

RESPONDING TO EARLY AND FORCED MARRIAGE IN AUSTRALIA

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ABSTRACT

Forced marriage is an issue of emerging concern in Australia. In February 2013 an amendment to the Crimes Legislation (Slavery, Slavery-like Conditions and People Trafficking) was enacted, making forced marriage a Commonwealth criminal offence. Since the enactment of legislation there has been a considerable increase in reporting rates of early and forced marriage with the primary presenting group being young women aged 16-18 years. Australia's response to forced marriage is currently positioned within the federal criminal justice framework. Practice shows that a collaborative, multi-disciplinary effort from federal and state law enforcement, child protection agencies and community organisations working for the best interests of the child is required. This paper aims to create awareness and make practical recommendations on how the Australian community can address forced marriage through a community development as well as a criminal justice approach that prioritises the rights of children and young people. The paper will draw on published research and compare Australia's efforts with the highly developed response implemented in the United Kingdom. It will also draw on direct experience of working with victims in Australia.

UNDERSTANDING EARLY AND FORCED MARRIAGE IN AUSTRALIA

Early and Forced Marriage is an emerging issue in Australia with the number of reports rising since it was criminalised in March 2013. Forced marriages are arranged and facilitated by others against the will of one or both participants in the marriage. Family members are often involved in coercing a person into marriage. Forced marriages must be distinguished from an arranged marriage where a third party finds and sets up a marriage with the consent of both parties, or a sham marriage that is entered into to achieve a benefit such as migration purposes.

Generally people affected by forced marriage are young and female. This does not however exclude males from being victims. A person subjected to a forced marriage may sometimes be subject to a slave like existence

The Australian Federal Police (AFP) investigated 34 cases of forced marriage between 2013 and 2015. Alarmingly 29 of these investigations were related to persons under the age of 18 (Source: Australian Federal Police)

Data from NSW Department of Families and Community Services (FACS) also indicates a steady increase in reports to the child protection helpline.

Whilst there is very little available data on the prevalence of early and forced marriage in Australia, the United Nations Population Fund estimates that 140 million girls around the world will become child brides between 2011 and 2020.

The fact that this occurs in Australia today demands our attention and resources.

Forced Marriage is defined in Section 270 and 271 of the Commonwealth Criminal Code; it refers to a marriage entered into without the free and full consent of one or both of the parties involved, as a result of coercion, threat or deception. The definition applies to legally

recognised marriages as well as cultural or religious ceremonies and registered relationships, regardless of age gender or sexual orientation. Marriage offences apply to marriages which occur in Australia and outside of Australia involving an Australia Citizen or resident. In 2015 the act was amended to include an assumptive provision, meaning that any marriage that occurred under the age of 16 is considered a forced marriage as an individual is too young to give consent.

What are the underlying reasons of early and forced marriage?

Throughout our work with individuals who are facing early and forced marriage a number of motivating factors have been presented including:

- Migration benefits
- Financial benefits
- Social control (curbing and controlling behaviours)
- Customary/religious practices
- Gender/sexual orientation
- Lack of understanding of Australia's laws
- Interpretations of rights and choices

It should be noted that no major world religion sanctions forced marriage. It is purely a cultural practice. However, no culture exclusively practices forced marriage. People are forced into marriage for many different reasons. In the United Kingdom, the Working Group on Forced Marriage found that most cases were a result of "loving manipulation where parents genuinely felt that they were acting in their children and family's best interests"¹

Fears about sexual activity before marriage, or a fear of rumours about such activity running a daughters opportunity to 'marry well', also fuels early and forced marriages.

Sending an individual overseas to a family's country of origin to marry or forcing a victim to sponsor a spouse from the country of origin (usually a western country) has grown

¹ The Advocates for Human Rights (2010) "Stop Violence Against Women: Forced and Child Marriage", accessed: http://www.stopvaw.org/forced_and_child_marriage

increasingly common. In some cases, individuals facing forced marriage can be considered trafficking victims, as well.

Forced and early marriage have serious psychological, emotional, medical, financial and legal consequences. Individuals tend to be isolated from their peers and friends. They rarely have access to social services that could assist them. Early marriage often interrupts an individual's education. This deprives them of their right to education as well as limits any possibility of economic independence from their spouse, making it more difficult to build an independent life.

Indicators of Early and Forced Marriage

It is important to be alert to a wide range of circumstances that may indicate somebody is facing and early and/or forced marriage. All indicators should be viewed within the context of the individual—naturally assumptions or indicators in isolation are unhelpful in determining appropriate supports and interventions.

Some indicators² may include:

- Sudden announcement that a person is engaged
- Older brothers or sisters stopped going to school or were married early
- Family have a lot of control over the person's life which doesn't seem appropriate or necessary for their age or societal context (for example, the person is never allowed out or always has somebody else from the family with them)
- Displays signs of depression, self-harming, social isolation and substance abuse
- Scared or nervous about an upcoming family holiday overseas
- Spends a lot of time away from school, university or work
- Often does not come to, or suddenly withdraws from school, university or work
- Does not have control over their income
- Unable to make significant decisions about their future without consultation or agreement from their parents or others
- Evidence of family disputes or conflict, domestic violence, abuse or running away from home

² Attorney General's Department (2015), "Forced Marriage Information Sheet"

AUSTRALIAS RESPONSE TO EARLY AND FORCED MARRIAGE

Under Australia's policy, victims who disclose risk of forced marriage or actual forced marriage must engage with federal law enforcement to access a government support program. This means that a person at risk of forced marriage or who has experienced forced marriage must report their concerns to the AFP to be offered the government funded support program.

This program allows for a 90 day reflection period whereby individuals can decide if they wish to have ongoing engagement with the federal police i.e. provide a full statement to them and possibly proceed with a criminal investigation in relation to the circumstances around their marriage. During this time an individual is offered support via the Australian Red Cross (the government contracted support provider) Provisions are made for emergency financial assistance, accommodation and case management support. Following the 90 reflection period if both the individual and law enforcement agree to proceed with the full investigation, the individual is offered ongoing support through the support program and for the duration of the investigation; should they not wish to proceed alternative support arrangements need to be made. The current practice challenge lies in the fact that very few alternative and specialised support arrangements are available.

There are varied responses across the country with respect to child protection responses. For example in New South Wales 'Child Marriage' has been added to the Mandatory Reporting Guidelines and the child protection helpline has a specific telephony cue for callers ringing to report a child marriage. In Western Australia, the Department of Health has a specific child marriage liaison officer, some other states are yet to activate a response

in relation to this issue, however it has been assumed that the abuse attached to early and forced marriage would activate a child protection response.

In addition to criminal offences that can protect individuals against early and forced marriage, protections under the Family Law Act are also available. Mechanisms include (but not restricted to):

- Family Law Watch List, until 18
- Withholding of passport by the court, until 18
- Family medication
- Court order attendance at a nominated school
- Powers of arrest should any court orders be breached

It should be noted that limitations based on age apply to family law remedies. Family law remedies can only apply to individuals under the age of 18.

PRACTICE CHALLENGES AND RECOMMENDATIONS

In New South Wales where a significant amount of our work takes place, there are emerging trends in practice:

- Many referrals are coming from school counsellors to the New South Wales Family and Community Services (FACS) HelpLine and the AFP are alerted directly. Schools have been providing support to young people facilitating meetings with FACS and the AFP to ensure the young person is aware of their rights and options
- Family law mechanisms are being utilised by those who wish to use them; Legal Aid Early Intervention team and Specialist Domestic Violence Unit is assisting in this matters.
- The AFP is working collaboratively with FACS and Joint Investigative Response Unit (JIRT)
- Young people co-operating with the AFP in an investigation are accessing case management from both FACS and the Australian Red Cross. Other agencies that

provide specialist services such a youth accommodation and The Salvation Army are also engaged in multi-stakeholder case management plans

- If a young person does not wish to engage with the AFP, the AFP can act in the background around protective measures (Such as an Airport Alert) but cannot pursue an investigation
- Service delivery models and best practice frameworks remain under-developed.

Responses to early and forced marriage are emerging and our response is disjointed and in many ways failing to meet the needs of young people.

What we have learned in our time supporting individuals affected by early and forced marriage is criminalising forced marriage in order to prevent it is only one part of a complex and comprehensive response to best support young people and their families. In particular, young people aged 16-18 years represent a significant number of those at risk, and more nuanced interventions should be offered.

In many cases it has been found that it may not be in the best interest of a young person's well-being or emotional and psychological development to be party to the prosecution of their own family members.

Services should be made available to people independently of contacting the police who are inappropriately placed as gatekeepers to welfare supports. An integrative framework is needed—one that focuses on young people and provides resources for them to reach their full potential from the moment they seek help.

The United Kingdom's Forced Marriage Unit (FMU) offers Australia a model for delivering a consistent approach that is worth considering in light of the growing number of young women and girls seeking help here. The FMU response provides multi-disciplinary support teams that work alongside law enforcement if young people choose to engage with police. This means that a young person's journey is centred on their rights and needs rather than a criminal justice outcome.

Young Australians facing early and forced marriage need a similar approach that activates comprehensive wrap around supports first and law enforcement as needed.

From practice experience and best-practice literature, The Freedom Partnership is recommending enhancements to Australia's response, including:

1. Create an integrated and holistic support system for victims of early and forced marriage including international best practice service delivery models that provide accommodation, psycho-social support and peer mentoring
2. Incorporate early and forced marriage into state child protection frameworks and operational protocols for responding authorities
3. Develop and implement Forced Marriage Protection Orders, similar to the United Kingdom. This should include reform in the family law framework that allows for provisions for those over the age of 18 to apply for airport watch list orders and court ordered intervention
4. Ensure that communities who are interacting with individuals at risk know how to appropriate identify and response to disclosures, particularly within school communities

ACCESSING SUPPORT UNDER THE CURRENT FRAMEWORK

Under the current framework, the following agencies can be contacted to provide legal and social support for individuals impacted by early and forced marriage:

LEGAL

AFP
131 AFP or (02) 9277 0540
email: httsydneyenquiries@afp.gov.au
After 5pm and weekends, call:
0408 819 925

My Blue Sky
02 9514 9662
help@mybluesky.com.au
www.mybluesky.org.au

SOCIAL SUPPORT SERVICES

Muslim Women's Centre for Human Rights
03 9481 3000
www.ausmuslimwomenscentre.org.au

Trafficking and Slavery Safe House, Salvation Army
02 9211 5794
endslavery@aue.salvationarmy.org.au

<http://endslavery.salvos.org.au/learn/identifying-slave-like-or-forced-marriage/>

Legal Aid Early Intervention Unit
1800 551 589

The Freedom Partnership-to End Modern Slavery
(02) 9466 3573
endslavery@aue.salvationarmy.org

<http://endslavery.salvos.org.au/learn/identifying-slave-like-or-forced-marriage/>

National Children and Youth Law Centre
02 9385 9588
www.ncylc.org.au

Taldumande Youth Services
(02) 9460 3777
<http://www.taldumande.org.au/>

Further information can be accessed at:

- Commonwealth Government Attorney General's Department Community Pack:
<http://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Pages/ForcedMarriage.aspx>
- National Children's Youth Law Centre Guidelines
http://www.equalityrightsalliance.org.au/sites/equalityrightsalliance.org.au/files/docs/ncylc_best_practice_response_guidelines_forced_child_marriage_version_1_2.pdf
- Rosemount Good Shepherd Forced Marriage Casebook
https://www.goodshepvic.org.au/Assets/Files/FSM_Casebook_23_April_2014.pdf