

## Research Brief *Responding to Forced Marriage*

### Introduction

Globally and within Australia, current responses to forced marriage sit between two frameworks that position it as a manifestation of modern slavery and a form of family violence (Simmons & Wong, 2021). On the national level, forced marriage is criminalised under Section 270.7A and 270.7B of the *Criminal Code Act 1995 (Cth)*, as part of a suite of trafficking and slavery offences. Under the Criminal Code, forced marriage is defined as a marriage entered into:

- (1) *without free and full consent of one, or both of the parties involved,*
- (2) *as a result of coercion, threat or deception, or*
- (3) *because the victim was incapable to understanding the nature and effect of the marriage ceremony.*

This applies to all marriages and relationships registered in Australia, or recognised in another country and that occurred in Australia or overseas (Department of Home Affairs 2022).

More recently, in 2018, the Victorian government expanded on the national response framework to include forced marriage as a statutory example of family violence under Section 6 of the Family Violence Protection Act 2008 (Vic). This legislative amendment follows recommendations from the 2016 Royal Commission into Family Violence, and came into force in March 2019.

These efforts reflect a commitment to addressing forced marriage. However, there remains significant gaps in current knowledge pertaining to the efficacy and impact of the existing law, criminal justice and support service response.

This research brief provides an overview of the two key response frameworks to forced marriage in Australia: human trafficking and modern slavery, and family violence. It maps the service delivery response under the respective frameworks, the support mechanisms available, and the known limitations of each of the framework.

### Forced marriage as a trafficking and slavery offence

To-date, human trafficking and modern slavery remains the primary framework through which forced marriage is understood and responded to. This is reflected in Australia's second National Plan to Combat Human Trafficking and Modern Slavery (2020-2025), which identifies forced marriage as one of the key national strategic priorities. Under this national framing, forced marriage is addressed via a legal and criminal justice approach, which prioritises criminalisation processes over protective legislation e.g., civil protection orders or long-term support needs of victim survivors (Vidal, 2017; Askola, 2018; Simmons & Wong, 2021). While the government has announced its intention to develop a Commonwealth Forced Marriage Protection Order (FMPO) Scheme (Simmons & Wong, 2021), details are not yet publicly available at the time of writing.

As part of the Federal response, there is also support offered for individuals who are identified as victims of modern slavery through the Support for Trafficked Persons Program (STPP), which is a Department of Social Services (DSS) funded victim-support program, delivered by the Australian Red Cross. In 2018, the Forced Marriage Trial was introduced to allow eligible victim survivors of forced marriage to access a longer period of assistance (up to 200 days), without having to participate in the criminal justice process (Stacey & Boniface, 2019). Support to obtain a temporary visa is also provided for those who do not hold

a valid visa (Simmons & Wong, 2021). However, eligibility and access to program remains contingent via referral by the Australian Federal Police (AFP), which has raised particular concerns around the appropriateness of directly linking victim support services to the criminal justice system (Segrave, Milivojevic & Pickering, 2018), and the transparency of the assessment and referral processes (Simmons & Wong, 2021).

The criticisms with Australia's prevailing focus on a criminal justice approach to forced marriage is well-documented across academic and 'grey' literature (for example, RMIT & The Salvation Army, 2018; Vidal, 2017; Askola, 2018; Segrave, Milivojevic & Pickering, 2018; Simmons & Wong, 2021).

On one hand, the criminalisation of forced marriage is symbolically significant in that it sends a clear message about unacceptability, and can be an instrument regulatory tool for challenging entrenched attitudes and behaviours (Gill & Anitha, 2009; Simmons & Burn, 2013; Askola, 2018). As Vidal (2017) and Sowe (2018) have noted, criminalisation has raised the profile of forced marriage, and more broadly, brought to fore, the importance of choice and consent when entering into a marriage. In creating a specific offence, the law can also offer protection against a wide range of crimes committed in the commission of a forced marriage (Gill & Van Engeland, 2014)

On the other hand, others have argued that the impact of law can be minimal and even counterproductive (Gill & Anitha, 2009). Specifically, Australia's response has been criticised for falling short in recognising the complex familial relationships that sit at the heart of forced marriage (Askola, 2018; Vidal, 2019).

This not only has implications for the question of "full and free" consent, which is central to the determination of a forced marriage (Anitha & Gill, 2009; Simmons & Burn, 2013), it importantly explains why individuals affected by forced marriage may be unwilling to report their victimisation. Some of the reasons include hesitations about implicating family members in a criminal investigation, the risk of isolation from family and community, and prevention of future reconciliation with family (Lyneham & Bricknell, 2018; Stacey & Boniface, 2019; Simmons & Wong, 2021; Zeweri & Shinkfield, 2021)

In terms of take-up within the criminal justice system, data from recent reporting periods have indicated that forced marriage constituted 41% of human trafficking cases to the AFP, and nearly 50% of the entire STPP (Australian Government, 2021; Stacey & Boniface, 2019), making it the most commonly investigated form of human trafficking and slavery in Australia (Lyneham & Bricknell, 2018). Yet, there have been no prosecutions related to forced marriage offences under the Commonwealth legislation. While recognising that these numbers are not reliable estimates of the prevalence of forced marriage – being a highly under-reported problem – they may in part reflect the reluctance of victim survivors to subject family members to prosecution.

### Forced marriage as a form of family violence

In light of the various challenges and limitations of the Commonwealth response, within Australia, there have been strong calls for forced marriage to be understood as a form of family violence (RMIT & The Salvation Army, 2018; Vidal, 2019).

As Australian legal scholars, Simmons & Wong (2021) have identified, the focus of the Commonwealth legislation is on the point of time that the marriage was entered into, which does not sufficiently account for the familial and cultural context in which forced marriage occurs. In centring the family *and* the gendered nature of family violence, it can help to unpack the complexities of violence, coercion and control that may be experienced over a

prolonged period of time (Gangoli et al., 2011).

Further, inclusion in the family violence framework could open up opportunities to intervention and support mechanisms including intervention orders, eligibility to crisis and/or other accommodation services, that may not otherwise be accessible (Vidal, 2019). Notably, accessing support through the family violence service sector in Australia does not require mandatory cooperation with law enforcement, which may reduce the risk of missing out on affected individuals.

To-date, the state of Victoria is the only jurisdiction to have codified forced marriage as a form of family violence. While the law in other States and Territories is open to the inclusion of forced marriage in general terms such as in the description of harm, coercion, abuse, control or inciting fear, Vidal (2019) notes that there remain considerable barriers to recognition and application, especially without specialised training.

Since coming into effect, there is no publicly available data on recorded cases of forced marriage by Victoria Police. There is also no publicly available information about the subsequent resource investments in victim support process, and questions remain about the implementation of this new legislation and the extent to which it meets the needs of persons coming forward to seek assistance and intervention for potential, threatened or formalised forced marriage/s.

The adequacy and appropriateness of the family violence framework to address forced marriage has also been questioned in relation to its capacity to meet the complex needs of victim survivors, especially because of the lack of specialised training and knowledge (Simmons & Burn, 2013; RMIT & The Salvation Army, 2018). Indeed, preliminary empirical research with victim survivors of forced marriage has pointed to the limitations of the family violence framework where victim survivors may not identify their experiences as 'family violence' (Simmons & Wong, 2021).

Others have highlighted that state practices around immigration control means that victim survivors on insecure visas, or who were visa sponsors may be deterred from coming forward to report or even seek help due to pressure from family or fear of harm (Gangoli et al., 2011; Simmons & Wong, 2021). This is a familiar limitation of the family violence framework and research have illuminated how the migration system can create conditions that enable and sustain family violence, especially for migrant women on temporary visas (Segrave, 2021).

## Conclusion

Through the two frameworks of human trafficking and modern slavery, and family violence, Australia has taken steps towards addressing forced marriage. But each of the frameworks has its limitations, and consistently, research has pointed to the need to centre the voices of victim-survivors. Drawing from the lessons of UK, a key challenge for Australia is accounting for specific socio-cultural contexts that underpin the practice of forced marriage without stereotyping particular ethnic communities, religions and cultures, and positioning whole communities or cultures as backward or lacking social integration, and in need of Western

'modernisation' (Gangoli et al., 2011; Gill & Van Engeland, 2014). It is important as Gill & Anitha (2009, p. 258) argues, to attend to 'the ways in which all women are located within a matrix of structural inequalities and thus must address powerful social expectations, pressures and constraints in matters relating to marriage.' Finally, there is increasing recognition and recommendation for the robust analysis of interventions and services across national and state levels, and the extent to which they offer protection to those affected by forced marriage.

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## Legislation

- Criminal Code Act 1995* (Cth) <https://www.legislation.gov.au/Details/C2018C00386>
- Family Violence Protection Act 2008* (Vic) <https://www.legislation.vic.gov.au/in-force/acts/family-violence-protection-act-2008/053>

**Author: Shih Joo (Siru) Tan and Laura Vidal (2022)**

**For further inquiries:** [arts.monash.edu/gender-and-family-violence](https://arts.monash.edu/gender-and-family-violence)