



COMMISSION FOR CHILDREN AND YOUNG PEOPLE

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CCYPD/16/463

Justice Peter McClellan and Commissioners
Royal Commission into Institutional Responses to Child Sexual Abuse
advocacyandsupport@childabuseroyalcommission.gov.au

Dear Justice McClellan

Re: Submission in relation to Forced Marriage

This submission is being made to the Royal Commission into Institutional Responses to Child Sexual Abuse following the attendance of a representative of the Commission for Children and Young People (the Commission) at the Royal Commission's Multicultural Forum held in Melbourne on Tuesday 12 April 2016. At this forum, the issues of Forced Marriage and Female Genital Cutting (FGC) were raised by forum participants and Commissioner Coate indicated that the Royal Commission would be interested in receiving submissions in relation to these and other issues relevant to Culturally and Linguistically Diverse (CALD) communities. The Commission for Children and Young Peoples' role is to make improvements in policies and practices to improve children's safety and wellbeing, and especially those that are vulnerable. The Commission's interest in forced marriage stems from the evidence from formal data from the Australian Federal Police (AFP) and anecdotal reports from community workers that the majority of cases relate to young women under 18 years old, which is borne out by the more robust UK data.

This submission draws upon a presentation made by Dr Kathy Landvogt to the Commission's CALD Strategic Partnership Advisory Committee (SPAC), and the research and project work done by members of the Victorian Forced Marriage Network and national agencies based in NSW.

It is acknowledged that broad legislative work has been completed in response to criminalising forced marriage. However, it would appear that there has been a lack of consideration given to instituting a civil remedy approach to orders, and how to address the vulnerability of those young people still transitioning into adulthood. Whilst the Commission acknowledges that there are various information resources and nationally available phone support and legal advice, there is an absence of a readily accessible, well resourced and integrated support system.


There is concern amongst community workers that the majority of cases are going unreported. Whilst there are many reasons for this, the requirement of accessing support from the Support for Trafficked People Program (STPP) through the gateway of referral by the Australian Federal Police (AFP) would seem to be a major barrier. Those most at risk of forced marriage are young girls and women from CALD communities who face language and cultural barriers and the risk of social exclusion and physical harm from their family and community if they reject or report the forced marriage. These young people are turning to the grassroots community workers they know, only to find the workers have no access to funding to provide the diverse range of supports they need.



The UK model of service would appear to have important lessons for Australia and the Freedom Fund and Partnership based in NSW demonstrates what a responsible, flexible and client focussed service should look like. It is the hope of the Commission that this submission will provide you with some material to assist in understanding the complexity of forced marriage, the potential victims and what measures would be best suited to provide them with protection.

If you would like to discuss in greater detail any of the issues raised, please contact Dr Virginia Dods, Senior Policy Adviser, on (03) 8601 5285 or at virginia.dods@ccyp.vic.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Liana Buchanan', written in a cursive style.

Liana Buchanan
Principal Commissioner



1. General Overview

In Australia, there have been many legislative amendments criminalising forced marriage and removing loopholes, and investigation processes have been set up with the AFP, alongside legal advice and casework offered through national services. Community education initiatives have also been funded federally and resources developed to be appropriate for specific target audiences. However, there is not an integrated strategy of prevention and support that ensures that those identified as the most vulnerable are receiving adequate protection, particularly taking into account changing migration patterns.

There is limited research available in Australia and the only robust data relates to the small number of cases investigated by the AFP. These clear gaps in research and data on this largely unreported issue mean that effective strategies cannot be implemented and evaluated.

The UK's lengthier experience in dealing with this issue offers lessons that could be of great benefit to Australia, with the FMU (Forced Marriage Unit) having high visibility, collaborative working relationships with community agencies and innovative resource production, strengthened by comprehensive data collection and accountability. The UK experience shows that forced marriage is an issue that goes unreported in communities and can result in family homicides without effective intervention.

Consistent with global trends, the Australian experience has identified that the majority of people at risk of forced marriage are under the age of 18 years and generally female. This raises issues of cross jurisdictional responsibility and the need for child protection services in states and territories to be part of greater co-ordination between all levels of government including policing, and setting of standards for service provision. There is also a question as to whether state based child protection services should be responsible for young people who are at the age when they would normally not be picked up by, or would be exiting this program. The alternative is amendment of the *Family Law Act 1975* to make protective orders for children beyond the current age limit of 18 years, and/or the implementation of a system of civil protection orders.

The Freedom Fund and Partnership in NSW offers a best practice model whose integration of accommodation, case management and support and brokerage to cover the myriad of expenses of a traumatised survivor of forced marriage, is one which should be locally accessible to any person at risk of forced marriage across Australia.

Meaning of Forced Marriage

A forced marriage is a marriage that is entered into without the full and free consent of at least one of the intending spouses, because they have been coerced, threatened or deceived. In Australia, it is expected that individuals can choose if and when they wish to marry. All major religions require free and full consent to form a marriage. A forced marriage is a violation of human rights and in Australia it is illegal to force a person to enter a marriage (in Australia or overseas), and to be a party to a forced marriage (Attorney-General's Department website). Although forced marriage is recognised as a violation of human rights and a form of gender-based violence, there is no coordinated definition of forced marriage at an international level (European Parliament, 2016).

Some types of coercion are clearly identifiable, such as the use of physical or sexual violence, or refusing to let the person leave a particular place or location until they accept the marriage. Other forms of coercion may be more subtle, through the involvement of psychological or emotional

pressure, such as making the person feel responsible for, or ashamed of the consequences of not marrying, including bringing shame on their family (Attorney-General's Department website).

It must be recognised that this meaning of forced marriage applies in a broad Australian cultural context, but for newly arrived families and those within closed communities, cultural practices from the country of origin may be very powerful. In many countries around the world, traditional gender roles are entrenched and gender-based violence is endemic, with forced marriage being a consequence (European Parliament, 2016). Although forced marriage is illegal in Australia, in many countries the practice may not be illegal or the law is seen as subordinate to traditional practices (European Parliament, 2016). For young women and girls who are denied freedom of movement and other forms of autonomy, even forced marriage may be perceived as a form of liberation with some attractive privileges. In countries with no social welfare system, 'choice' and 'agency' may not be useful concepts to consider for those for whom marriage may represent literally the only path for survival for a woman (Landvogt, 4-5 April 2016).

Victim Characteristics and the Continuum of Intervention

Please see **Appendix 1** for a detailed discussion of these topics.

2. National Approach

Legislative Context in Australia

History of Legislative Reform

In 2010, Anti-Slavery Australia (ASA) commissioned a report exploring whether civil and/or criminal legislation would be the preferable approach for implementation in Australia. Although this *Strengthening Australia's Response to Human Trafficking Report* (30 March 2010) recommended criminalising forced marriage, with a complementary civil response, in 2013 only a criminal law was enacted. ASA has suggested that Australia is currently considering whether or not to introduce a civil protection law, which they would support. ASA reported that there were some cases in Australian courts of forced marriages, even prior to the introduction of the *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013*, which amended the Commonwealth *Criminal Code Act 1995*. The amendment was to include s270.7A which provides a definition of forced marriage and s270.7B which outlines the offence and penalties that apply. The law applies whether the marriage occurs in Australia (including where a person is brought to Australia to get married) or takes place outside Australia, where the 'conduct' is by an Australian citizen or resident (Wilton, January 2016).

Other legislation also applies in terms of the *Marriage Act 1961*, which was amended to clarify that it is illegal for any person aged below 16 years to get married, and a marriage can only occur if one of the parties is aged between 16 and 18 years if a court order authorises this. Parental consent is also required, unless exceptional circumstances exist and parental consent is dispensed with. Therefore, a civil ceremony where one of the participants is aged under 16 years is not recognised as a legal marriage.

The Commonwealth *Criminal Code Act 1995* was further amended by the *Crimes Legislation Amendment (Powers, Offences and Other Measures) Act 2015* which included s270.7A being modified to expand the definition of forced marriage to include where one party is not fully and freely consenting, due to being incapable of understanding the nature and effect of a marriage ceremony. In addition, s270.7A (4) was amended so that a person under 16 years is presumed, unless the contrary is proven, to be incapable of understanding the nature and effect of a marriage. A legal burden is placed on the defendant to rebut this presumption. This means that if one of the parties to a marriage is under 16 years, it will be presumed to be a forced marriage unless proven otherwise. The penalties were also increased from

four years to seven years for a standard offence, and from seven years to nine years for an aggravated offence (ASA website, 2015). The penalty is increased to 25 years imprisonment if the victim has been taken overseas to be married (Attorney-General's Department).

Current Situation

Given that many forced marriage victims are at an age when they are transitioning to being young adults and state-based child protection legislation no longer applies, it has been argued these vulnerable young adults over 18 years may require stronger legal protection given that the Family Law Act also provides for protective orders for the welfare of children to cease at the age of 18 years. There may be merit in examining if the Family Court's jurisdiction should be broadened, or a system of civil protection modelled upon the UK's Forced Marriage Protection Order system established, which would be able to make a protective order on behalf of any person at risk of forced marriage, regardless of their age (Burn, 2016).

Issues – Consideration should be given to addressing the protection needs of vulnerable young adults, through amendment of the Family Law Act to extend the age coverage of protective orders, or establishment of a system of civil protection orders.

National Prevention Initiatives

Forced Marriage Community Pack and My Blue Sky

At a Federal level, there have recently been some forced marriage prevention initiatives implemented. In partnership with the National Roundtable on Human Trafficking and Slavery Communications, the Federal Attorney General's Department produced a *Forced Marriage Community Pack* containing resources for agency staff and community members specifically about forced marriage, which was launched in December 2014. During 2015, a series of workshops were held for frontline staff and community workers, hosted by the Federal Attorney-General's Department in partnership with ASA staff and the Australian Federal Police (AFP). These workshops, along with other community consultations, were used by ASA to develop the *My Blue Sky* website, which is designed to be an easily navigable and accessible online resource to empower vulnerable people to protect themselves by providing information, resources and links to support services. The website was launched on the International Day for the Elimination of Violence Against Women (25 November 2015) by the Federal Minister for Justice. ASA is also providing the *My Blue Sky* legal advice service and a forced marriage helpline to provide free confidential advice to any person who has experienced, or is at risk of, forced marriage.

School Resource Kit

The Federal Attorney-General's Department also provided funding in July 2014 to the Australian Catholic Religious Against Trafficking in Humans (ACRATH) to develop and pilot a forced marriage education kit for government, Catholic and independent schools across Australia. The aim of the project is to increase awareness of forced marriages and educate secondary students about forced marriage legislation and how they can access their human rights. ACRATH has conducted teacher training sessions in nine pilot schools in the three states of Victoria, New South Wales and South Australia. The findings were incorporated into the kit, and the pilot schools will continue to teach the new material. The kit, *My Rights – My Future: Forced marriage, A Kit of Learning and Teaching Materials and support documents for Australian Secondary Schools* was released in April 2016 for use by schools in conjunction with an online training tool on the ASA website. Tools like this promote an understanding of human rights amongst young people and help to build the protection and resilience of those at risk of forced marriage.

Direct Service Provision

Support for Trafficked People Program (STPP)

The STPP is a key component of the *National Action Plan to Combat Human Trafficking and Slavery 2015-19* and provides assistance to all victims of human trafficking, slavery and slavery-like practices, including forced marriage and forced labour, who meet the eligibility criteria. The STPP is administered by the Federal Department of Social Services (DSS) and has been delivered nationally by the Australian Red Cross (ARC) since 2009. The aim of the program is to assist clients to meet their safety, security, health and wellbeing needs, and to develop options for their life after leaving the program. Case managers are responsible for ensuring the appropriate delivery of support services to meet the needs of each client, which may include:

- Case management support
- Suitable accommodation that meets the AFP's security and safety requirements
- Medical treatment (through Medicare and the Pharmaceutical Benefits Scheme (PBS), or as approved)
- Counselling
- Referral to legal and migration advice
- Skills development training, including English language classes and vocational guidance
- Social support

Please see **Appendix 2** for details of the STPP streams.

However, this longer-term support is only available for those suspected victims participating in the criminal justice process. Victims of forced marriage who are unable, or do not wish, to assist law enforcement agencies, can receive assistance from the STPP to find other appropriate support frameworks and legal and migration options, if required.

Issues – The Good Shepherd has raised concerns about this arrangement of ARC providing support to forced marriage victims being conditional upon referral from the AFP. Yvonne Lay has said 'Tying support to the legal system means the majority of forced marriage victims are falling through the gaps'. She argues that many victims will be reluctant to engage with the police, courts and services for fear of social stigma, violence, deportation or because of family pressure, financial constraints, limited understanding about their options, or concern about their children. It is argued that forced marriage is a complex issue and a service response that 'goes beyond the goal of prosecution' is required, especially in situations where the victim is a young person and the perpetrator or perpetrators are their parents or immediate family members (GSANZ, 20 February 2016).

3. Victorian Context

Legislation

On 21 October 2014, Victoria brought into effect the *Crimes Amendment (Sexual Offences and Other Matters) Act 2014*, which removed a redundant exception to sexual offences committed against a child, as it was no longer possible for someone under the age of 16 years to be married (following the previous amendment of the *Marriage Act 1961* removing this age exception).

The Victorian Royal Commission into Family Violence (RCFV) made a recommendation (no. 156) that 'The Victorian Government amend section 6 of the *Family Violence Protection Act 2008 (Vic)* to expand the statutory examples of family violence to include forced marriage and dowry-related abuse [within 12 months]'. This proposed legislative amendment is consistent with previous argument that there was a need to ban the practice of dowry in Victoria given the implication that it can be involved in the

perpetration of family violence and abuse of women (Kleinman, 2014; FECCA, 2014). The experience of the UK of a linkage between honour-based abuse and family homicide has led to inclusion of honour-based abuse in risk assessment tools and advocacy that a formal definition of honour-based abuse should be incorporated into legislation (Sanghera, 2016).

Policing

Since 2014, work has been undertaken by Victoria Police on the development of a training package on human trafficking information and awareness that includes forced marriage. The aim of the package is to skill police officers to recognise indicators and ask more questions, which has led to provision of a prompt card for members which explains human trafficking and indicators. Forced marriage is in the portfolio of Family and Sexual Violence within Victoria Police, and dealt with by the Sex Industry Coordination Unit, as a result of the historical link with human trafficking. However, this may cause some operational difficulties in practice when the majority of victims of forced marriage would appear to be young women under 18 years. Police experienced in working with children and young people in relation to child protection issues are in the Sexual Offences and Child Abuse Investigation Teams (SOCIT). Although these officers are experienced in child protection and sexual abuse issues, they may have limited experience with immigration issues, suggesting processes for secondary consultation and perhaps joint training would be useful.

Issues – There is a need for Victoria Police to ensure there is effective internal communication and sharing of practice expertise between family and sexual violence staff and SOCIT members, in conjunction with Child Protection staff, to ensure a holistic approach is taken when dealing with young victims of forced marriage. Secondary consultation and training are critical and there may be an opportunity for the Multi Disciplinary Centres (MDCs) to play a role in facilitating this joint work.

Advocacy

Victorian Forced Marriage Network (VFMN)

Some agencies in Victoria came together to form the Victorian Forced Marriage Network (VFMN), with the first meeting held on 1 May 2014, and subsequently on a quarterly basis. Four organisations were identified as the 'drivers' of the VFMN; Australian Red Cross (ARC), Centre for Multicultural Youth (CMY), In Touch Multicultural Centre Against Family Violence and the Victorian Immigrant and Refugee Women's Coalition (VIRWC), with Good Shepherd Australia and New Zealand (GSANZ) being a later addition.

The Terms of Reference (TOR) for the network state that the aims are to:

- Strengthen understanding and raise awareness of the changes that have taken place in Australia in relation to forced marriage relevant to stakeholders
- Provide a platform for cohesive service planning and coordination on forced marriage in Victoria
- Ensure a coordinated and consistent approach to informing/educating the community and relevant sectors on forced marriage and the support available
- Provide a space for professionals from a range of specialist areas (advocacy, service provision, research and policy) to identify gaps and collaborate in addressing areas of need related to forced marriage.

Membership of the VFMN is open to a range of organisations and bodies engaged in working on the issue of forced marriage, such as community based service providers and advocacy organisations, government departments at all levels, academics and peak bodies. Three working groups were subsequently developed, focussing on Community Education and Awareness Raising, Development of

Framework for Service Responses, and Advocacy and Research, and these have undertaken a range of projects.

Forced and Underage Marriage (FAM)

As a result of local community service providers becoming concerned about apparent instances of forced and underage marriage occurring in the Springvale/Dandenong area, the Forced and Underage Marriage network was formed and held a first meeting on 15 December 2014, unaware of the establishment of the VFMN. This grassroots network aimed:

- To be preventative and legislative
- To consult with service providers and communities on the issue of FAM
- To formulate effective models and interventions for community information and education
- To keep a de-identified record of FAM as evidence base
- Work towards initiating larger policy and structural change.

Community Education

Professionals Forum

An invitation only forum for professionals on the issue of forced marriage was first held by Good Shepherd Youth and Family Service and Domestic Violence Victoria (DVVic) on 3 September 2013. The forum titled 'The Right to Refuse: Examining Forced Marriage in Australia' aimed to examine forced marriage through the lenses of the law, family violence frameworks, migration issues and young people's services. A report was produced (McGuire, 2014), and after the forum, the Victorian Immigrant and Refugee Women's Coalition (VIWRC) launched their project 'The Choice is Yours!', which included a set of educational materials.

Community Education

In Victoria, the Australian Muslim Women's Centre for Human Rights (AMWCHR) has received funding from the Federal Attorney-General's Department since July 2014 to develop and conduct an education program aimed at increasing the capacity of community organisations to work with young women and families in relation to forced marriage. The AMWCHR has conducted numerous trainings sessions since the first one on 24 February 2015, given the strong interest from community workers.

Marriage Laws in Australia Workshops

A series of three community workshops were held through a partnership between ARC and VIWRC, using a consultative methodology working with community leaders to develop a train-the-trainer model that included group discussion in community languages and role play sessions. A funding request has been made to the Victorian Multicultural Commission (VMC) to facilitate the roll out of future community education sessions.

Issues – Although a range of community education packages have been developed to suit different target audiences, there would not appear to be a dedicated, ongoing funding stream that would allow planning for prevention.

Schools

Department of Education and Training (DET)

The DET in Victoria is in the process of creating resources aimed at preventing child abuse as part of planning for the implementation of mandatory Child Safe Standards, with which schools must be compliant by 1 August 2016. These resources include a new policy, *Identifying and responding to All Forms of Abuse in Victorian Schools*, which includes a reference to forced marriage. The policy and other resources will be accessible to all school sectors via a new departmental web portal. The RCFV also identified schools as a key setting for the prevention of gender-based violence through the incorporation of respectful relationships education. *Building Respectful Relationships: Stepping Out against Gender-Based Violence*, a set of sequential teaching activities to educate secondary school students about gender, violence and respectful relationships, is a product designed to achieve this. The resource is designed to provide curriculum advice as part of a whole-school approach to preventing gender-based violence and building respectful relationships, and seeks to build a culture of child safety. It would appear that this resource might offer an opportunity to also include teaching in relation to forced marriage.

Issues – The need to include material on forced marriage in respectful relationships education would appear able to be easily addressed by incorporation of the material developed by ACRATH, with funding provided by the Federal Attorney-General's Department and piloted in secondary schools in three states. This kit, *My Rights – My Future: Forced marriage, A Kit of Learning and Teaching Materials and support documents for Australian Secondary Schools* was released in April 2016 for use by schools in conjunction with an online training tool on the ASA website.

Service Providers

Forced Marriage Workshops

The series of workshops that were held for frontline staff and community workers during 2015, hosted by the Federal Attorney-General's Department in partnership with ASA staff and the AFP, aimed to raise awareness of forced marriage issues through interactive presentations and panel discussions. Participants were to be equipped with best-practice information on how to effectively respond to suspected cases of forced marriage, including information on the legislative framework, key indicators and referral pathways. However, the process of word-of-mouth nomination for invitation to these workshops highlighted the lack of a formalised network of service providers that is known to government agencies and others working in community service provision, and begs the question as to how a survivor or community worker would be able to access direct service support.

The discussion at the workshop held in Dandenong on 26 May 2015 raised a number of issues of concern to community service providers. Participants were advised that when a victim comes to the attention of any professional, the AFP was to be contacted. Their officers need to speak with the victim directly, and can do this at a safe place arranged with the victim, and will attend dressed in plain clothes rather than police uniform. The victim needs to describe their situation and the AFP officer will explain the investigation process. The AFP need to suspect that an offence has occurred, but they do not need *prima facie* evidence. If the victim decides not to continue with supporting a prosecution, they are exited from the support program. Referral to the STPP is dependent upon the AFP case proceeding. The case must be proven beyond reasonable doubt and there is a low likelihood of a successful prosecution, as the DPP must authorise this first.

Many community workers participating in the workshop raised that they were aware of a number of cases of forced marriage that their community members had approached them about and they had struggled to provide appropriate support, especially as most victims were uncomfortable with involving

the police. The grassroots community workers with the least resources were those the victims felt most comfortable about approaching. At the workshop, workers raised cases related to people in immigration detention, but it seemed nothing could be progressed in these cases, as eligibility requirements for the STPP include that the victim must be an Australian citizen or valid visa holder. It was acknowledged that it is unknown how many victims there may be in the community due to fear, lack of knowledge that forced marriage is an offence, community and government professionals being unsure about where to seek information and referral pathways, lack of eligibility for investigation by the AFP or access to the STPP, and no organisation tasked with this role.

Please see **Appendix 3** for Case Examples.

Issues

- Victims are reluctant to speak out due to fear and concern about bringing shame upon their family and possible prosecution of family members. They tend to speak with community workers, who have no funding or access for provision of specialist support, including case management –which needs to be rectified.
- Members of newly emerging communities are particularly vulnerable to exploitation due to a lack of knowledge of human rights protections, Australian legislation and social mores, and uncertain immigration status.
- Victims are ineligible for supports unless they agree to cooperate with a police investigation, which they seem likely to feel afraid to do, unless they are receiving support, thus creating a 'chicken and egg' problem.
- Lack of eligibility for victims who are in immigration detention and have uncertain immigration status.
- There does not appear to be a formal system for measuring that professionals in all the sectors involved are aware of the extensive sources of information and resources available.
- Lack of centralised data collection to accurately assess the scope of forced marriage.

I Don't Public Forum

On 28 October 2015, a large public forum was hosted by the VFMN and CMY, with participants from government, police, legal, community and multicultural agencies.

The purpose of the forum was to:

- Raise awareness and provide insight into the emerging issue of forced marriage
- Provide an overview of the current laws relating to forced marriages
- Identify practice responses for workers to better identify and respond to the issue
- Develop recommendations for future policy and action

The forum included a video presentation of *Voices of Women – I Don't*, made with the support of the VIRWC and consisting of the stories of five anonymous women. The keynote was provided by Jasvinder Sanghera, who is the CEO of Karma Nirvana in the UK. Jasvinder is a survivor of forced marriage, an author and the founder of Karma Nirvana, which provides a national helpline to support those impacted by forced marriage and honour-based violence. Jasvinder explained in detail the work of Karma Nirvana and suggested recommendations for Australian service providers. Jo Wilton from ASA presented on the Australian legal context, and following a panel discussion, participants were in facilitated break out groups which were tasked with identifying what strategies are working well, and where there are gaps and challenges, and what are the priorities for action. A full report of this forum was subsequently produced and distributed (VFMN, January 2016), and the findings used to form the basis of the current work plan of the VFMN.

Data

In Australia, there is limited data regarding the practice of forced marriage, with the AFP indicating that they have received referrals of matters relating to forced marriage which have resulted in 42 cases being investigated from March 2013 to May 2015, with 32 cases (76%) involving children, and seven of these child bride cases were in Victoria (Palin, 2015). However, Victoria Police has indicated that they are concerned about the number of forced marriages that are going unreported within the state, whilst acknowledging that children as young as 12 years old have been involved in a forced marriage (Bourke, 2015).

This view is supported by a research study by the National Children's and Youth Law Centre as part of the *End Child Marriage* project, and focussed on the forced marriage of children under 18 years of age, and was conducted prior to the passing of the Federal legislation amendments. The web-based survey of government and non-government agencies found cases reported in each state and territory, with a total number estimated at over 250 cases (Jelenic & Keeley, 2013). The most common scenario was that of an Australian child at risk of being taken overseas for a forced marriage. Over the past few years, as community workers have continued to identify the presence of forced marriage as an emerging issue, there have been calls for comprehensive data collection to be established.

Issues – There is a need for comprehensive data collection in relation to the issue of forced marriage, which is broader in scope than simply those cases being investigated by authorities, and includes cases where other professionals become aware of a possible victim. Data needs to be collected which covers the full range of sectors and service providers, and looks at characteristics of gender and age of the victims, relationship to perpetrators, alleged reasons for the forced marriage, country of origin and the cultural background of the community involved, self-identification of sexual orientation and gender diversity, and the presence of disability. A data collection system would also need to integrate data collected from State based authorities such as police and child protection services and Commonwealth entities including the AFP and the Department of Immigration and Border Protection (DIBP).

Child Protection

The Victorian Department of Health and Human Services (DHHS) has had longer term involvement with the issue of forced marriage, including the case of a report to Child Protection of a child being at risk of forced marriage, which resulted in a matter being brought before the Family Court in 2010. The Department was successful in securing an injunction to prevent the young person from being removed from Australia, their passport was surrendered and they were placed on the AFP watch list until they turned 18 years old (*Department of Human Services & Brouker and Anar (2010) Fam CA 742 (file number MLC 5756 of 2010)*).

The current Victorian Child Protection Manual contains an advice section on Forced Marriage which indicates that the procedures for receiving, registering and classifying a report and the intake policy also apply in situations where a report is received which alleges that a child or young person is at risk of forced marriage. There is provision of some background information and references to relevant legislation and how to access further information through the Federal Attorney-General's Community Pack and *My Blue Sky* website. However, without specialist training and skill development, and the opportunity for secondary consultation, it would seem unlikely that a child protection practitioner would be able to fully comprehend the complexity resulting from differing cultural beliefs and attitudes to enable a nuanced risk assessment to be completed.

DHHS has advised the Commission that if a report is received by Child Protection in relation to a child aged under 17 years, it would be assessed and potentially investigated, without a requirement that concerns in relation to family violence are expressed. As such a report involves allegations of physical and sexual abuse and involves a crime, it would be referred to the police. In practice, the difficulty

would seem to lie in Child Protection receiving a report relating to a young person of 17 years of age, unless the young person was an existing client. This is because a report cannot be made in relation to a child over 17 years of age under the *Children, Youth and Families Act 2005*. Unfortunately, the data on forced marriage that is available indicates young women of this age are those most likely to be vulnerable to a risk of forced marriage, and given their typical family background and social isolation these young people are very unlikely to have previous involvement with and be an existing client of Child Protection. Given these circumstances, there may be merit in the proposal that the Family Law Act be amended to make protective orders for the welfare of children beyond the age of 18 years to address the needs of this specific cohort.

Issues – Child Protection practitioners would benefit from specialist training and skill development to enable identification of risk indicators of forced marriage, especially given the low likelihood that they would encounter this issue very often. To understand the nuances of differing cultural beliefs and attitudes it would be essential that the practitioner has the opportunity to access secondary consultation with a bicultural specialist in order to complete an informed risk assessment.

There would appear to be an especial vulnerability of young people aged between 16 and 18 years (who may have younger siblings at risk) deemed at risk of forced marriage, which is the major 'at risk' population, because Child Protection is less likely to intervene with this group. It is quite unlikely that a 17 year old in this situation would be an existing Child Protection client given the family would be unknown to Child Protection until this point. There is also a complication if there is a sibling group being assessed as at risk or not, dependent upon the arbitrary basis of a minor age difference. The young girls in this situation are most likely to have been socially and culturally isolated, unaware of their human rights and with limited independent living skills, leaving them ill prepared to manage in the community or in out-of-home care without tailored support and guidance.

4. New South Wales Context

Advocacy and Legal Advice

In NSW, there is an even larger network of community service providers focussed on the issue of forced marriage than in Victoria. NSW also has the advantage that the National Children's and Youth Law Centre (NCYLC), based in the Law faculty at the University of New South Wales has developed expertise in the area of forced marriage through a federal funding grant for the End Child Marriage Project. The aim of the project was to build the capacity of community service providers to respond to the needs of young people under the age of 18 years, who are at risk of child abuse due to forced marriage. The project resulted in the production of the landmark resource, *End Child Marriage Australia: Research Report on the Forced Marriage of Children in Australia* in May 2013. The project also led to development of the *End Forced Child Marriage: Best Practice Response Guidelines* (2013) to provide a children's rights-based analysis and evaluation of the current responses of service providers of child victims of forced marriage. Service providers and those at risk of forced marriage can also contact the NCYLC for legal advice and casework services. Anti-Slavery Australia (ASA) is based within the Law faculty at the University of Technology in Sydney. ASA provides free, confidential legal advice and casework including referral to support services to anyone within Australia at risk of forced marriage.

Casework Guidance

Rosemount Good Shepherd Youth and Family Services in Sydney provides counselling services for adolescents and their families, advocacy and research, and education services for young people at risk of disengaging from education. The debate which arose as a result of legislative amendments in relation to forced marriage led this agency to develop a resource for those professionals who might encounter the risk or reality of forced and/or servile marriage in their work. The aim was to improve understanding of the variety of forms that these practices can take, and the great diversity of contexts

in which they may occur, through use of the *Forced and Servile Marriage Casebook: Beyond the Stereotypes* (2014) to support early intervention and prevention, and prevent harm to those facing forced or servile marriages.

Wrap around Service

The Freedom Hub Survivor School opened in 2014 in Sydney and provides survivors of slavery, including forced marriage, with the opportunity to undertake training in preparation for entering the workforce. Classes at the school have just a couple of students and are tailored to their individual needs, with volunteer teachers teaching interview skills and building self-confidence. A philanthropist pays the rent for the school and the Freedom Hub Café which opened in 2015 ensures all profit goes to supporting the school, as well as providing work training opportunities (Calixto, 2016).

The Australian Freedom Fund is a philanthropic fund auspiced by the Salvation Army which commenced in February 2016 and provides holistic support to victims of human trafficking, slavery and slavery-like practices (including early and forced marriage) through three grant categories and consideration of discretionary grants on a case-by-case basis.

Please see **Appendix 4** for a detailed description of the work of the Freedom Fund and the Freedom Partnership.

Issues – The Freedom Fund and Partnership offers a holistic, wrap around service response that is attuned to the client's individual needs, cognisant of the trauma the individual has experienced and focussed on offering a range of innovative support modalities. Staff have indicated that the service is quite busy and usually has a handful of young women resident at any one time, in addition to those receiving outreach support, and that the peer support program is highly valued. This program is highly flexible and willing to accommodate women from any part of Australia, which may be especially useful for those who are fearful of their safety. However, for young women who have some supports in their local area and who may have little experience outside a very restrictive community, the transfer to more independent living may be quite terrifying.

There would appear to be a strong case for provision of a dedicated safe house to provide such accommodation, with support, in every State and Territory in Australia. These safe houses could provide a network which would enable an interstate transfer if a client's safety was at risk. If client demand was insufficient for a dedicated safe house in a particular area, an existing youth or women's refuge could become the nominated service and specialist training for staff and adaption of program delivery could be undertaken.

5. United Kingdom Model

Legislation

The UK legislation relating to forced marriage is similar to that in place in Australia, with the exception that there is also a civil remedy, a Forced Marriage Protection Order. Each order is unique and designed to protect the individual according to their specific circumstances. For example, an order may require someone to return a passport or reveal where the victim is located, attendance at school, regular monitoring or case manager review. In an emergency, an order can be made to protect the victim immediately.

The Anti-social Behaviour, Crime and Policing Act 2014 makes it a criminal offence to force someone to marry, including:

- Taking someone overseas to force them to marry (whether or not the forced marriage takes place)
- Marrying someone who lacks the mental capacity to consent to the marriage (whether they are pressured or not)
- Breaching a Forced Marriage Protection Order through the family courts will continue to exist, alongside the new criminal offence, so victims may choose how they wish to be assisted.

Forced Marriage Unit (FMU)

Please see **Appendix 5** for a detailed description of the work of the FMU in the UK.

Statistics

The FMU compiles and produces a publically accessible statistical report on an annual basis, which shows that in 2015, the FMU gave advice relating to a possible forced marriage in 1,220 cases (including both phone and email contacts), receiving approximately 350 calls per month in total. There has been a general downward trend in the number of contacts made to the FMU each year, which may reflect improved capacity of community service organisations. The majority of cases, being 980 (80%) involved female victims and 240 cases (20%) involved male victims. There were 329 (27%) of cases involving victims under 18 years and 427 (35%) involving victims aged from 18 to 25 years. The FMU has dealt with a very large variety of countries and in 2015, 175(14%) of the cases handled by the FMU had no overseas involvement, with the forced marriage activity taking place entirely within the UK. In a small number of cases (29 (2%)), the victims identified themselves as LGBT. There were also 141 cases (12%) involving victims who had either a physical or learning disability, with a reversed majority of victims being male (62%), and a trend towards an older age group.

Karma Nirvana

Karma Nirvana is a UK charity that supports victims of forced marriage and honour-based abuse. It was established in 1993 by Jasvinder Sanghera, who is a survivor of forced marriage and honour-based abuse, who wished to create a support network for victims who may face cultural and language barriers and so need an accessible, informed and supportive service. It has grown to be a national organisation with a global reach, that now supports female, and male victims and couples subject to this form of abuse.

Please see **Appendix 6** for a description of the services offered by Karma Nirvana.

At the *I Don't* Forum held in Melbourne on 28 October 2015, Jasvinder Sanghera spoke from the victim's perspective and highlighted that victims fear a report will mean disclosure to their family, so confidentiality and non-disclosure to the family or community without the young person's permission is paramount. This is because when a report is made, the service provider is 'breaking the silence', creating shame and putting the young person at risk of being disowned by their family or community. Therefore, an attempt to mediate or provide family counselling can put the young person at greater risk, and has resulted in deaths in the UK. This need to approach work with families differently can prove challenging for professionals whose primary practice approach may be to work collaboratively with the family and endeavour to maintain the family unit.

Parents may also tell services what they wish to hear, which might be that home schooling will be done in response to cessation of school attendance. Young people are led to believe that they are the perpetrators in terms of family shame and have been conditioned for their whole lives to put family honour before their own wishes. Attempts to engage with community leaders had found that given the extent of power they exercised within their communities, if they were not supportive, they could act as a barrier to change within their communities. Service providers had also demonstrated a tendency to

view the issue as 'it's cultural' or were afraid of being labelled as racist, resulting in prevention of appropriate responses. Concerns that judges were viewing it as a 'cultural' issue resulting in more lenient sentences have been addressed by providing training for judges and prosecutors, which has led to improvements.

Issues – Some recommendations flowing from the forum were made for Australian service providers, which would seem quite relevant:

- A specific and standardised risk assessment tool should be developed, which can be used across services.
- Honour-based abuse should be included in risk assessment tools, as honour-based abuse precedes and co-occurs with forced marriage, and may act as a warning sign of forced marriage, even if there has been no mention of marriage.
- A formal definition of honour-based abuse should be incorporated into legislation.
- The service response needs to include elements in addition to criminal law, such as repatriation protocols.
- Education of professionals involved on the frontline is required to ensure that they have confidence to respond effectively regardless of cultural background.

Based on the discussion, a couple of other issues were highlighted:

- Frontline responders such as child protection and police need cultural competency training to facilitate the modification of assessment and investigation approaches to minimise the risk of harm to the child.
- Home schooling and other actions which increase the social isolation of the child need to form part of the risk assessment.

Who are Potential Victims?

Forced marriage has been recognised as clearly a gender-based form of violence, with the Global Report on Trafficking Persons (2012) finding 75% of victims were female, compared to 82% female in the UK and 92% female in Canada. The perceived options available to women are more limited, even when compared to the situation when a man has been forced into marriage. It has been argued that the mechanisms underlying this are multiple and centred on rigidly controlled societal norms and expectations regarding gender. Entrenched inequality between men and women and a lack of respect for the personhood and agency of women and girls, and a misuse of contested cultural practices allows it to flourish (Landvogt, 2016). There are a range of risk factors that can be framed in terms of intersectionality, with younger women and girls being more vulnerable, and disability for both sexes has been identified as placing individuals at greater risk because forced marriage provides an avenue to ensure that they do get married. Similarly, when the person's sexuality or gender becomes a source of shame or concern, marriage may be perceived as a solution to control it. There may also be other risk factors playing a role including immigration status, mental health and criminality (Landvogt, 2016) and cultural beliefs which do not prohibit marriage of relatives and may promote this as a way of keeping an inheritance within the family.

Continuum of Intervention

Dr Kathy Landvogt of the Women's Research, Advocacy and Policy (WRAP) Centre at Good Shepherd Australian New Zealand (GSANZ) has argued that criminal offence legislation in Australia has 'become a torchbearer for' in terms of pre-empting, and not a reflection of, social change in relation to forced marriage. It is argued that a holistic response to this complex issue is required, which integrates criminal legislation with both prevention and service responses, which was comprehensively argued by Magdalena McGuire in the foundation report, *The Right to Refuse* (2014). But prevention of forced marriage in terms of community education and embedding a culture of human rights would appear to have lagged behind the significant legislative activity that has sought to address an issue that straddles the intersection of family violence, sexual assault and child protection policy and program areas.

It has been suggested that inclusion of forced marriage under the banner of slavery and human trafficking may actually make it more difficult to identify as a relevant concern for services such as schools, who do not traditionally have experience with these areas. Dr Landvogt has argued that in relation to forced marriage, within a continuum of intervention, whilst some work has been done on prevention and later crisis response, there is a critical gap in the service system development in relation to early intervention and post-crisis response, which are quite under-developed (Landvogt, 2016).

STP Program Streams

➤ ***Assessment and Intensive Support Stream***

Provision of intensive support for 45 days is given to all trafficked people referred by the AFP, irrespective of whether they are willing or able to assist with the investigation or prosecution of a human trafficking or slavery-related offence.

Clients can access:

- Case management support
- Secure accommodation
- A living allowance
- An amount for the purchase of essentials
- Access to health care
- Access to interpreters
- Access to legal services and migration advice
- Assistance with accessing income support and a Health Care Card, if eligible.

➤ ***Extended Intensive Support Stream***

Access to a further 45 days of support is offered to clients who are willing, but not able, to assist with an investigation or prosecution of a human trafficking or slavery-related offence, on a case-by-case basis. Children are automatically entitled to access this stream if it is in their best interests.

➤ ***Justice Support Stream***

Support is provided until the investigation and prosecution of a human trafficking or slavery-related matter is finalised.

Clients can have access to the following support as needed and if eligible:

- Assistance with accessing income support and a Health Care Card, if eligible.
- Assistance with securing longer-term accommodation
- Assistance to purchase essential furniture and household items
- Access to Medicare and the PBS
- Access to legal services and interpreters
- Assistance to obtain employment and training if desired
- Links to social support

Case Examples

On 27 January 2015, the Commission was approached by a community agency with concerns about a specific case of a 14 year old girl forced into marriage, becoming pregnant and terminating the pregnancy after being disowned by her 'husband'. The child's family were members of a newly emerging community who were isolated due to cultural and language barriers and vulnerable to exploitation by a community gatekeeper. Advocacy about the issue was being sought from the Commission given that the community agency was working with a number of young women who were victims of forced marriage.

On 4 March 2015, the same community agency contacted the Commission in relation to serious concerns for a young woman who had no support services, was due to have her third child and was on a BVE (Bridging Visa E) and had been married to a man who was seemingly sex trafficking her. Provision of sexual assault counselling was arranged with an appropriate agency through the intervention of the Commission, but it was apparent that there was no agency tasked with providing case management in such a scenario.

Freedom Fund and Freedom Partnership

The grant categories are:

- **Emergency Relief**, which covers the gap between people leaving their situation and being able to access formal support services and may include temporary accommodation, food, basic necessities, replacement of documents and photos, transport and access to a phone.
- The **Independent Living** grants cover survivors who are transitioning into more permanent housing needing assistance with meeting the costs of providing a bond and obtaining items to establish a household. A second grant may also be sought by previous applicants being joined at a later date by family members.
- The **Family Reunification** grants are for survivors whose family members have been left behind in their country of origin, to access support to reunite with family members. Support can include airfares, medical checks, DNA testing, travel documents, ground transport, application fees and accommodation costs.

The fund is very flexible and responsive to the survivor's needs, accepting self-referrals and referrals from service providers. Assessment includes basic information, a privacy statement and the requirement of a consent form. The assessment is based on the individual's circumstances to ensure the grant criteria are met, and that all other avenues of support are not accessible, various payment methods are offered and there are no limits on the number of grants available to an individual. The fund does not offer ongoing case management.

The Salvation Army Freedom Partnership however, provides a range of supports to those experiencing trafficking, slavery and slavery-like practices and those in or at risk of forced marriage. These supports include confidential professional advice and support by phone, accommodation for ten women aged over 18 years in a Safe House since 2008 (the only one in Australia), which includes case management, staff also provide support to peers who talk with clients and offer practical advice based on their own experiences. The Freedom Partnership also provides community education and training to service providers, community groups and schools to assist in identifying and responding to forced marriage.

The Freedom Partnership provides Residential Support, Outreach Support, Prevention Support and International Support, Advice and Assistance. Residential Support provides no limits on the length of stay of clients who access transitional community housing, and they can access support regardless of their visa status or income. Women with children are able to be accommodated and clients are not required to engage with law enforcement services as a condition of accessing support. Comprehensive case management is offered and can include support for families in countries of origin, with the service approach being trauma-informed and operating within a human rights framework. Outreach Support can also be offered in the form of non-residential case management to men, women or young people living in the community.

Complementary case management support can also be provided to other Australian agencies and can include housing referrals, material assistance, cash assistance, medical, mental health, legal, education, training and job support, court support and recreational outings. Prevention support can be offered in the form of case management to those at risk, with eligibility assessed on a case-by-case basis when there are risk indicators and contributing factors that increase vulnerability. Staff may work to identify intervention that will improve the ability to remain free from exploitation, including for prospective migrants outside Australia. International Support Advice and Assistance can also be provided to families in 120 countries where the Salvation Army works.

Forced Marriage Unit (FMU)

The Forced Marriage Unit (FMU) is a joint Foreign and Commonwealth Office and Home Office unit in the United Kingdom, which was set up in January 2005 to provide leadership on the Government's forced marriage policy, outreach and casework. The unit operates both within the UK where support is provided to any individual requiring it, and overseas where consular assistance is provided to British nationals, including dual nationals. The FMU operates a public helpline to provide advice and support to victims of forced marriage and professionals dealing with such cases. This assistance can range from simple safety advice to aiding a victim to prevent an unwanted spouse from moving to the UK, known as 'reluctant sponsor' cases. In extreme circumstances, there can be rescue of victims held against their will overseas.

The FMU has developed a forced marriage e-learning package for professionals that assists them to recognise the warning signs of forced marriage and ensure appropriate action can be taken to help protect and support all those at risk. This free training module can be accessed by registering at the FMU website. A range of free resources are also accessible through this website, including *Multi-Agency Statutory Guidance for dealing with forced marriage*, *Multi-Agency practice guidelines: Handling cases of forced marriage*, a *2010 Review of implementation of statutory guidance*, *Guidance for Members of Parliament and constituency offices* and *Guidance for Registrars*. Other education resources can be ordered or downloaded from the FMU including leaflets, cards, posters in a range of community languages, a survivor's handbook, a fictional account to be used as a school resource, campaign videos and animated documentaries.

The FMU is also responsible for conducting media campaigns, such as 2015's 'right to choose' campaign, when the FMU commissioned a short film to raise awareness amongst young people about the risk of being forced into marriage, as well as potential perpetrators. The FMU undertakes an extensive outreach and training program of around 100 events per year, which targets both professionals and potential victims. The FMU Domestic Programme Fund (DPF) annually provides funding to charities for small-sized projects in the UK to provide improvements in service provision through collaborative work. Projects which have received funding include increasing refuge provision and emergency accommodation, working to challenge attitudes in hard-to-reach groups, developing resources for LGBT victims and delivering awareness raising at schools and colleges.

Karma Nirvana Services

Karma Nirvana offers a broad range of services, including:

- A dedicated helpline for victims and professionals which received 48,000 calls during its first four years and now receives over 700 calls per month. Of these callers, 42% are professionals and the remainder are victims, with 55% of victims aged 12 to 18 years old.
- Karma Nirvana campaigned for the legal protections that have been enacted for forced marriage victims, in the belief that a civil law would assist victims who do not wish to progress criminal offences against their family. It is a criminal offence if there is a breach of the specific conditions. Despite concerns of some in the community that forced marriage would go 'underground' if it was criminalised, the focus of both civil and criminal acts on ensuring reporting appears to have increased reporting. Young people wanted assurance that they could report and stay safe, without having to get their parents into trouble.
- Karma Nirvana has been campaigning for a definition of 'Honour based Abuse' separate from family violence definitions. This would be defined as 'An incident or crime which has or may have been committed to protect or defend the honour of the family and/or community'. It is believed that a separate definition is needed as it includes a regard for perception, such as 'I'm going to be killed or harmed because of family shame' and it includes collusion of family (and there are usually multiple perpetrators).
- Karma Nirvana developed a specific risk assessment tool in recognition that a standard risk assessment tool did not adequately meet the needs of victims. This tool is now being used by police who are trained as specialist officers on Forced Marriage and Female Genital Cutting (FGC).
- Training is delivered to prosecutors, to ensure that when charges are laid, victims will have a trained prosecutor who understands the issue.
- Roadshows are conducted to increase awareness raising amongst professionals, training events and workshops.
- Youth training is provided in schools and colleges in partnership with the FMU and local police
- Public media campaigns are conducted, including an annual Day of Remembrance on 14 July to honour those who have died in relation to this abuse, which is being promoted globally. (Sanghera, 2016)

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