



Australian Government  
Attorney-General's Department

# Enhancing Civil Protections and Remedies for Forced Marriage

CONSULTATION PAPER | 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

Forced marriage is a challenging issue and reading this paper may bring up strong feelings for some people.

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.

## Note on terminology

This consultation paper uses the term ‘victim-survivor’ to describe an individual who has experienced forced marriage or who has experienced conduct intended to cause a person to enter into a forced marriage. We acknowledge that individuals who have experienced forced marriage may not identify with this term.

## Making a submission

This consultation paper invites comments to inform Australian governments’ work to tackle forced marriage through a coordinated national response, including through the development of a model to enhance civil protections and remedies for people in, or at risk of, forced marriage.

We are interested in hearing from all members of the community, particularly those with lived experience of forced marriage, communities impacted by forced marriage, legal practitioners, service providers, frontline responders, community groups, and academia.

### *Online survey or written 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 are welcome to only answer those questions that are relevant to you or your organisation. 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, please contact [ForcedMarriage@ag.gov.au](mailto:ForcedMarriage@ag.gov.au).

If you would like to provide your feedback in a language other than English, please contact [ForcedMarriage@ag.gov.au](mailto:ForcedMarriage@ag.gov.au).

If you have other accessibility requirements, please let us know by contacting [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

All Australian governments are working together to better protect people in or at risk of forced marriage. The measures described in this paper do not represent the agreed view of the Commonwealth, state or territory governments or commit governments to action. Responses to this consultation paper will inform further work by all Australian jurisdictions to develop and agree to a model to enhance forced marriage civil protections and remedies.

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.

Australian governments are committed to working together through a coordinated national response that strengthens civil protections and remedies available to people in or at risk of forced marriage. Cooperation across governments is fundamental to achieving a model that is equitable, accessible and enforceable, and that addresses the unique challenges of forced marriage responses, such as preventing victim-survivors from being forcibly removed from Australia and providing protections that are available for both children and adults.

Enhanced civil protections and remedies would aim to provide new intervention and prevention tools that complement Australia's existing forced marriage response, which includes:

- the dedicated forced marriage support stream available through the Australian Government's Support for Trafficked People Program
- new funding from the Australian Government to establish a Forced Marriage Specialist Support Program in 2025, delivering specialised support as well as community education and awareness raising
- grant funding for community organisations to deliver programs to address forced marriage and support those experiencing or at risk of forced marriage
- MyBlueSky, Australia's dedicated national service for people who are in a forced marriage or worried about being forced to marry, delivered by Anti-Slavery Australia.

The Australian public's input is important to ensure this work meets community needs and delivers enhanced civil protections for people in or at risk of forced marriage.

## Forced Marriage

Forced marriage occurs when a person gets married without freely and fully consenting because they have been coerced, threatened or deceived, or are incapable of understanding the nature and effect of a marriage ceremony, or are under the age of 16 when they were married.

Forced marriage can happen to anyone from any background. Young women and girls are most at risk, but people of all ages, genders, sexual orientations, cultures or religions can be forced into a marriage. Forced marriage is considered a slavery-like practice in Australia, but is also recognised as a form of family and domestic violence and a form of gender-based violence. Forced marriage has been identified as an issue for consideration in the *National Plan to End Violence Against Women and their Children (2022 2032)*.

It is important to note that forced marriage is distinct from arranged and sham marriages. Arranged marriages are legal and occur where family or community members play a leading role in introducing or choosing a spouse, with both parties consenting to the marriage. Sham marriage takes place when a fake marriage is willingly entered into by both parties for fraudulent purposes.

### **Existing response to forced marriage in Australia**

Australia's response to forced marriage forms part of the Australian Government's strategy to combat serious forms of exploitation, including human trafficking, slavery and other slavery like practices such as servitude and forced labour. Collectively, these practices are often referred to as 'modern slavery.'

Australia's strategy to combat modern slavery, including forced marriage, is set out in the [National Action Plan to Combat Modern Slavery 2020 – 2025](#) (National Action Plan). A specific commitment within the National Action Plan is to develop a model to enhance civil protections and remedies for individuals in or at risk of forced marriage.

The Commonwealth *Criminal Code Act 1995* (the Criminal Code) contains offences that criminalise forced marriage. These were introduced in 2013. Under the Criminal Code, it is illegal to cause a person to enter into a forced marriage, 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.

The Australian Federal Police (AFP) are the primary investigative agency for forced marriage offences in Australia. The AFP can also refer people in or at risk of forced marriage for support, including safe accommodation, financial support, counselling, and legal immigration advice.

This support is available even if the person does not wish to assist with a criminal investigation or prosecution.

### **Support services**

Support is provided 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. Currently, only the AFP can refer clients to the STPP. However, in mid-2024, an additional referral pathway onto the STPP will be established. This will mean that victims-survivors will be able to access the STPP through a community service provider, without the requirement to engage with the AFP. Following an open competitive grant process, the Salvation Army was selected to implement the Additional Referral Pathway pilot until 28 November 2025. They will assess possible victim-survivors' eligibility for the STPP between 9am and 5pm in each state and territory, and have a website and message service available for access to information after hours.

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 individualised needs-based prevention and early intervention support for those at risk of, or who have experienced, forced marriage to meet the health, wellbeing, physical and social needs of clients, including essential access to counselling and emergency accommodation where required. The FMSSP will have a 'no wrong door' approach, with people in or at risk of forced marriage able to access the program through 'soft entry' points across the community. The FMSSP will also include new community education and awareness raising initiatives, working closely with communities in Australia.

To complement the establishment of the FMSSP, the Australian Government has committed \$2.2 million to extend the *Speak Now* project, delivered by Anti Slavery Australia, to continue the delivery of forced marriage prevention through education, awareness raising and collaboration.

**Prevalence and data**

*Number of reports*

The number of reports of forced marriage to the AFP account for a significant proportion of all modern slavery reports. Forced marriage is often hidden and is under-reported and under-detected. Victim survivors are often young and may fear coming forward and making a report. Coercion and control may also prevent victim-survivors from seeking help. In Australia, research indicates as few as one in five victim-survivors of modern slavery are detected.

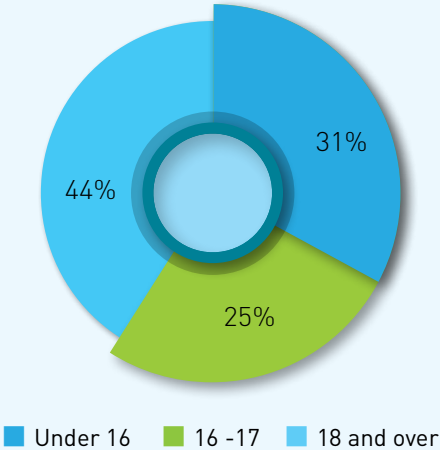
**Table 1: Modern slavery reports received by the AFP between 2018 FY to 2023 FY (5 years)**

	2018-19 FY	2019-20 FY	2020-21FY	2021-22 FY	2022-23 FY
<b>Forced marriage</b>	95	92	79	84	90
<b>Total modern slavery reports</b>	220	223	224	294	340

*Age of victims-survivors*

The majority of reports to the AFP involve victim-survivors that are under the age of 18, with most of these under the age of 16. From 1 July 2016 to 30 June 2022, 56% of reports involved victim survivors under the age of 18, comprising 31% under the age of 16 and 25% between 16 and 18 years of age.

**Graph 1: Forced marriage reports – Victim-survivor age at time of report (5 year analysis)**



*Note: These statistics relate to reports of offences that have occurred, attempted offences and offences at risk of occurring.*



## Case Examples

The stories below provide examples of some of the ways people may be forced into marriage. These are fictional examples, drawing from scenarios in real cases.

### Case Example

*Yasmin is a 15-year-old Australian citizen.*

*Yasmin travels overseas to visit her grandparents while her parents remain in Australia. She soon finds out that her parents have arranged for her to marry her cousin, who is almost 20 years older than her, on this trip. Yasmin tells her parents that she doesn't want to get married, but they insist that the marriage needs to go ahead, emphasising the importance of the marriage for their family and community.*

*Her relatives take Yasmin's passport away and bring her to another relative's home in a part of Yasmin's home country that she is unfamiliar with. She is not allowed to leave the house and is not given access to a phone, except when her parents call her.*

*One day, Yasmin's parents call her to tell her that she will only be able to return to Australia and go back to school if she agrees to marry the man they have chosen for her. Yasmin tells her parents she agrees to marry the man but once she ends the call with them, she quickly contacts a close friend in Australia to confide in her about what has happened and how she does not want to go ahead with the marriage. She tells her friend she does not know where she is and does not know how to get help. Her friend contacts a local community organisation to seek help and advice.*

### Case Example

*Sam is a 20-year-old gay man. He has been dating his boyfriend in secret for two years.*

*Sam's parents are very traditional. Sam cares a lot about his parents and is afraid they will not approve of his boyfriend..*

*One day, Sam's uncle sees Sam with his boyfriend and informs his parents. He convinces Sam's parents to hastily marry Sam to a woman to avoid tarnishing the family's reputation within their community.*

*Soon after, his parents find a woman from their community who agrees to marry him. Sam has never met her before and tries to tell his family that he doesn't want to marry her. Sam's uncle tells him he is being selfish and bringing shame on their family and insists that Sam's parents continue the wedding preparations. Sam relents and goes through with the legal wedding ceremony but is unhappy and does not wish to remain in the marriage. When he voices this, Sam's uncle gets angry and convinces Sam's parents to prevent him from leaving the marriage in fear that Sam may return to his boyfriend.*

*Sam is afraid that speaking up will get his parents in trouble by reporting it to the police. Sam feels he may be able to appeal to his parents but is concerned that his uncle may continue to pressure Sam's parents into forcing him to remain in the marriage.*

### **Case Example**

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

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

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

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

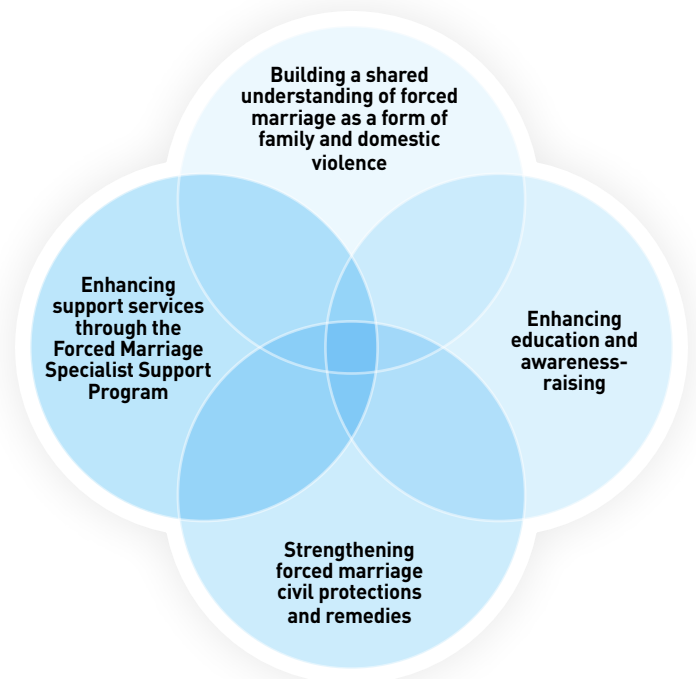
# Proposal for consultation

This consultation paper outlines draft options for a model to strengthen Australia's approach to forced marriage and deliver enhanced forced marriage civil protections and remedies. These options, and others, remain under discussion by all Australian governments and are subject to further consideration and decision.

The three key actions considered in this paper are:

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. **Enhancing education and awareness raising** to support early identification, intervention and prevention
3. **Strengthening forced marriage civil protections** and remedies, through
  - a. **Option A:** integrating enhanced protections into existing Commonwealth, state and territory family and domestic violence frameworks
    - i. 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, or
  - b. **Option B:** establishing new protections through Commonwealth legislation, with implementation support from state and territory governments

This work will be complemented by the Australian Government's commitment to enhance support for people in or at risk of forced marriage, by establishing the Forced Marriage Specialist Support Program, commencing January 2025.



## Consultation Questions

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

### Outcome sought

People in or at risk of forced marriage are able to access supports and protections through family and domestic violence systems in each Australian jurisdiction.

### Summary

Forced marriage generally occurs within family contexts. However, across Australia, recognition of forced marriage as a form of family and domestic violence varies. For example, New South Wales, Victoria and South Australia all recognise forced marriage as a form of family violence, but Queensland, Western Australia, Tasmania, the Northern Territory and Australian Capital Territory do not explicitly recognise forced marriage in relevant legislation.

Family and domestic violence frameworks include protections and supports that can benefit victim-survivors of forced marriage. Relevant protections and support 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 limits forced marriage victim-survivors' access to these protections and supports. In some cases, this is because relevant protections and supports are not available to people in or at risk of forced marriage. In other cases, access barriers may arise from lack of awareness or recognition of forced marriage as a form of family and domestic violence.

If forced marriage is recognised in all jurisdictions as a form of family and domestic violence, jurisdictions will also need to provide guidance on the definition and meaning of forced marriage. This could be done through reference to the definition of forced marriage in the Criminal Code (Cth), which defines forced marriage as occurring when:

- a) either party to the marriage (the victim) entered into the marriage without freely and fully consenting:
  - i. because of the use of coercion, threat or deception; or
  - ii. because the victim was incapable of understanding the nature and effect of the marriage ceremony; or
- b) when the marriage was entered into, either party to the marriage (the victim) was under 16.

The proposal below outlines actions that could build a shared understanding of forced marriage as a form of family and domestic violence across Australia and subsequently improve the availability of family and domestic violence services to forced marriage victim-survivors.

## Proposal for feedback

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
  - for example, by including forced marriage as a statutory example of family and domestic violence
- developing education and awareness raising activities and resources with key stakeholders so that forced marriage is more consistently recognised as a 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.

## Consultation Questions

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 consistently recognise forced marriage as a form of family and domestic violence?

# Part 2 – Enhancing education and awareness raising

## Outcomes sought

Understanding and awareness of forced marriage increases across communities and organisations, leading to improved identification and culturally appropriate and timely responses to forced marriage from community members and frontline responders.

## Summary

Feedback from stakeholders to date has emphasised the importance of ensuring enhanced forced marriage civil protections and remedies form part of a holistic response to forced marriage that 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 go hand in hand with appropriate support services.

Governments are considering the most effective way to work together to strengthen a holistic coordinated response across all jurisdictions. These actions would seek to complement other proposals in this consultation paper, and could include education and awareness raising activities with family and domestic violence services, forced marriage specific services, other frontline responders and the judiciary. Any new education and awareness-raising activities will need to be culturally appropriate and developed with communities that are affected by forced marriage.

The Australian Government-funded FMSSP will commence in 2025 and is expected to have a strong role in education and awareness in impacted communities. The selected provider will build relationships and networks in local communities, and deliver targeted education and awareness raising about forced marriage in a culturally appropriate manner to foster behaviour change and strengthen family

relationships. The FMSSP will be evaluated following 18 months of operation, providing an opportunity to further consideration of education and awareness-raising needs to support early intervention and prevention of forced marriage.

## Proposal for feedback

The list below highlights activities that governments may progress. Work to strengthen forced marriage education and awareness raising will be informed by learnings from the establishment of the FMSSP and existing activities to address forced marriage.

Key activities may include:

- targeted awareness raising, including on identifying 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.

## Consultation Questions

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

## Outcomes sought

Improved civil protections and remedies that provide intervention and prevention options for people in or at risk of forced marriage.

## Summary

Currently, civil protection mechanisms for people in or at risk of forced marriage are limited, not tailored to forced marriage contexts, and vary across jurisdictions. This part of the proposal considers the protections that may be most useful to people in or at risk of forced marriage. This includes considering actions that protection orders could cover and who the protection orders could apply to.

### *What are civil protections and remedies?*

Civil protections and remedies are orders issued by courts that can legally require people or organisations to act, or not act, in a certain way. Civil protections can protect victim-survivors from future violence and do not need to be initiated by the police. They can result in conditions or restrictions being placed on a person against whom an order is made. Civil protections can often be ordered by a court quickly, providing time-sensitive protections for those that need them.

### *What civil protections are currently available?*

All jurisdictions have civil protection frameworks that provide protections to victim-survivors of family, domestic and personal violence. These frameworks offer a range of protections, including to prohibit a respondent from harming a protected person or from contacting a protected person. These protections may be relevant to people in or at risk of forced marriage.

However, there are also gaps and limitation in the application of existing civil protections to people in or at risk of forced marriage. For example, there are varying types of protections available across all jurisdictions, with some only available in limited circumstances, and in specific family or intimate partner contexts.

Under the *Family Law Act 1975* (Cth), a court can make a parenting order that deals with parenting arrangements for a child. This can include any orders about the care, welfare or development of a child. In certain circumstances, the court may make a location order that can require any person or organisation to provide the court information about the location of a child. If a parenting order is made to prevent international travel, an application can be made to the AFP to have the child's details listed on the Airport Watch List. This will establish a Passenger Analysis Clearance and Evacuation System (PACE) alert, which places an alert to prevent a child from leaving Australia. This can be used to prevent a child being taken overseas for the purpose of a forced marriage.

However, parenting orders are designed to govern the relationship of children and their parents or carers, and cannot provide protections for adults. This also means that adults cannot be placed on the Airport Watch List.

The proposed enhancements set out in Part 3 aim to address gaps in available civil protections and achieve more consistent and fit-for-purpose protection for people in or at risk of forced marriage.

### *Why do we need stronger civil protections and remedies for forced marriage?*

The criminal justice response to forced marriage serves an important role as a deterrent, sending a clear message that this conduct is not accepted in Australia. Stronger civil protections and remedies for forced marriage would complement the criminal justice response, providing practical tools that can achieve preventative and time-critical outcomes for victim-survivor safety and wellbeing. Australian research has highlighted the lengthy and complex nature of human trafficking and modern slavery (including forced marriage) matters for police and prosecutors, which have been shown to take an average of over two years to finalise regardless of outcome. Furthermore, the AFP is also often limited in the early intervention steps it can take and the protections it can provide.

Internationally, the United Kingdom (UK) provides an example of a country that has used civil protections to help address forced marriage. In 2008, the UK introduced forced marriage protection orders (FMPOs). The introduction of FMPOs drew on recommendations from stakeholders that civil protections, rather than criminal sanctions, were the most appropriate way to tackle forced marriage. These stakeholders argued that many victim-survivors would be reluctant to see their families prosecuted, resulting in fewer people seeking help. Research in the UK shows a strong uptake in the use of FMPOs, with approximately 200-250 FMPOs having been granted each year in England and Wales from 2014 to 2023.

In Australia, academic research and advice from civil society organisations describe the risks facing victim-survivors of forced marriage and the benefit of legal tools, such as civil protection orders, to help victim-survivors 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). Consistent with the recommendations of stakeholders in the UK, Australian research with people facing forced marriage also suggests that civil orders may be a preferable legal option for some who may fear that members of their family would otherwise be arrested and prosecuted.

Previous Parliamentary inquiries have considered Australia's response to forced marriage and other forms of modern slavery. A number of submissions to these inquiries highlighted gaps in the legal framework for protecting people in or at risk of forced marriage. They emphasised that while some protections are available for children, equivalent protections are not available for adults.

In these submissions, stakeholders advocated for the introduction of a civil framework that ensures protections are available to victim-survivors regardless of age and location, and the final reports of the inquiries recommended the Commonwealth government consider extending protection orders relating to forced marriage to people over 18 years of age.

The proposals outlined in this paper would seek to complement Australia's existing forced marriage response by enhancing intervention and prevention tools that can achieve time critical outcomes for people in or at risk of forced marriage.

The UK's experience, as well as stakeholder feedback to date, show that civil protections and remedies need to be supported by a strong support service system, as well as culturally appropriate education and awareness raising initiatives with communities most affected by forced marriage. This consultation paper seeks views on supports, including through family and domestic violence service systems, and on education and awareness raising activities. The new FMSSP will also contribute significantly to strengthening available supports for people in or at risk of forced marriage.



## Proposal for feedback

The sections below seek feedback on proposed key features of enhanced civil protections and remedies for forced marriage, as well as options to establish these through Commonwealth law or by integrating enhancements into existing family and domestic violence frameworks. The proposed key features and options to establish these are for discussion and further consideration by all Australian governments.

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

### *Option A: Integration with family and domestic violence frameworks*

Option A would seek to integrate enhanced civil protections and remedies in existing Commonwealth, state and territory family and domestic frameworks, building on existing expertise and systems.

Research draws links between forced marriage and coercive control as a form of family and domestic violence, with perpetrators using abusive behaviours in a pattern over time to force children and adults into marriage. This option seeks to reflect these linkages, building on existing family and domestic violence frameworks and expertise. Family and domestic violence frameworks vary across jurisdictions, and in some jurisdictions, it may be more appropriate to integrate civil protections for forced marriage in alternative frameworks. For example, in Tasmania the Family Violence Act 2004 (Tas) addresses conduct committed by a person's spouse or partner only and alternate framework/s may be better placed to embed civil protections for forced marriage.

Integration with existing systems provides an opportunity to link into broader family and domestic violence supports, including specialised courts, protections, and assistance. Building on existing systems may also reduce the risk that people in or at risk of forced marriage will need to go through different courts and systems to access the breadth of support and protection that they need.

To integrate the forced marriage protections in family and domestic violence frameworks, all Australian governments would need to agree to amend their frameworks as appropriate to implement enhanced protections and remedies. This model would require legislative amendments in each jurisdiction (where appropriate), which may be complicated by the different legislative frameworks and approaches across jurisdictions.

There would also need to be strong education, awareness raising and capacity-building to support implementation, including with police officers and other frontline officials, service providers, courts and judiciary, and with communities. Strengthened coordination between different agencies and service providers at both the Commonwealth and state and territory levels will be key.

Information sharing between jurisdictions will be important, and could be supported through the National Domestic Violence Order Scheme (NDVOS), which allows all Domestic Violence Orders issued in an Australian state or territory to be automatically recognised and enforceable across Australia.

### *Shared principles*

In the first instance, Option A could be progressed through development of shared principles or features of enhanced protections that jurisdictions would integrate as appropriate in their family and domestic violence frameworks, or other relevant frameworks.

The principles or features would underpin all jurisdictions' approach to enhancing forced marriage civil protections and remedies. They could also guide implementation of proposals in Parts 1 and 2 of this paper.

By agreeing to principles or features of enhanced civil protections and remedies, 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.

### **Option B: Standalone Act of the Commonwealth**

Option B would establish a new forced marriage order through a standalone Act of the Commonwealth. It would seek to achieve similar protection outcomes as proposed in Option A.

A standalone Act of the Commonwealth provides an opportunity to establish national legislation that applies equally and consistently across all jurisdictions. The Act would allow courts to make orders that address the prevention and protection needs of people in or at risk of forced marriage.

As with Option A, Option B would necessitate collaboration and coordination between all jurisdictions to ensure that Commonwealth orders are accessible, timely and effective. For example, this could be achieved by conferring jurisdiction to state and territory courts to hear applications for Commonwealth orders. Effective communication and information sharing processes between jurisdictions would be important for coordination and effective integration, including consideration of the NDVOS. Similarly, Option B could consider the role of state and territory police in serving and enforcing orders.

While nationally consistent, this model would potentially require applicants to access multiple systems to seek protection and support. Clear referral processes, and education and awareness raising on these, including with police officers and other frontline officials, service providers, courts and judiciary, and with communities, will again be important to mitigate risks.

### **Consultation Questions**

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?
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?

## Enhanced civil protections and remedies – key features

### Grounds for Orders

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

For example, state and territory civil protection frameworks generally regard the existence, or anticipation, of violence to be sufficient grounds to grant civil protections to an individual.

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. This could be due to:

- threats of harm to the person (or another person, such as a sibling)
- risk or expectation of being taken overseas for the purpose of a forced marriage, or
- the respondent undertaking coercive behaviour to force a marriage.

Grounds that already exist in state and territory frameworks would also continue to be relevant, including existing, or anticipation of, violence.

### Consultation Questions

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

The scope of orders outlines the range of orders or actions that might seek to prevent a forced marriage from taking place, help a person to exit a forced marriage, or help protect a person from any harm they might experience in connection to a forced marriage (including before a forced marriage has taken place).

The scope of orders is under discussion and consideration by Australian governments and will also depend on the preferred implementation mechanism (outlined in Options A and B above). Australian governments will prioritise the civil protections that can address the most common and significant risks and harms faced by people in or at risk of forced marriage. These might include 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.

The proposed scope listed above may impact other aspects of people's lives and Australian governments are considering these issues to avoid any inadvertent consequences. For example:

- an individual's visa arrangements may be tied to their spouse or family's visa status and the granting of a protection order may cause the sponsoring person to remove support for the victim-survivor's visa
- the granting of a protection order may increase the risk of harm to other members of the victim-survivor family, as a perpetrator may attempt to further pressure the victim-survivor into the marriage through other members of the family, such as siblings.

### Consultation Questions

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

Victims-survivors may be reluctant or unable to make an application for a civil protection order for a range of reasons, including age, and other barriers such as cultural and language barriers. 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 victim-survivor. Potential applicants could include:

- the person in or at risk of forced marriage
- a parent or guardian on behalf of a child
- a guardian on behalf of someone over the age of 18 with impaired decision making abilities
- police officers
- child protection agencies, and
- specified community organisations, service providers and/or other non-government organisations

There may also be merit in considering provisions that allow a third party to bring forward an application, with the permission of the Court. 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.

Courts may also be able to make an order of their own motion without an application, if appropriate in the course of other proceedings.

### Consultation Questions

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

A respondent is the person against whom a civil protection order is made. In other words, it is the person who has to change their behaviour to act in accordance with the order. Jurisdictions have varied rules about who can be a respondent in applications for civil protection orders. For example, some jurisdictions' family and domestic violence frameworks only allow orders to be made against immediate family members or intimate partners. Parenting orders under the *Family Law Act 1975* (Cth) allow for injunctions to be made against any person, if the court considers it appropriate to ensure the welfare of the child.

To enhance forced marriage civil protections, Australian governments are considering whether it would be appropriate to define respondents or provide the court discretion to make orders that can apply to any person that it considers appropriate. In cases of forced marriage, the person posing a risk may not be a family member. For example, the intended spouse or a community member may attempt to force a person into marriage.

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.

### Consultation Questions

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

Taking victim survivor wishes into consideration will be important to ensure they are able to exercise their agency through processes connected to applying for and issuing civil protections and remedies. This will be particularly relevant for any orders that may impact human rights and freedoms of victim-survivors – for example to stop a person being taken offshore for the purpose of forced marriage.

There may also be instances of people in or at risk of a forced marriage being pressured by family or community members to say that they do not consent or wish to proceed with civil protection orders, and it is important that victim-survivors are supported and protected in these cases.

To address these concerns, it is proposed that provisions allow for the court to consider the wishes and feelings of the protected person when making an order. This prioritises the agency of the protected person while

also recognising the potentially extreme psychological pressure and coercion a person facing forced marriage can experience.

### Consultation Questions

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*

Currently, jurisdictions have protections available through family and domestic violence systems, including for vulnerable or special witnesses applying for civil protection orders. It is proposed that people in or at risk of forced marriage should be afforded the same courtroom protections as other vulnerable witnesses.

Courtroom protections can prevent the intimidation of witnesses and support their safety and wellbeing. Depending on the circumstances, protections can include:

- arrangements to ensure the victim-survivor does not have to see the respondent, for example by using 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.

Additionally, courts exercising family law jurisdiction have the ability to assign Independent Children's Lawyers in cases involving children, in certain circumstances.

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 the judiciary (see Part 2)
- support services to assist victim-survivors with their applications, including victim-survivors from culturally and linguistically diverse communities
- pathways to refer those at risk to government-funded support services such as the FMSSP.

Australian governments welcome views on opportunities to strengthen supports for forced marriage victim-survivors as they engage with the legal system, for further consideration and discussion.

### Consultation Questions

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*

Interim and ex-parte orders allow for applications for civil protection orders to be heard urgently, without providing notice to the other party. They are generally time-limited, allowing for protections to be in place until the application can be heard through the usual court process.

Courts are generally responsible for making interim or ex-parte orders. However, in all jurisdictions, police officers are able to make interim orders in certain circumstances. For example, police officers are often able to make interim orders, or apply for interim orders via telephone, to ensure the immediate safety of a protected person.

Victim-survivors of forced marriage may face a range of imminent risks to their safety, including the risk of being exit-trafficked out of Australia. It is therefore proposed that interim and/or ex-parte orders made by courts should be possible if necessary to ensure the safety of victim-survivors, pending a final decision by the court about an application for a civil protection order.

#### **Consultation Questions**

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*

Police officers are generally responsible for serving civil protection orders in Australia. Having police serve orders provides a high level of assurance that a respondent is made aware of the order, promoting compliance, accountability and assurance of the safety of the protected person.

In some specific circumstances, it may be appropriate for orders to be served electronically. This option will require careful consideration to ensure a fair process. For example, an electronically served order might get lost in 'spam,' may be disregarded as a scam, or may not be accessible to respondents that do not have access to the internet, are from culturally and linguistically diverse backgrounds or have other accessibility requirements.

Forced marriage orders would be enforced by the relevant policing agency. However, if enhanced protections are integrated with state and territory domestic and family violence frameworks, further consideration will need to be given to orders relating to travel restrictions and actions outside of Australia because international jurisdiction is generally the purview of the Commonwealth. This is a significant complexity that Australian governments are considering further.

In all Australian jurisdictions, breaching civil protection orders attracts a criminal penalty. Similarly, breaching civil protections for people in or at risk of forced marriage would be a criminal offence.

#### **Consultation Questions**

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

There may be other remedies that can be considered in a model to deliver enhanced forced marriage civil protections and remedies. For example, consideration may be given to streamlining processes for those that are in a forced marriage to seek an annulment.

#### Consultation Questions

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

Forced marriage is not exclusive to any cultural group, religion or ethnicity. However, some communities in Australia may have greater exposure to risk factors that can be connected to forced marriage. These can include recent displacement, temporary or dependent visa status, language barriers or lack of community support and networks.

People that are in or at risk of forced marriage may also experience barriers accessing support. Barriers can include racism, discrimination, lack of access to culturally safe services and/or lack of accessible reporting pathways. People with disability may also experience additional risk factors, including limited access to appropriate and safe support services and networks.

The complex family, cultural and social dimensions of forced marriage can also act as a barrier to seeking support. For example, a young person may not feel comfortable speaking out about a family or community member.

Engaging in a legal process may bring feelings of shame to families and communities and can bring heightened risks for a person seeking support. If a person does access legal protections for forced marriage, it will be important that the corresponding risks are carefully considered and mitigated, and that the person seeking protection has appropriate supports in place.

#### Consultation Questions

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 systems and legal system 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

AFP reports show that from 1 July 2017 to 30 June 2022, 56% of forced marriage reports to the AFP were from people aged under 18 years, with 31% aged under 16 years.

Existing protections for children are available through state and territory child protection frameworks and through the *Family Law Act*



1975 (Cth). For example, the *Family Law Act* allows for injunctions to be made to protect children, including injunctions against any person if the court considers it appropriate to ensure the welfare of the child, and for children to be placed on the Airport Watchlist to prevent them being taken out of Australia.

However, additional consideration needs to be given to the specific support and access needs of children seeking to avoid or exit a forced marriage. For example, this could include consideration of any additional support that children at risk of forced marriage might need to access court documents and forms, as well as appropriate courtroom protections.

### Consultation Questions

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?

### Conclusion

Advice 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 jurisdiction.

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?

