



Supplemental Submission to the Joint Committee on Law Enforcement

Inquiry into Human Trafficking

Responding to Individuals Facing Early and Forced Marriage in Australia

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(1) ORGANISATIONAL BACKGROUND

1. The Salvation Army- Freedom Partnership to End Modern Slavery

The Freedom Partnership- to End Modern Slavery is a national initiative of The Salvation Army working to mobilise community, business and government to recognise and respond to modern slavery, including early and forced marriage in Australia.

In 2008, the Salvation Army established a unique Safe House service for women who have experienced human trafficking, slavery and slavery-like practices. The Safe House receives referrals of cases of forced labour, organ removal, commercial sexual exploitation and forced underage and servile marriages and operates independent of government funding. It is the only one of its kind in Australia.

In 2014, The Salvation Army expanded its work to end modern slavery via 'The Freedom Partnership' This program includes initiatives to raise awareness, provide education and training and work in partnership with the community to ensure that people who have experienced slavery are adequately protected and that slavery can be eradicated in Australia.

The Salvation Army has a dedicated outreach and mentoring program for individuals facing forced marriage, delivering services that include:

- **Community Outreach & Training**—assisting communities to identify and appropriately respond to disclosures of early and forced marriage
- **Confidential advice and technical assistance**—to individuals and organisations facing early and forced marriage, including information about Australia's response framework and making referrals for assistance
- **Supported accommodation and case management** via—the Trafficking and Slavery Safe House
- **Peer Mentoring**—working with survivors to mentor others facing forced marriage, offering supporting, insight, resources and guidance through complex social and cultural situations

The Salvation Army identifies cases of people trafficking and slavery in the community and facilitates referrals to the Australian Federal Police and other government and civil society organisations. The service also accepts referrals from the Australian Federal Police and other agencies. The Salvation Army is a member of the Australian Government National Roundtable on Human Trafficking and Slavery and staff are regularly consulted as experts in the sector both in Australia and abroad.

For more: www.endslavery.salvos.org.au



(2) OVERVIEW OF EARLY & FORCED MARRIAGE IN AUSTRALIA

Awareness of early and forced marriage increased with the 2013 introduction of forced marriage into the Commonwealth Criminal Code (Div. 270 & 271), however, the practice is not a new phenomenon in Australia. Prior to criminalisation in 2013, cases involving individuals being forced into marriage were being addressed and continue to be addressed in the Federal Circuit Court of Australia.¹

In their study on child marriage in Australia, the National Children's Youth and Law Centre² reported that between 2011-2013, 250 cases were identified by research respondents. From 2014-2015, 28% of total matters investigated by the Australian Federal Police 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.

The criminalisation of early and forced marriage led to a concentrated effort by both government and community to raise awareness. Whilst the above information provides some indication of the prevalence of forced marriage in Australia, there remains little available comprehensive data about the true extent of early and forced marriage in Australia. Our practice experience with victims of trafficking and slavery related offences, many of whom report not feeling capable of engaging with the criminal justice system, indicates that the reported number is likely to be a small representation of what is actually occurring in the community.

We commend the Australian Government for taking steps to recognise and respond to the practice of early and forced marriage in Australia. We acknowledge the work of the Attorney General's Department on convening the community awareness working group to establish awareness and support materials on forced and early marriage; and funding Anti-Slavery Australia to deliver the forced marriage website, *My Blue Sky*. Efforts to raise awareness and educate communities has no doubt resulted in the significant rise in referrals to law enforcement and community organisations alike.

However, a great deal of work remains to be done to ensure a holistic and comprehensive response for individuals facing early and forced marriage. Of particular concern is the primary presenting client group 15-18 year olds who, in our experience, require specialised long-term support that acknowledges and accommodates the complexities of their situation.

Under the current framework, individuals must engage with federal law enforcement to be eligible for assistance under the government's Support Program (formerly Support for Trafficked People Program)—a feature intended to foster greater collaboration with the criminal justice system and consequently higher rates of successful prosecutions. This 'cooperation requirement' for people at risk of or experiencing forced marriage is problematic for two reasons: (1) in the majority of identified cases, the crime has not been committed and thus, the primary need of the vulnerable person is proactive prevention via social and accommodation services rather than a police response; and (2) in most cases,

¹ See: Essey & Elia [2013] FCCA 1525, Kreet & Sampir [2011] FamCA22, Madley & Madley and Anor[2011], Kandal & Khyatt & Ors [2010] FamCA508, Department of Human Services & Brouker and Anor[2010] FamCA742, Nagri & Chapal[2012] FamCA464.

² National Children's and Youth Law Centre (2013) 'End Child Marriage-Australia, Research Report on the Forced Marriage of Children in Australia'.



the primary offender is a young person's parents or other family members, whom they do not wish to see prosecuted. In our experience, this acts as a significant deterrent for individuals to seek assistance and is not contributing the goal of prosecution under the National Action Plan to Combat Human Trafficking and Slavery.

Additionally, in many cases it is not in the best interest of a young person's emotional and psychological development to have long-term engagement with the criminal justice system, particularly if the defendants are relatives. There is a significant body of research pointing to negative mental health outcomes for victims of crime³, including those who have experienced family violence.⁴

As one of the few service providers assisting young people who are either exiting or not accessing the Support Program, we have observed that the provisions under this program are inadequate to meet the needs of individuals facing early and forced marriage. The Support Program was established for a very different presenting client group—adults whose perpetrators are typically not related to them or with whom they have limited acquaintance. As such, the case management and accommodation needs are quite distinct from those of victims of other slavery-like crimes.

The provisions for accommodation and support under the Support Program most commonly employ hotels, mainstream homeless services, and shared house rental properties (for adults). These forms of accommodation are generally not appropriate for young people at risk of or experiencing forced marriage. In our experience, these options do not provide the necessary safety and support for this client group and in some instances have led to them returning home to their families where the risk of being forced into marriage increases rapidly, and/or physical and psychological abuse are perpetrated because of the original 'act of defiance'.

³ According to one U.K. study, "it is well established that the adversarial structure of the criminal justice process in England and Wales can present a challenging environment for its lay participants and this may be particularly the case for complainants who enter the arena affected by trauma or other vulnerabilities. Indeed, as Judith Herman has put it: 'if one set out by design to devise a system for provoking intrusive post-trauma symptoms, one could not do better than a court of law.'" See Ellison, L and Munro, VE (2016) Taking Trauma Seriously: Criminal Reflections on the Criminal Justice Process. International Journal of Evidence and Proof.

⁴ Clark, H (2010) What is the justice system willing to offer?- Understanding sexual assault victim/survivors' Criminal Justice Needs, Family Matters No. 85 Accessed online: <https://aifs.gov.au/publications/family-matters/issue-85/what-justice-system-willing-offer>



(3) CHALLENGES AND OPPORTUNITIES

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.

Failure to effectively address early and forced marriage leads to a proliferation of severe and long lasting impacts; including forced and early pregnancy, psychical and psychological violence, decreased access to education and employment opportunities, financial dependence and in some cases forced labour.

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.

(a) Accommodation & Support

The states and territories support young people experiencing homelessness through various state-wide homelessness initiatives, however, these services are established to support young people with very different needs. Individuals facing early and forced marriage need time to rebuild their life in Australia following, in most cases, total separation from their families and communities—in some cases, this has taken up to two years.

In our experience of delivering residential accommodation programs to this population, we have learned that they need specialised, comprehensive support to build independent lives. Typically, individuals come from isolated and conservative homes whereby they are unaware of what money is, how to access public transport, cook, clean and maintain their accommodation. The 16 – 17 year olds presenting to services require more intensive support than 16 – 17 year olds in other client populations as their cognitive functioning and life skill development is significantly below their physical age.

Current specialist homelessness programs do not have the scope to provide for individuals in this way—they are already over capacity with other populations and are unable to prioritise the unique needs of this client group. Best practice with this client group indicates that a 'continuum of care' approach should be adopted which provides flexibility for first time service users to access services safely and for long enough that they do not re-enter the service system.

Critical to the long term success of this client group is successful integration into a new community and ensuring that during the residential care period, emotional wellbeing is strengthened through psychosocial programs that build resilience. A large proportion of this client group will face a life time of ostracisation from family, which is confronting for both the client and the residential service providers. This also sets these clients apart from other young people experiencing homelessness and impacts significantly on how we design a residential care model.

Through discussions with the NSW state working group on early and forced marriage, we understand that it is a priority of the Australian Government that individuals facing forced marriage remain engaged in education. It is our experience that without appropriate support,



including basic and appropriate housing, that individuals withdraw from education as they try to navigate their own survival.

(b) Cooperation of State and Federal Government

Extensive research and international evidence suggests that a comprehensive suite of measures which include the coordinated delivery of both legislative and non-legislative measures are required to prevent early and forced marriage and protect those affected.

Federal Legislative Response

The explicit criminal response to forced marriage in Australia's legislation sits within the Commonwealth Criminal Code Div. 270 & 271. Civil protections and marriage offences are also found within the Marriage Act (1961) and the Family Law Act (1975).

Whilst these legislative responses exist, challenges exist in their implementation. For example, under the Family Law Act (1975), protections no longer apply when an individual reaches the age of 18. This simply means that 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.

To date, there have been no convictions under the forced marriage offence. As discussed in detail above, the inherent complexities of forced marriage, the relationship between offenders and victims, and the barriers victims have expressed in accessing the support framework, make this crime type extremely difficult to prosecute.

State Legislative Response

Inclusion of early and forced marriage and/or child marriage in state legislation varies from state to state. Some states have recognised forced marriage explicitly in their child protection response frameworks, for example, New South Wales⁵ whilst others are yet to do so. Forced Marriage has been acknowledged in Australia's Second National Action Plan to reduce violence against women and their children; there has again been varied application of this in state plans—however no plan addresses this as a standalone manifestation of family violence requiring resources and support.

Failure to recognise and legislate against early and forced marriage within states hinders the ability of state agencies to respond to disclosures of risk.

A Coordinated Approach

The multiple frameworks that have been designed to ultimately assist individuals at risk are falling short due to the lack of mandated state and federal government coordination. Various front line responders such as state police, schools and health care providers are positioned in the community to receive referrals of individuals at risk. They remain largely unaware of the framework in place and do not have any accessible resources and mechanisms to provide support. The current approach places excess burden on the individual at risk to initiate these processes.

⁵ Reference to Child Marriage has been made explicitly in mandatory reporting guidelines, with specific measures put in place at the Child Protection Reporting line. All reports of child marriage are to be allocated for investigation by child protection professionals in local service centres.



To illustrate:

- Very recently, New South Wales Police in Western Sydney contacted The Salvation Army as a 19-year-old woman had presented to them stating that she could not return home as she was being forced to be married. The New South Wales Police were unaware of the federal framework, and moreover had limited knowledge of how to respond. Officers contacted a chaplain of The Salvation Army with whom they had a relationship, who informed them of The Salvation Army's anti-slavery programs and assisted to make a referral to the Safe House. Had the officers not had the relationship with that chaplain, the victim may not have been linked with appropriate care;
- 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 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.

A more streamlined and accessible response protocol that involves both state and federal government agencies and civil society is required to efficiently and adequately respond, reducing risk and protecting safety.

The United Kingdom Forced Marriage Unit (FMU)⁶ offers Australia a model for delivering a consistent response to individuals facing early and forced marriage. The most appealing feature of the FMU response is the multi-disciplinary support teams that work alongside law enforcement if young people choose to engage with police. This means that the government's police and practice response is centred on rights and needs of individuals at risk rather than a criminal justice outcome.

Taking again from the United Kingdom, specially-designed Forced Marriage Protection Orders would also ensure that regardless of age, individuals would have protective measures in place that are specific to the risk at hand and are cross-jurisdictional.

State and federal government cooperation increases the capacity for individuals to seek assistance and for front line responders to put in place a rights-based framework.

This coordinated response would provide a process by which to consider the best outcome for each case on an individual basis. Whilst police do exercise great discretion and sensitivity in dealing with these cases, decentralising the role of law enforcement would fundamentally change how we approach cases of forced marriage to allow greater consideration of non-criminal justice outcomes as the determiner for success.

⁶ See: <https://www.gov.uk/guidance/forced-marriage>



(4) RECOMMENDATIONS

To address the above issues, Australia must build a nuanced and comprehensive response with a suite of both legislative and non-legislative measures that acknowledge and address the complexity of early and forced marriage.

There is a distinct opportunity for the Australian Government to strengthen its approach to early and forced marriage by allocating resources in the 2017-2018 budget to support legislative and non-legislative measures that engage state government on a national level and embed provisions for this client group into statement frameworks. We recommend:

1. Independent review of the Support Program framework and assessment of its applicability to individuals facing early and forced marriage;
2. Provision of supported accommodation regardless of an individual's capacity or willingness to engage with the criminal justice process. The absence of safe and supported accommodation services is a barrier to preventing early and forced marriage;
3. In cooperation with states and territories, revise the National Action Plan to Combat Trafficking and Slavery to include specific, measurable and funded steps to facilitate a more coordinated response to early and forced marriage.
 - 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; and
4. Resource schools and communities to promote awareness of early and forced marriage, utilising a community engagement approach which draws on pre-existing networks and relationships with communities at a local level.