



Australian Government  
Attorney-General's Department

# Enhancing Civil Protections and Remedies for Forced Marriage

Consultation Paper - **SUMMARY VERSION** | July 2024

## Acknowledgement of Country

*We acknowledge the traditional custodians of Australia and acknowledge their continuing connection to land, sea and community. We pay our respects to the people, the cultures and the elders past, present and emerging.*

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# Help and support

If you have immediate concerns for your safety, the safety of another person, or there is an emergency, dial Triple Zero (000).

If you or someone you know is in or at risk of forced marriage you can make a report to the [Australian Federal Police](#) or call 131 237, or contact [My Blue Sky](#) via their website or by calling 02 9514 8115 (Mon-Fri 9am – 5pm, Sydney time). My Blue Sky is Australia's national service for people who are in a forced marriage or worried about being forced to marry.

The following services can also give you help and support:

- [Lifeline](#) (13 11 14) – National crisis support and suicide prevention services, available 24 hours a day, 7 days a week
- [1800Respect](#) (1800 737 732) – National Sexual Assault, Domestic and Family Violence Counselling Service, available 24 hours a day, 7 days a week
- [13YARN](#) (13 92 76) is an Aboriginal and Torres Strait Islander crisis support line, available 24 hours a day, 7 days a week
- [Kids Helpline](#) (1800 55 1800) – National crisis support tailored for children and young people (aged 5 to 25), available 24 hours a day, 7 days a week.

## Making a submission

To provide a submission in response to this consultation paper, visit the [Commonwealth Attorney-General's Department's Consultation Hub](#) and click on 'Make a submission'. This will take you to an online survey with the consultation questions listed in this paper. You do not need to answer every question. You can also upload a stand-alone submission through the Consultation Hub.

You can submit your response under your name or anonymously. If you provide consent, we will publish responses at the end of the consultation period. We will not publish responses if you do not consent, or if there is any potential legal issue with publishing the submission. Submissions may be subject to freedom of information requests, or requests from Parliament.

Personal information shared through the consultation process will be treated in accordance with the *Privacy Act 1988* (Cth). For more information on how the Attorney-General's Department collects, stores and uses personal information, please visit the [Attorney-General's Department's Privacy Policy](#).

## Other consultation channels

If you would like to provide your feedback in person or via a video or phone call, have other accessibility requirements, or wish to provide your feedback in a language other than English, please contact [ForcedMarriage@ag.gov.au](mailto:ForcedMarriage@ag.gov.au).

## Consultation period

The consultation opens on 29 July 2024 and closes on 23 September 2024.

## Enquiries

If you would like to discuss your feedback please contact [ForcedMarriage@ag.gov.au](mailto:ForcedMarriage@ag.gov.au).

# Introduction

Everyone in Australia is free to choose if, who and when they marry. Making someone get married when they don't want to is never acceptable and is a crime in Australia.

Forced marriage occurs when someone gets married without freely and fully consenting. This can happen because they have been coerced, threatened or deceived, or are under the age of 16. It can happen to anyone, but young women and girls are most at risk.

Australian governments are considering options to improve the national response to forced marriage, including by:

- 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
- enhancing education and awareness-raising to support early identification, intervention and prevention, and
- strengthening civil protections and remedies available to people in or at risk of forced marriage.

The Australian public's input is important to ensure this work meets the needs of the community.

The measures described in this paper do not represent the agreed view of the Commonwealth, state or territory governments, or commit governments to action.

## Existing response

The Australian Government's response to forced marriage is set out in the [National Action Plan to Combat Modern Slavery 2020 – 2025](#). The National Action Plan includes a commitment to develop a model to enhance civil protections and remedies for people in or at risk of forced marriage.

The *Criminal Code* (Cth) also contains offences that criminalise forced marriage. These were introduced in 2013. It is illegal to cause a person to enter into a forced marriage, and/or to be a party to a forced marriage. Unless you are a victim of the forced marriage yourself, being a party to a forced marriage means agreeing to marry a person who you know or suspect is a victim of forced marriage.

Support is available through the Australian Government funded Support for Trafficked People Program (STPP), which is delivered by the Australian Red Cross. The STPP provides intensive support for up to 200 days for people who are in or at risk of forced marriage. The Australian Government has also committed \$12.1 million over 5 years to establish a new Forced Marriage Specialist Support Program (FMSSP), which will be a national forced marriage program that will commence in January 2025. The FMSSP will provide personalised support for people in or at risk of forced marriage. This support will cater to the diverse needs of individuals, focusing on health, wellbeing and social support. This includes crucial services like counselling and emergency accommodation if needed.

# Proposal for consultation

## 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.

Forced marriage generally occurs within family contexts. However, across Australia, recognition of forced marriage as a form of family and domestic violence varies.

Family and domestic violence frameworks include protections and supports that could benefit victim-survivors of forced marriage. These may include civil protection orders, legal assistance, medical care, counselling, financial assistance and emergency accommodation. However, inconsistent recognition of forced marriage as a form of family and domestic violence can limit access to these protections and supports. This could be because those services are not available to people in or at risk of forced marriage, or from a lack of awareness or recognition of forced marriage as a form of family and domestic violence.

Depending on the jurisdiction, a shared understanding of forced marriage as a form of family and domestic violence could be achieved by:

- explicitly including forced marriage in definitions of family and domestic violence
- where relevant, clarifying that forced marriage is already captured in family and domestic violence definitions
- developing education and awareness raising activities to ensure more consistent recognition as form of family and domestic violence
- ensuring definitions of family and domestic violence can also apply to conduct leading up to forced marriage, including coercion, threat and deception for the purpose of forcing a person into marriage.

## 2. Enhancing Education and Awareness Raising

Stakeholders have emphasised the importance of ensuring enhanced forced marriage civil protections and remedies are part of a holistic coordinated response. This includes community education and awareness raising, as well as training for frontline responders. Education and awareness raising may also increase the number of people seeking support, and so must go hand in hand with appropriate support services.

Any new education and awareness-raising activities will need to be culturally appropriate and developed with communities that are affected by forced marriage.

New education and awareness-raising activities may include:

- targeted awareness raising, including on identifying of signs of forced marriage and how to respond, including culturally appropriate, accessible and trauma-informed responses
- community education and awareness raising, and
- targeted awareness raising and education for frontline responders, including family and domestic violence service providers.

## 3. Strengthening civil protections and remedies

Currently, civil protection mechanisms for people in or at risk of forced marriage are limited, are not always tailored to forced marriage contexts, and vary across jurisdictions.

Civil protections and remedies are court-issued legal protections to ensure people or organisations behave in specific ways. These protections aim to prevent future harm, offering quick protection for those in need.

In Australia, academic research and advice from civil society organisations describe the need to provide people facing forced marriage with legal tools to avoid or exit forced marriage. The research argues that civil protections provide additional tools that are more accessible due to the lower standard of proof required (balance of probabilities) compared to the standard of proof required for a criminal conviction (beyond a reasonable doubt). Research also suggests that civil orders may be a preferable legal option for some who fear that members of their family would otherwise be arrested and prosecuted.

#### *Options to establish enhanced civil protections and remedies*

Australian governments are considering options to establish enhanced civil protections and remedies for forced marriage. Two of these options may include:

- **Option A:** integrating enhanced protections into existing Commonwealth, state and territory family and domestic violence frameworks
  - o This could include through developing and agreeing shared principles or features of enhanced protections for jurisdictions to integrate as appropriate in their family and domestic violence frameworks.

This option proposes integrating forced marriage civil protections and remedies into existing Commonwealth, state and territory, family and domestic violence frameworks. This approach would build on existing expertise and systems. Family and domestic violence frameworks vary across jurisdictions, and in some jurisdictions, it may be more appropriate to integrate civil protections for forced marriage into alternative civil protection frameworks.

By leveraging existing expertise and systems, this option aims to streamline access to broader support services, including specialised courts and protections. Strong education, awareness raising and capacity-building efforts would be necessary to support implementation, with information-sharing between jurisdictions crucial to supporting this. This information-sharing could be supported through the National Domestic Violence Order Scheme.

In the first instance, jurisdictions may focus on developing and agreeing shared principles or features of enhanced protections for jurisdictions to integrate as appropriate in their family and domestic violence frameworks. By agreeing to principles or features, governments would be committing to address those needs, while retaining implementation flexibility. Jurisdictions could choose to use existing mechanisms, such as family and domestic violence frameworks, establish new frameworks, or use other preferred methods to embed and address the principles or features.

- **Option B:** establishing new protections through Commonwealth legislation, with implementation support from state and territory governments.

Option B proposes the establishment of a new forced marriage order through a standalone Act of the Commonwealth, aiming to create nationally consistent legislation that applies equally and consistently across all jurisdictions.

As with Option A, collaboration between all jurisdictions would be necessary to ensure accessibility, timeliness and effectiveness of Commonwealth orders. While offering national consistency, this model may require applicants to access multiple systems to seek protection and support. Therefore, clear referral processes and awareness raising will be important to mitigate this risk.

Effective information-sharing processes would also play an important role in facilitating integration across jurisdictions.

## **Enhanced civil protections and remedies – key features**

### *Grounds for Orders*

'Grounds for orders' are the reasons a court can grant an order and are outlined in legislation.

Potential grounds for orders for forced marriage related civil protections could include the court being satisfied, on the balance of probabilities, that a person has reasonable grounds to fear they will be forced to marry.

These grounds could stem from threats of harm to the person, or others, the risk of being taken overseas for a forced marriage, or coercive behaviour. Grounds that already exist in state and territory frameworks would remain relevant, including real or anticipated violence.

### *Scope of Orders*

The scope of orders outlines the range of orders that might seek to:

- prevent a forced marriage
- assist a person to exit a forced marriage
- protect a person from harm they might experience in connection to a forced marriage.

Priority will be given to civil protections addressing the most common and significant risks and harms faced, including orders that:

- prevent a respondent from forcing, attempting to force, aiding, or abetting a forced marriage involving the protected person
- prevent the respondent from taking steps to organise a marriage for the protected person, such as applying for a passport for the protected person, booking flights, engaging a celebrant, or completing a notice of intent to marry

- prevent a respondent from forcing, attempting to force, or coercing a person to remain in a forced marriage
- prevent the removal of a protected person from Australia
- restrain the protected person from travelling internationally, in exceptional circumstances and balanced with human rights considerations
- require the protected person's passport to be handed over to the Court, in exceptional circumstances and balanced with human rights considerations
- support the repatriation of a person taken overseas for the purpose of a forced marriage, including by requiring a respondent to assist with the repatriation of a protected person in a specified manner (such as booking flights for the protected person to return to Australia)
- require a respondent to disclose the whereabouts of a protected person
- prevent the respondent from coercing, aiding or abetting any other person undertaking conduct that is prohibited by the order
- restrain a respondent from committing particular actions or types of harm.

### *Applicants*

Victim-survivors may face barriers in applying for civil protection orders. To address this, it is proposed that a range of people be allowed to make an application for a civil protection order on behalf of the person in or at risk of forced marriage. Potential applicants could include:

- the person in or at risk of forced marriage,
- a parent or guardian
- police officers
- child protection agencies



- specified community organisations, service providers and/or other non-government organisations
- courts themselves may initiate orders if deemed appropriate during other proceedings.

While a broader range of applicants will provide more accessible pathways to seek civil protections, there may also be risks, such as making it difficult for the court to determine if the applicant is acting in the best interests of the victim-survivor.

### *Respondents*

A respondent is the person against whom a civil protection order is made or directed. Requirements for directing civil protection orders can vary across Australia. Some frameworks require an order to be directed to a family member or an intimate partner of a victim-survivor, while others allow the court to direct the order against any person.

For enhanced forced marriage civil protections, potential respondents could include:

- family members, including parents and extended family members
- the intended spouse of the person that is at risk of forced marriage
- marriage celebrants, including for religious, cultural or legal ceremonies
- other person/s involved in forcing a person to marry, including where they are forcing, attempting to force, aiding, or abetting a forced marriage.

### *Victim-survivor agency*

Consideration of victim-survivor wishes is crucial to ensure their agency is respected throughout civil protection processes, particularly in cases where orders may impact their human rights and freedoms. Proposed provisions would allow courts to consider the wishes of the protected person when issuing orders.

Victim-survivors may also face pressure from family and community members to oppose or abandon protection orders. This will also require consideration.

### *Courtroom protections and assistance through the legal process*

There are currently courtroom protections available through family and domestic violence systems, including for vulnerable or special witnesses applying for civil protection orders, and it is proposed that people in or at risk of forced marriage should be afforded the same protections.

Courtroom protections can prevent the intimidation of witnesses and support their safety and wellbeing and can include:

- arrangements to ensure the victim-survivor does not have to see the respondent, for example by use of a screen or by giving evidence through an audio-visual link
- having a support person in court
- giving evidence in a closed court
- not being cross-examined by self-represented respondents.

Other services and actions may also be appropriate to streamline support for people in or at risk of forced marriage applying for civil protections, including:

- education and awareness raising activities for frontline responders, legal staff, courts and judiciary (see Part 2)
- support services to assist victim-survivors with their applications
- pathways to refer those at risk to government-funded support services.



### *Interim orders and ex-parte hearings*

Interim and ex-parte orders allow urgent hearings for civil protection orders. They don't require notice to be provided to the other party and are generally time-limited until regular court processes can occur.

Courts generally make interim or ex-parte orders. However, legislation can be drafted to allow parties like police officers to make an interim or ex-parte order in certain circumstances. Victim-survivors of forced marriage may face immediate risks to their safety. It is therefore proposed that interim and/or ex-parte orders made by courts should be made available, if necessary, to ensure their safety.

### *Service, Enforcement and Breaches*

Police officers are generally responsible for servicing civil protection orders in Australia and it is proposed that police also service forced marriage related civil protection orders. This would provide a high level of assurance that a respondent is made aware of the order, and promote compliance, accountability and assurance of the safety of the protected person.

### *Other Remedies*

There may be other remedies that can be considered in a model to deliver enhanced forced marriage civil protections and remedies, such as the streamlining of annulment processes for those in forced marriage.

### *Risk factors and barriers to seeking support*

Forced marriage is not exclusive to any particular cultural group, religion or ethnicity. However, some communities may face higher risks due to factors like displacement, visa status, language barriers or lack of community support. Discrimination and a lack of culturally safe services can make it hard for those at risk to get help. People with a disability may also face additional challenges. Family and cultural pressures may also make it difficult for individuals to speak out against family or community members.

### *Supporting children*

Existing protections for children are available through state and territory child protection frameworks and through the Family Law Act 1975 (Cth). However, additional consideration needs to be given to the specific support and access needs of children seeking to avoid or exit a forced marriage. This could include consideration of additional support to access court documents and forms, as well as appropriate courtroom protections.

### **Conclusion**

Feedback provided through this consultation will inform all Australian governments' work to develop a model to enhance forced marriage protections and remedies. This work is ongoing and subject to further consideration and decision by all jurisdictions.

If you have any questions or additional comments you are welcome to contact the Attorney General's Department at [ForcedMarriage@ag.gov.au](mailto:ForcedMarriage@ag.gov.au).

# Consolidated consultation questions

## *Proposal for consultation*

1. Are these effective options to improve nationally consistent responses to forced marriage? Are there different options that should be considered?

## *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*

2. Should forced marriage be recognised as a form of family and domestic violence? Why?
3. What legal, policy changes or additional guidance is needed to better recognise forced marriage as a form of family and domestic violence?
4. What enhancements or additional guidance might be needed to help family and domestic violence services more consistently recognise forced marriage as a form of family and domestic violence?

## *Part 2: Enhancing education and awareness raising*

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

## *Part 3: Strengthening civil protections and remedies*

### *Proposal for feedback*

8. 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 and do they need a national response?
9. This paper discusses two options to strengthen civil legal 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?
10. Under Option A are there civil protection frameworks alternative to family and domestic violence frameworks that could be used to strengthen forced marriage civil protections?

### *Grounds for Orders*

11. 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?

### *Scope of Orders*

12. 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 children? If not, what else should be addressed?
13. Are there any other risks or unintended consequences of the proposed protections that should be considered?

### *Applicants*

14. 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?
15. 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?

### *Respondents*

16. 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)?

### *Victim-survivor agency*

17. How can the risk of victim-survivors being coerced into abandoning orders be addressed?
18. How can the views of victim-survivors, including children, best be sought and incorporated into the process for hearing and issuing civil protections for forced marriage?

### *Courtroom protections and assistance through the legal process*

19. 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.

### *Interim orders and ex-parte hearings*

20. What grounds should be relevant to making interim orders where a person is in or at risk of forced marriage?
21. 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?

22. 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?

### *Service, Enforcement and Breaches*

23. Are there any circumstances where personal service of orders should not be required (for example via electronic service)? If so, what are those circumstances?

### *Other Remedies*

24. Are there remedies, in addition to civil protections, for people in or at risk of forced marriage that should be considered?
25. 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?

### *Risk factors and barriers to seeking support*

26. 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?
27. What risks and barriers might a person face if they seek protection through legal systems? How can these be mitigated?
28. Engaging with support 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?

### *Supporting Children*

29. What additional supports and protections could be considered to help children to access the proposed legal protections and to assist them through applications, courtroom and other legal processes?

