal Violence) Act 2007 (NSW)
Criminal Law Consolidation Act 1935 (SA)
Crimes Legislation Amendment (Coercive Control) Act 2022 (NSW)
Domestic and Family Violence Protection Act 2012 (Qld)
Family Law Act 1975 (Cth)
Family Violence Protection Act 2018 (Vic)
Forced Marriage etc (Protection and Jurisdiction) Act 2011 (Scotland)
Interpretation Act 1987 (NSW)
Marriage Act 1961 (Cth)
Modern Slavery Act 2018 (NSW)

Cases

DHS v Brouker and Anor [2010] FamCA 742
Di Mento v Visallil[1973] 2 NSWLR 199
Kandal v Khyatt & Ors [2010] FMCAfam 508
Kreet & Sampir [2011] FamCA 22 (8 January 2011)
Madley & Madley + Anor [2011] FMCAfam 1007
Parojcic v Parojcic [1959] 1 All ER 1.
Szechter v Szechter [1970] 3 All ER 905
In the Marriage of S (1980) 5 Fam LR 831, 838

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Dr Laura Vidal is a Lecturer in Social Work at the University of Canberra. Laura holds a Bachelor of Social Work (Hons.1) and a Masters in Human Rights Law and Policy from the University of New South Wales. She obtained a PhD in Criminology in 2023 from Monash University, being awarded both the Vice-Chancellor's Commendation and Faculty of Arts Prize for Thesis Excellence. Laura's PhD research focused on young women's experiences of forced marriage in Australia including the ways in which they both understand and define their experience, and how they navigate support and assistance. Laura's research emerged out of both her award of a 2016 Churchill Fellowship focused on best-practice responses to forced marriage and over a decade of direct practice as a social worker – where she worked in support of individuals with experiences of gender-based violence, specifically diverse forms of family violence, human trafficking, and modern slavery – including forced marriage. These experiences and insights continue to drive Laura's teaching and research agenda where her primary focus is on the intersections of gendered violence, migration and systems of intervention and support.

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Rebecca Dominguez is the Director and Principal Solicitor of the Western Sydney University Justice Clinic, and member of the WSU School of Law's executive leadership team. The Justice Clinic operates the university's community legal service and internal student legal service and runs the law school's experiential learning programs. It is at the core of the law school's strategy for achieving impactful community-driven research, quality legal education and law graduates, and community service and engagement. Rebecca has worked previously as a pro bono practitioner, criminal defence lawyer, in private practice and in-house. As well as developing a human rights-based legal practice over many years in the legal assistance sector, focused primarily in the areas of family violence, modern slavery, and refugee law, Rebecca has a strong interest and history in law reform. Rebecca won the 2019 Pro Bono Lawyer of the Year award for her legal work with those affected by family violence and modern slavery and received the 2022 WSU Vice-Chancellor's Award for Excellence in Indigenous Teaching and Learning, and the 2022 University of Technology (UTS) Alumni Award for Excellence in Law. In 2023, she completed the University of Oxford's Executive Leadership Programme and sits on a number of Commonwealth and NSW committees and advisory boards focused on modern slavery, human rights and the legal assistance sector.

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Professor Marie Segrave is an ARC Future Fellow in the School of Political and Social Sciences in the Faculty of Arts. Marie has led significant research on human trafficking and slavery-like practices, the exploitation of irregular and temporary migrants, and the intersections of temporary migration and domestic and family violence. Marie's research is closely connected to advocacy for policy reform, with a consistent focus on the ways in which systems, particularly the migration system, supports and enables violence and exploitation. Marie co-leads the Border, Migration & Gendered Violence Research Hub (with Dr Shih Joo Tan), which brings together researchers within and beyond the University of Melbourne leading critical national and international research in this area. She also co-leads the Gender, Violence & Exploitation

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Dr Shih Joo Tan is a Lecturer in Criminology, School of Social and Political Sciences and co-leads the Borders, Migration and Gendered Violence Research Hub. Her work is multidisciplinary and broadly concerned with the intersections of gender, migration and harm of state systems for experiences of women migrants from all backgrounds, particularly in the context of family, work and employment. Her recent work is focused on the experiences of migrant and refugee communities in Australia, particularly on workplace sexual harassment, forced marriage and family and domestic violence. She has also been involved in various national and international collaborative projects that examines the impacts of existing legal and regulatory frameworks on sustaining harms, exploitation and violence against women. She is also interested in critical concepts of safety and security for migrant women from all backgrounds and committed to research that is responsive and relevant to on-the-ground realities of gendered violence.