

# Chapter 5

## Forced marriage

5.1 This chapter addresses a number of issues with respect to forced marriage, a slavery-like offence introduced into Commonwealth legislation in 2013. The chapter first sets out the definition of a forced marriage, as distinct from an arranged marriage. It then examines the prevalence of forced marriage in Australia, and concludes with an examination of the Commonwealth government's response to forced marriage.

### What is forced marriage?

5.2 In 2013, amendments were made to the *Criminal Code Act 1995* (Criminal Code), including the insertion of the offence of 'forced marriage'.<sup>1</sup> The Criminal Code and the *Crimes Act 1914* were also amended in order to provide protections for vulnerable witnesses giving evidence in Commonwealth criminal proceedings, including victims of human trafficking and slavery.<sup>2</sup> Subsequently, in 2015, the definition of 'forced marriage' in the Criminal Code was expanded, and the related penalties were increased.<sup>3</sup>

5.3 Forced marriage appears at section 270.7A of the Criminal Code and is defined as follows:

- (1) A marriage is a forced marriage if one party to the marriage (the victim) entered into the marriage without freely and fully consenting:
  - (a) because of the use of coercion, threat or deception; or
  - (b) because the party was incapable of understanding the nature and effect of the marriage ceremony.
- (2) For the purposes of subsection (1), marriage includes the following:
  - (a) a registered relationship within the meaning of section 2E of the *Acts Interpretation Act 1901*;
  - (b) a marriage recognised under a law of a foreign country;
  - (c) a relationship registered (however that process is described) under a law of a foreign country, if the relationship is of the same, or a similar, type as any registered relationship within the meaning of section 2E of the *Acts Interpretation Act 1901*;

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1 The offences of forced labour, organ trafficking and harbouring a victim were also introduced, and amendments were also made to the *Crimes Act 1914*, the *Migration Act 1958*, the *Proceeds of Crime Act 2002* and the *Telecommunications (Interception and Access) Act 1979*.

2 *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013* and *Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protection and Other Measures) Act 2013*.

3 Attorney-General's Department (AGD), *Human trafficking and slavery legislation*, <https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Pages/Human-trafficking-legislation.aspx> (accessed 6 April 2017).

(d) a marriage (including a relationship or marriage mentioned in paragraph (a), (b) or (c)) that is void, invalid, or not recognised by law, for any reason, including the following:

(i) a party to the marriage has not freely or fully consented to the marriage (for example, because of natural, induced or age-related incapacity);

(ii) a party to the marriage is married (within the meaning of this subsection) to more than one person.

Note: Section 2E of the *Acts Interpretation Act 1901* covers relationships registered under a law of a State or Territory that are prescribed by regulations under that Act.

(3) Paragraph (1)(a) applies whether the coercion, threat or deception is used against the victim or another person.

(4) For the purposes of proving an offence against this Division or Division 271, a person under 16 years of age is presumed, unless the contrary is proved, to be incapable of understanding the nature and effect of a marriage ceremony.

Note: A defendant bears a legal burden in relation to proving the contrary (see section 13.4).

5.4 The maximum penalty for a forced marriage offence is seven years, or nine years for an aggravated offence.<sup>4</sup> Where the victim is under the age of 18 and is taken overseas for the purpose of the forced marriage, the maximum penalty increases to 25 years' imprisonment.<sup>5</sup>

5.5 A forced marriage is *not* the same as an arranged marriage, the distinction being the lack of consent in a forced marriage in contrast with an arranged marriage. As Anti-Slavery Australia (ASA) explained:

It is a consent issue. It is legal. There is no issue. There is no breach of Australian law through an arranged marriage, and in fact there are many successful arranged marriages in Australia.

A forced marriage is different technically. It is a marriage where there has been conduct—effected through coercion, for example—that has had the effect of taking away a person's ability to fully and freely consent to the marriage. It is really a forced marriage. It is where there is no full and free consent to that marriage, and there have been many examples of forced marriages in the Australian context—for example, 'Unless you marry this man, I will harm another person,' or, 'Unless you marry this person, your sister will not be able to finish her schooling.' There is coercion and threat that can take away a person's ability to fully and freely consent. In the case law, they use the expression 'having the will being overborne'. There is no ability to consent. So it is an issue about coercion and is different from arranged marriage.

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4 *Criminal Code Act 1995*, s. 270.7B.

5 *Criminal Code Act 1995*, s. 271.4.

Sometimes, though, some of the cases use the expression 'the point at which consent vanishes'. So there is a grey line somewhere, sometimes, between an arranged marriage and a forced marriage. But many of the cases that we have seen have been quite clearly on the forced marriage side of the spectrum.<sup>6</sup>

### ***Forced child marriage***

5.6 Forced child marriage occurs when the person that is the victim of a forced marriage is less than 18 years of age. Such an offence is defined as an aggravated offence, carrying a maximum of nine years' imprisonment.<sup>7</sup>

5.7 In its supplementary submission, The Salvation Army—Freedom Partnership to End Modern Slavery (The Salvation Army) discussed the findings on forced child marriage in Australia from a study undertaken by the National Children's Youth and Law Centre:

...between 2011-2013, 250 cases were identified by research respondents. From 2014-2015, 28% of total matters investigated by the Australian Federal Police [(AFP)] were related to early and forced marriage. Between 8 March 2013-31 July 2015, 49 referrals of forced marriage were received, of which 41 were accepted for further investigation; 32 of these matters related to persons under the age of 18.<sup>8</sup>

5.8 On the issue of forced child marriage in the Asia-Pacific region, the United Nations Office on Drugs and Crime (UNODC) stated:

As a phenomenon, the idea of forced marriage is particularly prevalent in the Mekong region—examples of Vietnamese women being forced to marry Chinese nationals, for example. That is the classic example. As to the extent to which these women are children, I am not so sure; although I know there are some cases where they have been teenage brides, for example. We do not work specifically on this issue, but we do handle this issue insofar as we work with law enforcement in these regions and help them to combat trafficking writ large. We have not had any specific initiatives that look on the issue of forced marriage.<sup>9</sup>

### **Prevalence of forced marriage in Australia**

5.9 Data for the 2015–16 financial year indicates that the number of referrals to the AFP and investigations by the AFP relating to forced marriage have increased

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6 Professor Jennifer Burn, Director, Anti-Slavery Australia (ASA), University of Technology Sydney, *Committee Hansard*, 5 May 2017, p. 19.

7 Pursuant to the definition of 'aggravated offences' at s. 270.8 of the *Criminal Code Act 1995*.

8 The Salvation Army—Freedom Partnership to End Modern Slavery (The Salvation Army), *Supplementary submission 25.1*, p. 3 (citations omitted).

9 Mr Benjamin Smith, Regional Programme Coordinator, Human Trafficking/Smuggling of Migrants, United Nations Office on Drugs and Crime (UNODC), *Committee Hansard*, 4 May 2017, p. 46.

each year since March 2013, when the new offences were first introduced into the Criminal Code.<sup>10</sup>

5.10 In 2015–16, the AFP received 69 referrals for forced marriage offences.<sup>11</sup> The AFP's practice in respect of responding to referrals is set out in the government's *Trafficking in Persons* report:

Where there was sufficient evidence, these matters were referred to the CDPP. Australia also sought mutual legal assistance to support ongoing human trafficking and slavery-related investigations during the reporting period, where evidence was available offshore.<sup>12</sup>

5.11 Further information about prosecutions was provided by the Attorney-General's Department (AGD):

...referrals have been received involving victims of alleged forced marriages that have occurred, or were planned to occur, both domestically and internationally.

There has only been one forced marriage matter established at law. In this case the marriage occurred in Australia. The victim in this matter was an Iranian national, however was not brought to Australia solely for the purpose of a forced marriage.<sup>13</sup>

5.12 The Salvation Army noted that the AFP has reported that forced marriage offences account for almost 50 per cent of the AFP's investigations<sup>14</sup> into human trafficking, slavery and slavery-like offences,<sup>15</sup> commenting that '[u]nfortunately, the current design of the framework has not delivered prosecutions; has prevented many victims from receiving ongoing support; and has not reduced the prevalence of the practice'.<sup>16</sup>

5.13 The Commonwealth government has acknowledged that a different investigative approach is required for forced marriage, compared to other human trafficking and slavery matters.<sup>17</sup> It was noted in the most recent *Trafficking in Persons* report that:

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10 Commonwealth of Australia, *Trafficking in Persons: The Australian Government Response 1 July 2015–30 June 2016*, 2016, p. 20.

11 Commonwealth of Australia, *Trafficking in Persons: The Australian Government Response 1 July 2015–30 June 2016*, 2016, p. 20.

12 Commonwealth of Australia, *Trafficking in Persons: The Australian Government Response 1 July 2015–30 June 2016*, 2016, p. 20.

13 AGD, answers to questions on notice, 10 May 2017 (received 26 June 2017), p. 2.

14 The Salvation Army, *Submission 14*, p. 3.

15 Commonwealth of Australia, *Trafficking in Persons: The Australian Government Response 1 July 2015–30 June 2016*, 2016, p. 20.

16 The Salvation Army, *Submission 14*, p. 3.

17 Commonwealth of Australia, *Trafficking in Persons: The Australian Government Response 1 July 2015–30 June 2016*, 2016, p. 22.

Cases of young women and girls in, or at risk of, forced marriage or serious exploitation within intimate relationships continue to be identified, with some of these cases involving young women and girls from Australia being taken overseas to be married. Since the introduction of forced marriage legislation in March 2013, this crime type has risen to represent 41 per cent of all AFP human trafficking referrals in 2015–16. While there is currently insufficient information available to determine whether human trafficking for this purpose has increased in prevalence, or whether a greater awareness has led to increased reporting, it is anticipated that matters relating to forced marriage will continue to increase in the medium term given the legislative changes and greater community engagement.<sup>18</sup>

### **Government response to forced marriage**

5.14 Forced marriage has been identified as one of the seven key areas of focus of the *National Action Plan to Combat Human Trafficking and Slavery 2015–19* (NAP).<sup>19</sup> The NAP provides that:

...forced marriage has been criminalised in Australia since the entry into force of specific offences in the Criminal Code on 8 March 2013. Over the life of the National Action Plan, a key area of focus will be to refine the Australian Government response to this issue including the provision of support and appropriate referral pathways for people in, or at risk of forced marriage. Work will also continue to finalise the development and dissemination of a Forced Marriage Community Pack for frontline officers and service providers, vulnerable groups, and the general public including: information and FAQ sheets on forced marriage; a small fold-away booklet for people in, or at risk of forced marriage; a how to guide (including a template) on preparing a forced marriage safety plan; a media fact sheet; a forced marriage information booklet for agencies, community organisations and service providers; and, a website to assist people in, or at risk of forced marriage with information, links to services and free online individualised advice.<sup>20</sup>

5.15 The following sections consider the Commonwealth government's response to forced marriage by examining the effectiveness of existing legislative provisions; funding for NGO programs intended to reduce the prevalence of forced marriage; community education; and interagency and interstate cooperation.

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18 Commonwealth of Australia, *Trafficking in Persons: The Australian Government Response 1 July 2015–30 June 2016*, 2016, p. 23.

19 Commonwealth of Australia, *National Action Plan to Combat Human Trafficking and Slavery 2015–19*, 2014, pp 19–20. The other key areas of focus are: monitoring of the 2013 legislative reforms; awareness-raising and education; exploitation in supply chains; operational protocol for minors; strengthening connectedness with States and Territories; and international and regional leadership.

20 Commonwealth of Australia, *National Action Plan to Combat Human Trafficking and Slavery 2015–19*, 2014, p. 19.

### *Effectiveness of existing legislative provisions*

5.16 While submitters welcomed the criminalisation of forced marriage, a number of recommendations were made to the committee in respect of legislative and regulatory reform that could increase the effectiveness of the existing provisions.

5.17 For example, Australian Catholic Religious Against Trafficking in Humans (ACRATH), an organisation educating young people on the topic of human trafficking since 2005, advocated for the inclusion of forced marriage in the definition of family violence in Australia, on the basis that the family violence sector has 'vast experience in victim/survivor care, community education and development of resources'.<sup>21</sup>

5.18 Further, ASA considered that the following changes could be made to the Migration Regulations 1994:

- ...repeal the “would be in danger” clause currently contained within Migration Regulation 2.07AK.
- Provide for temporary family reunification for victims of human trafficking who have assisted police for 6 to 12 months or more while holding the Bridging F Visa.
- Amend the family violence provisions in the *Migration Regulations 1994* (Cth) to include circumstances where a marriage was forced such that there is no ‘genuine relationship’.<sup>22</sup>

### *Protection orders*

5.19 A number of organisations specifically raised concerns about the existing protection order regime. For example, ASA identified that, through its experience with this offence—discussed further below—there are 'significant gaps in the legal framework', particularly in respect to the existing family law protective jurisdiction.<sup>23</sup> The ASA therefore advocated for:

...the introduction of a complementary civil framework through the *Family Law Act 1975* (Cth) to address gaps in victim support and protection where any person, regardless of age, is at risk of or in a forced marriage.<sup>24</sup>

5.20 In its submission, the Australian Human Rights Commission (AHRC) also identified legislative gaps and recommended that '[t]he Australian Government allow for general protective and preventative orders be issued for people over the age of 18 years in relation to forced marriage'.<sup>25</sup> This recommendation was made on the basis of the following explanation:<sup>26</sup>

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21 Australian Catholic Religious Against Trafficking in Humans (ACRATH), *Submission 18*, p. 8.

22 ASA, *Submission 27*, p. 15.

23 ASA, *Submission 9*, p. 29.

24 ASA, *Submission 9*, p. 29.

25 Australian Human Rights Commission (AHRC), *Submission 23*, p. 10.

26 AHRC, *Submission 23*, p. 10.

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The Family Court of Australia and the Federal Circuit Court of Australia can issue protective and preventative orders for children at risk of forced marriage. However, there is currently no civil protection order available for young women aged over 18 years who are at risk of forced marriage. Such a protection order has been introduced in other jurisdictions for example, the United Kingdom Forced marriage protection order which allows those at risk or their advocates to apply for a protective order, regardless of the age of the person at risk.<sup>27</sup>

5.21 The inadequacy of protective orders was also acknowledged by The Salvation Army as providing an example of where 'challenges exist' in the implementation of the forced marriage provisions.<sup>28</sup> It was noted that, pursuant to the *Family Law Act 1975* (Family Law Act), protections no longer apply when an individual reaches the age of 18.<sup>29</sup> As a result, 'any orders in place whilst the individual was under 18, such as an Airport Watch List Order, are lifted and can no longer protect the individual at risk once they turn 18'.<sup>30</sup>

5.22 The Salvation Army therefore recommended that the government '[i]ntroduce Forced Marriage Protection Orders, similar to the U.K. model, which include airport watch list orders and court ordered intervention for those over the age of 18'.<sup>31</sup> It was also recommended that the government:

- Integrate federal and state responses to forced marriage which include a mandatory role for state child protection agencies.
- Remove the requirement to cooperate with law enforcement for victims of trafficking. As a minimum, remove the requirement for victims of child and forced marriage and for all children.<sup>32</sup>

5.23 In response to questions on notice, the AGD informed the committee that the ability to create border alerts specific to forced marriage has existed since October 2016, and is divided into two alert types: 'Forced Marriage – Investigations' and 'Forced Marriage – Court Order'.<sup>33</sup> To date, there have been 75 'Forced Marriage – Investigations' alerts, with 56 still in effect. The committee was also informed that of these 75 alerts, 33 related to people under 18 years of age, and 42 to people over 18

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27 AHRC, *Submission 23*, p. 10.

28 The Salvation Army, *Supplementary submission 25.1*, p. 6.

29 The Salvation Army, *Supplementary submission 25.1*, p. 6.

30 The Salvation Army, *Supplementary submission 25.1*, p. 6.

31 The Salvation Army, *Submission 25*, p. 7. This was also discussed by ASA in its submission, made prior to the implementation of the existing watch lists in October 2016: ASA, *Submission 9*, p. 30.

32 The Salvation Army, *Submission 25*, p. 7.

33 AGD, answers to questions on notice, 10 May 2017 (received 26 June 2017), p. 8.

years of age.<sup>34</sup> The committee notes that there have been no 'Forced Marriage – Court Order' alerts.<sup>35</sup>

#### *Committee view*

5.24 The committee acknowledges the various recommendations made to it to amend existing provisions of the Migration Regulations 1994 and the Family Law Act, which may serve to strengthen protections for potential victims of forced marriage. However, the committee considers the existing legislative provisions are sufficient to address this practice, and that protections for these potential victims could be strengthened by other means.

5.25 The committee welcomes the AGD's advice that border alerts relating to forced marriage have been available to Australian authorities since October 2016. However, the committee is concerned about the apparently limited protections available to people over the age of 18, and therefore considers there may be merit in extending protection orders, including court ordered alerts, to these individuals.

#### **Recommendation 17**

**5.26 The committee recommends that the Commonwealth government considers extending the application of protection orders relating to forced marriage to people over 18 years of age.**

#### *Funding for non-government organisation programs*

5.27 Following the introduction of the offence of forced marriage in the Criminal Code, the AGD provided specific one-off funding to three organisations:

In 2014, the Australian Government awarded a total of \$485,925 in further funding to three specialist [non-government organisations] over three years to progress outreach, education and awareness-raising activities on forced marriage issues. [ASA] received \$355,393 to develop and administer a dedicated website to provide people in, or at risk of, forced marriage with information, advice and links to support services. The website, *My Blue Sky*, was launched on 25 November 2015 and also includes a helpline and a free legal advice service primarily delivered by text message and email. ACRATH received \$61,000 to develop a unit of work and resource kit for teachers, school support staff and students in pilot schools across Australia. The Australian Muslim Women's Centre for Human Rights (AMWCHR) received \$69,532 to develop a pilot education and training program aimed at increasing the capacity of frontline organisations in vulnerable communities. The ACRATH and AMWCHR projects were pilots and were completed in December 2015.<sup>36</sup>

5.28 In its submission, ASA provided an overview of the My Blue Sky website:

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34 AGD, answers to written questions on notice, 12 May 2017 (received 26 June 2017), p. 25.

35 AGD, answers to questions on notice, 10 May 2017 (received 26 June 2017), p. 8.

36 AGD, *Submission 17*, p. 13.



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My Blue Sky includes dedicated pages for young children and teenagers; educators and medical practitioners; as well as a page for those who are worried about a friend who may be forced to marry. Parts of the website are available in six languages with links to the [AGD] Forced Marriage Community Pack.<sup>37</sup>

5.29 ASA also provided details of the website's usage in 2016, which 'highlight[s] the need for coordinated, accessible education targeted towards at-risk communities'.<sup>38</sup>

My Blue Sky has received over 20 requests and referrals for assistance and legal advice concerning Australians who feared, or were subject to forced marriage during 2016. Additionally My Blue Sky has received referrals from temporary partner visa holders who have reported that they have experienced violence, preceded by a forced marriage.<sup>39</sup>

5.30 Speaking on behalf of ASA, Professor Jennifer Burn informed the committee that this form of engagement with vulnerable people allows a relationship of trust to be built:

...vulnerable people can contact us confidentially and securely. They often begin the communication with a tentative question, and then we will respond. Then there will be another question or a comment. In some of our cases we have had over 40 communications with a young person fearing forced marriage before there is an instruction to take some steps and protective steps on their behalf. It is interesting to see that. That is one of the benefits of an online scheme that we had not anticipated.<sup>40</sup>

5.31 The committee also received evidence from ACRATH, another organisation that had received government funding to respond to the practice of forced marriage. ACRATH noted that through its role educating secondary and tertiary students about human trafficking, it has identified that there is:

...a great deal of ignorance about the issues of forced marriage, about the difference between forced and arranged marriages, about the human rights of all people with regard to marriage, and about supports that are available to people, mostly girls and young women, who are facing forced marriage.<sup>41</sup>

5.32 Indeed, ACRATH suggested to the committee that it is necessary for schools and the community sector to educate parents about the law with respect to forced marriage, but also the social detriments of this practice.<sup>42</sup>

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37 ASA, *Submission 9*, p. 28.

38 ASA, *Submission 27*, p. 15.

39 ASA, *Submission 27*, p. 15.

40 Professor Burn, ASA, *Committee Hansard*, 5 May 2017, p. 18.

41 ACRATH, *Submission 18*, p. 6.

42 Ms Christine Carolan, Executive Officer, ACRATH, *Committee Hansard*, 4 May 2017, p. 22.

5.33 ACRATH also discussed the lack of government funding for the programs it is undertaking in schools, and suggested that forced marriage training could be included in the curriculum for all schools.<sup>43</sup> In its supplementary submission, ACRATH noted that it had:

...asked [AGD] to continue funding to raise awareness of forced marriage for at least another two years in order to meet this need [for awareness raising]. One experienced ACRATH ex-principal likened the introduction into schools of forced marriage units of study to the introduction in the 1970s of sex education; she commented that it took a number of years for school communities to accept the sex education material and to be able to face the challenges of teaching the material and offering support to students who need it. ACRATH believes the same challenges are being faced now that units of study on forced marriage are being introduced.<sup>44</sup>

5.34 ACRATH advocated for a number of other policy changes with respect to forced marriage, including the establishment of a Pilot Project for flexible entry to the Support for Trafficked People Program.<sup>45</sup>

5.35 ACRATH and a number of other submitters and witnesses advocated for early engagement with potential victims of forced marriage, and providing these people with adequate and appropriate support.<sup>46</sup> For example, The Salvation Army stated:

The inherent challenge is that people who need help are not getting it. Outside of the Federal Government's Support Program there are no funded services for comprehensive, face-to-face support for individuals facing early and forced marriage.

...

In our experience, the majority of individuals seeking support do so before the marriage takes place. This illustrates the need to ensure that an effective early intervention response is in place. Our clients have told us that if they want to avoid being married they are not able to remain living at home. All have reported physical and/or verbal abuse once their families found out they were resistant, did not want to marry or, had told somebody about their situation.<sup>47</sup>

#### *Committee view*

5.36 The committee believes that community engagement and education are the most appropriate ways in which forced marriage in Australia can be addressed; the committee is therefore supportive of the programs conducted by organisations such as

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43 Ms Carolan, ACRATH, *Committee Hansard*, 4 May 2017, pp 22–24.

44 ACRATH, *Submission 26*, p. 4.

45 ACRATH, *Submission 18*, p. 8.

46 See, for example, ACRATH, *Submission 26*, pp 2–4; Ms Laura Vidal, National Projects Coordinator, The Salvation Army, *Committee Hansard*, 5 May 2017, p. 28.

47 The Salvation Army, *Supplementary submission 25.1*, p. 5.

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ACRATH, ASA and the AMWCHR and urges the government to ensure that these programs continue into the future.

5.37 The committee is concerned that government funding for these organisations is not ongoing. In order for these organisations to continue their important work, the committee considers it imperative that the Commonwealth government continues to fund them—and other suitable organisations and programs—for outreach, education and awareness-raising activities on forced marriage issues.

### **Recommendation 18**

**5.38 The committee recommends that the Commonwealth government continues to fund organisations and programs that engage in outreach, education and awareness-raising activities on forced marriage issues.**

5.39 The committee also notes the evidence about the role of educating school-aged children and their parents about forced marriage as one way in which governments can work to combat forced marriage. The committee agrees that consideration should be given by Australian governments to including education on forced marriage in school curricula.

### **Recommendation 19**

**5.40 The committee recommends that Australian governments consider the inclusion of education on forced marriage in school curricula.**

#### *Community engagement and education*

5.41 As mentioned above, community engagement and education play a vital role in addressing forced marriage in the Australian context. The AGD told the committee about the Commonwealth government's role in community engagement, with the help of civil society organisations:

...we developed and launched a very comprehensive forced marriage community pack in December 2014. It includes practical things like a template safety plan, question-and-answer information sheets, small booklets and guides for service providers. We developed that in conjunction with Civil Society. There was a working group under the national round table that has Civil Society on it. In 2015, we translated a range of that information into a number of priority committee languages—Arabic, Dari, Farsi, Somali, Tamil, Urdu. So we are doing quite a bit to address exactly the issue that you are raising. The pack was updated this year, and we are going to redistribute the forced marriage community pack in the middle of this year.<sup>48</sup>

5.42 ASA noted that 'collaborative forced marriage networks have been established in New South Wales and Victoria', distinct from government, 'with plans to establish networks in other states and territories in the future'.<sup>49</sup> Further detail was provided

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48 Ms Catherine Hawkins, First Assistant Secretary, Criminal Justice Policy and Programmes Division, AGD, *Committee Hansard*, 10 May 2017, p. 6.

49 ASA, *Submission 9*, p. 29.

about the NSW Forced Marriage Network, which ASA co-convenes with the Australian Red Cross. The Network:

...brings together over 130 members from 60 government and community organisations. Membership includes representation from the Cultural and Linguistically Diverse (CALD) communities, migrant resource centres, government agencies at the local, state and federal level as well as from community organisations and individual advocates. The purpose of the Network is to engage the community to raise awareness about and prevent forced marriage as well as to provide coordinated support and assistance to people who may be in, or at risk of, forced marriage. Three working groups have also been established in the areas of prevention, education and training and direct service provision. There is clearly a need for greater education and awareness-raising about forced marriage in all communities. Currently the Networks are run on a pro-bono basis by members, and this limits the capacity to provide education and outreach. There is a real need for government funding for these Networks.<sup>50</sup>

5.43 The Salvation Army outlined the benefits likely to arise from restructuring the current framework for addressing forced marriage, in order to 'take advantage of well-developed networks at the community level':<sup>51</sup>

The advantages of doing so would include better resource sharing between Commonwealth and state-based agencies; tapping into the expertise of victim-response networks, including local refuges, family violence services, and cultural community based organisations, all of which could provide support for victims unable to go onto and remain on the Support Program; and finally, leveraging this cooperation to progress community engagement, which is quite limited in the current framework, to decrease the practice of forced marriage.<sup>52</sup>

5.44 Indeed, Ms Laura Vidal, National Projects Coordinator at The Salvation Army did not consider that strengthening criminal offences with a view to increased deterrence was the 'most effective way of moving forward' with respect to this issue:<sup>53</sup>

What we need to do is ensure that appropriate support is available to people so that they can prevent a marriage from occurring, and then deliver grassroots community education with a whole diverse split of communities. We need to be really careful that we are not segmenting out particular groups where we have an assumption that this practice is more common than others. We have received referrals from a wide range of religious and cultural backgrounds, so we would definitely advocate for this as a human rights issue. Education needs to be built in using a human rights framework,

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50 ASA, *Submission 9*, p. 29.

51 The Salvation Army, *Submission 25*, p. 14.

52 The Salvation Army, *Submission 25*, p. 14.

53 Ms Vidal, The Salvation Army, *Committee Hansard*, 5 May 2017, p. 28.

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and the rights of women and girls and men and boys are part of that piece of mainstream human rights education.<sup>54</sup>

*New migrants*

5.45 The Department of Social Services (DSS) described the information on forced marriage that is provided to visa applicants:

The family safety pack sits on the DSS website, but the link to it is in visa grant letters. When people apply for, initially, a spouse visa, they get a range of information attached to that letter that says: 'The Australian government has important information to provide about Australian law. See the attached link.' So, in many cases, they would access it via the internet, but in Immigration posts where the internet is not easily available—it is easily printed out and provided with the visa letter. It is provided before arrival and, principally, for spouse visa holders. Last year, after a range of consultations with CALD and migrant communities, there was a suggestion that it be progressively expanded to other visa classes, because there are people in similar situations—say the spouse is an international student or a 457 holder; there are various sorts of dependent visas. To my knowledge, it has been expanded out to 457 visa holders, international students, New Zealand category visa holders, and it is our understanding that it will be progressively continued.<sup>55</sup>

5.46 It was further clarified, in response to questions on notice, that a link to the Family Safety Pack, which 'includes four factsheets on domestic and family violence, sexual assault, forced and early marriage, and family violence and partner visas' is provided to visa applicants across the partner, child, orphan relative, skilled and student visa streams.<sup>56</sup> The pack has been translated into 46 languages.<sup>57</sup>

5.47 The committee was also informed that newly arrived migrants, humanitarian entrants, and their sponsors and service providers receive a Beginning Life in Australia booklet, which 'includes links to national and state-based organisations people can contact if they require support or information about forced marriage'.<sup>58</sup>

5.48 Offshore humanitarian entrants also participate in the Australian Cultural Orientation program, where participants are provided with a booklet that includes information about Australia's laws on forced marriage.<sup>59</sup> This information is provided again through the Humanitarian Settlement Services program, once these visa holders have arrived in Australia.<sup>60</sup>

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54 Ms Vidal, The Salvation Army, *Committee Hansard*, 5 May 2017, p. 28.

55 Dr Margot Clifford, Director of CALD and Indigenous Women's Safety, Family Safety Taskforce, Department of Social Services (DSS), *Committee Hansard*, 10 May 2017, p. 8.

56 AGD, answers to questions on notice, 10 May 2017 (received 26 June 2017), p. 3–4.

57 AGD, answers to questions on notice, 10 May 2017 (received 26 June 2017), p. 4.

58 AGD, answers to questions on notice, 10 May 2017 (received 26 June 2017), p. 4.

59 AGD, answers to questions on notice, 10 May 2017 (received 26 June 2017), p. 5.

60 AGD, answers to questions on notice, 10 May 2017 (received 26 June 2017), p. 5.

5.49 However, ACRATH suggested that the government is not doing enough to inform people migrating to Australia that forced marriage is unlawful.<sup>61</sup> ACRATH identified that this issue requires 'a multifaceted approach', including that people have the opportunity to access information about Australia's response to forced marriage through English language classes migrants participate in on their arrival in Australia.<sup>62</sup>

#### *Committee view*

5.50 As outlined at paragraph 5.36, the committee is of the opinion that community engagement and education are the most appropriate means of addressing forced marriage in Australia.

5.51 Consistent with this view, and the committee's earlier recommendations relating to briefings and information for migrant workers pre-departure and post-arrival in Australia, the committee recommends that information about forced marriage (amongst other things) is consistently and routinely provided to newly arrived migrants in Australia, not only through their engagement with government officials at their point of arrival and when accessing government services, but also through appropriate community groups and programs.

#### **Recommendation 20**

**5.52 The committee recommends that information on forced marriage is consistently and routinely provided to newly arrived migrants in Australia through their engagement with government officials and agencies, as well as appropriate community groups and programs.**

#### *Interagency and interstate cooperation*

5.53 In chapter 2, the committee discussed the need to strengthen the Interdepartmental Committee on Human Trafficking and Slavery, agency engagement and engagement between the Commonwealth and state and territory governments. Some submitters to the inquiry also raised the lack of coordination across governments and frontline services with regard to forced marriage in particular.

5.54 For example, The Salvation Army stated that '[a] more streamlined and accessible response protocol that involves both state and federal government agencies and civil society is required' noting that '[t]he current approach places excess burden on the individual at risk to initiate these processes'.<sup>63</sup> The Salvation Army provided the following example:

One young woman in a pair of sisters, accommodated by a partner youth service, disclosed the confidential address of her sibling to the family who was actively looking for her following her disclosure of forced marriage. When reporting this to New South Wales police they did not have any specific criminal legislation that could apply to this unique situation. It was decided that should the family make an attempt to access the property and

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61 Ms Carolan, ACRATH, *Committee Hansard*, 4 May 2017, p. 18.

62 Ms Carolan, ACRATH, *Committee Hansard*, 4 May 2017, p. 18.

63 The Salvation Army, *Supplementary submission 25.1*, pp 6–7.

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the individual at risk, New South Wales police would utilise a ‘trespassing offence’. A more appropriate response would be for responding officers to assist the victim to obtain a protection order.<sup>64</sup>

5.55 The Salvation Army recommended that the NAP should be revised, in cooperation with states and territories, in order to 'include specific, measurable and funded steps to facilitate a more coordinated response to early and forced marriage'.<sup>65</sup>

a. As part of this process, the federal government should work with states to update relevant legislation ensure it is effectively synchronised with federal legislation.

b. The federal government should then work with states to develop clear response protocols between key stakeholders and provide supplemental funding to build states’ capacity to efficiently identify and appropriately respond to disclosures of early and forced marriage<sup>66</sup>

5.56 Ms Vidal elaborated on this at a public hearing, noting that 'we are experiencing a great deal of difficulty with state agencies recognising the existence of the federal framework or that the federal offences exist'.<sup>67</sup>

5.57 The need for better coordination with states and territories was also highlighted by ASA:

Since the practice of forced marriage was criminalised in 2013, the [AFP] have reported that a significant number of children are facing forced marriage. As child protection is a state issue, this highlights the need for clear coordination between federal and state agencies for the purpose of establishing effective referral and support services.<sup>68</sup>

### ***Committee view***

5.58 Given the committee's first recommendation, it is unnecessary for the committee to make a further recommendation in relation to inter-agency coordination and communication specifically on forced marriage. However, the committee encourages the Commonwealth government to consider improvements to inter-agency coordination and communication on forced marriage issues in the context of recommendation 1.

### **Mr Craig Kelly MP Chair**

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64 The Salvation Army, *Supplementary submission 25.1*, p. 7.

65 The Salvation Army, *Supplementary submission 25.1*, p. 8.

66 The Salvation Army, *Supplementary submission 25.1*, p. 8.

67 Ms Vidal, The Salvation Army, *Committee Hansard*, 5 May 2017, p. 25.

68 ASA, *Submission 9*, p. 30.

