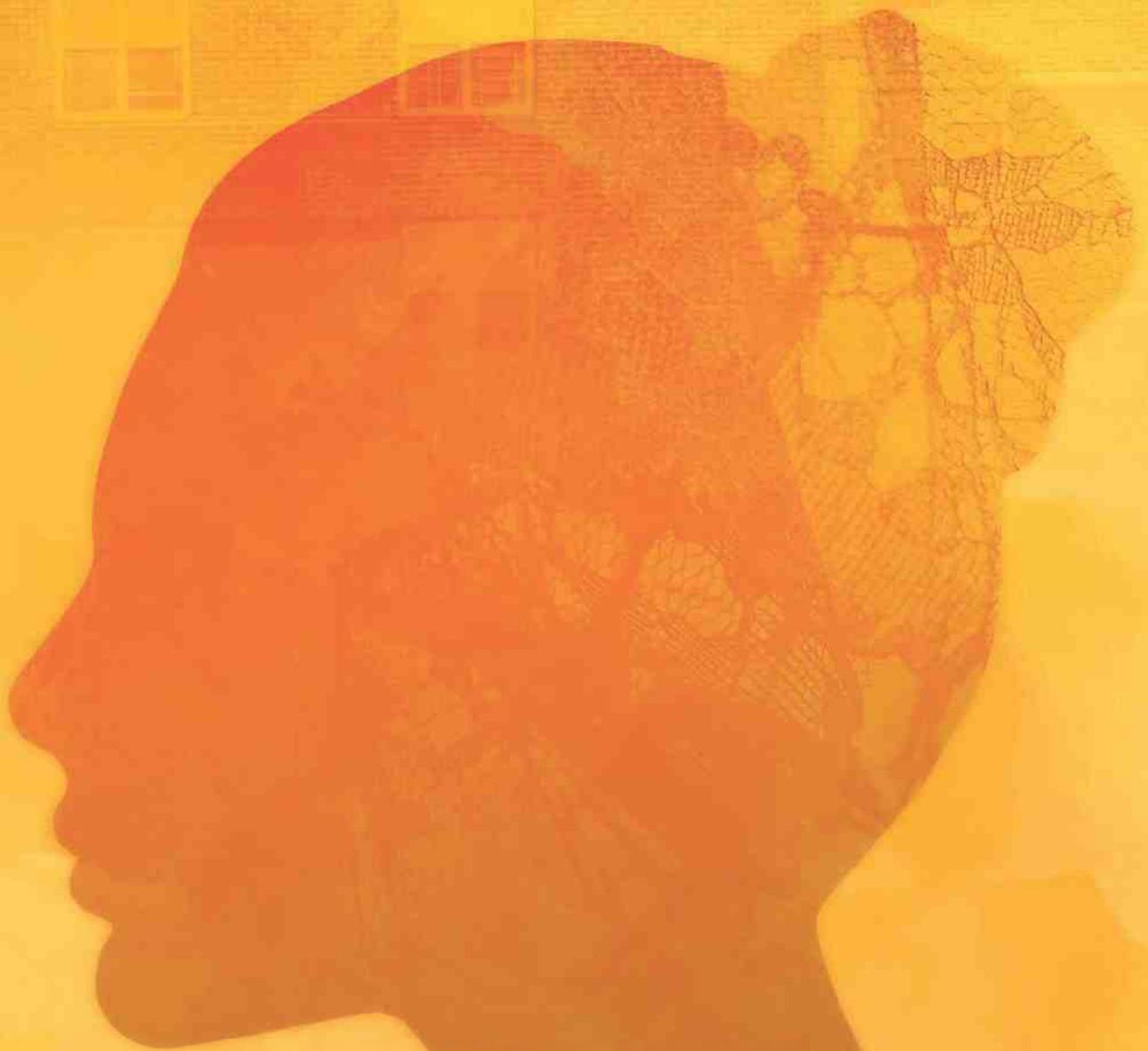


# WITHOUT CHOICE



A report by RMIT University and The Salvation Army Freedom Partnership - to end modern slavery, in consultation with survivors and frontline professionals.



**The Freedom Partnership**  
**End Modern Slavery**



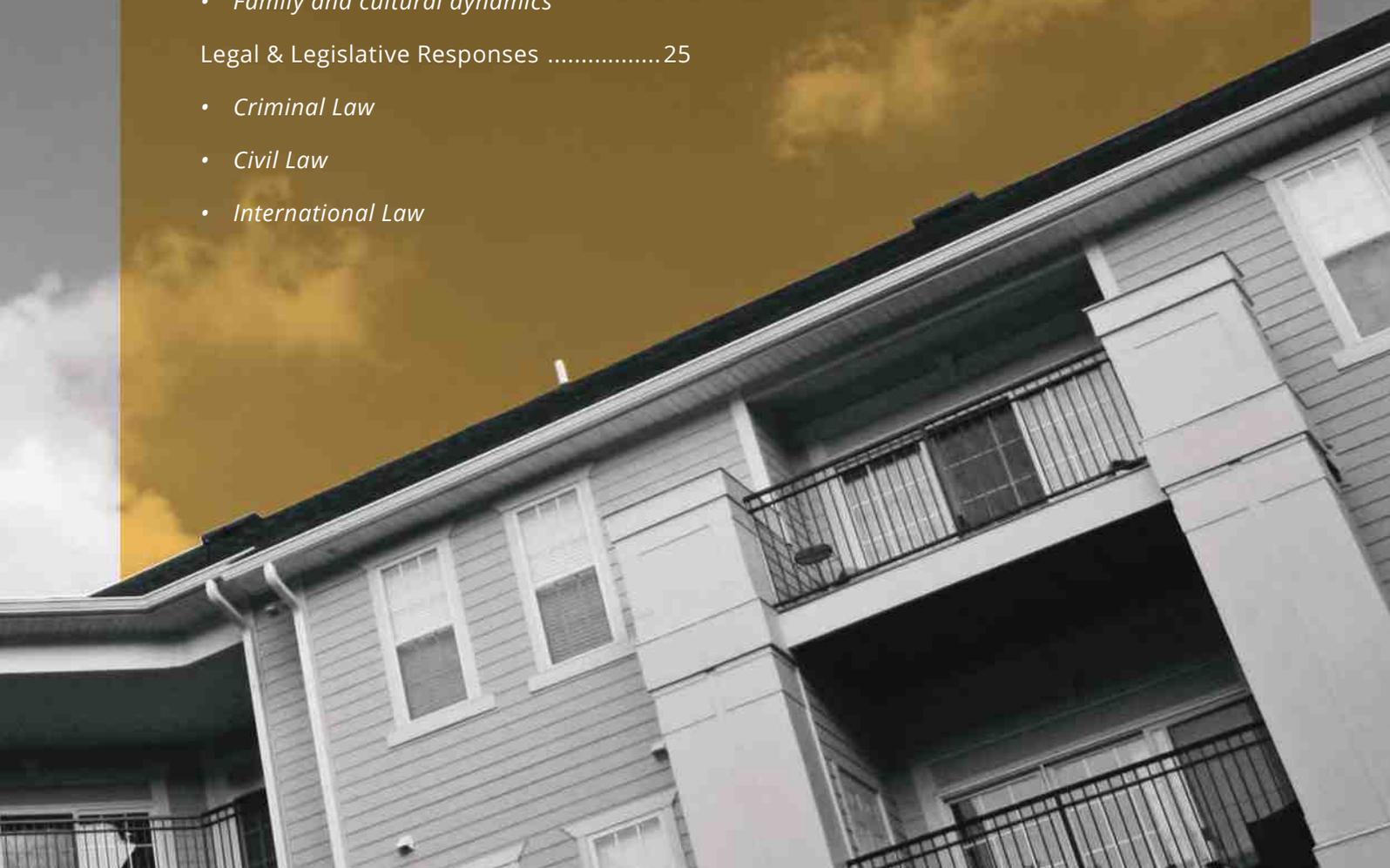
# WITHOUT CHOICE

EXAMINING FORCED MARRIAGE IN AUSTRALIA



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# ACKNOWLEDGEMENTS

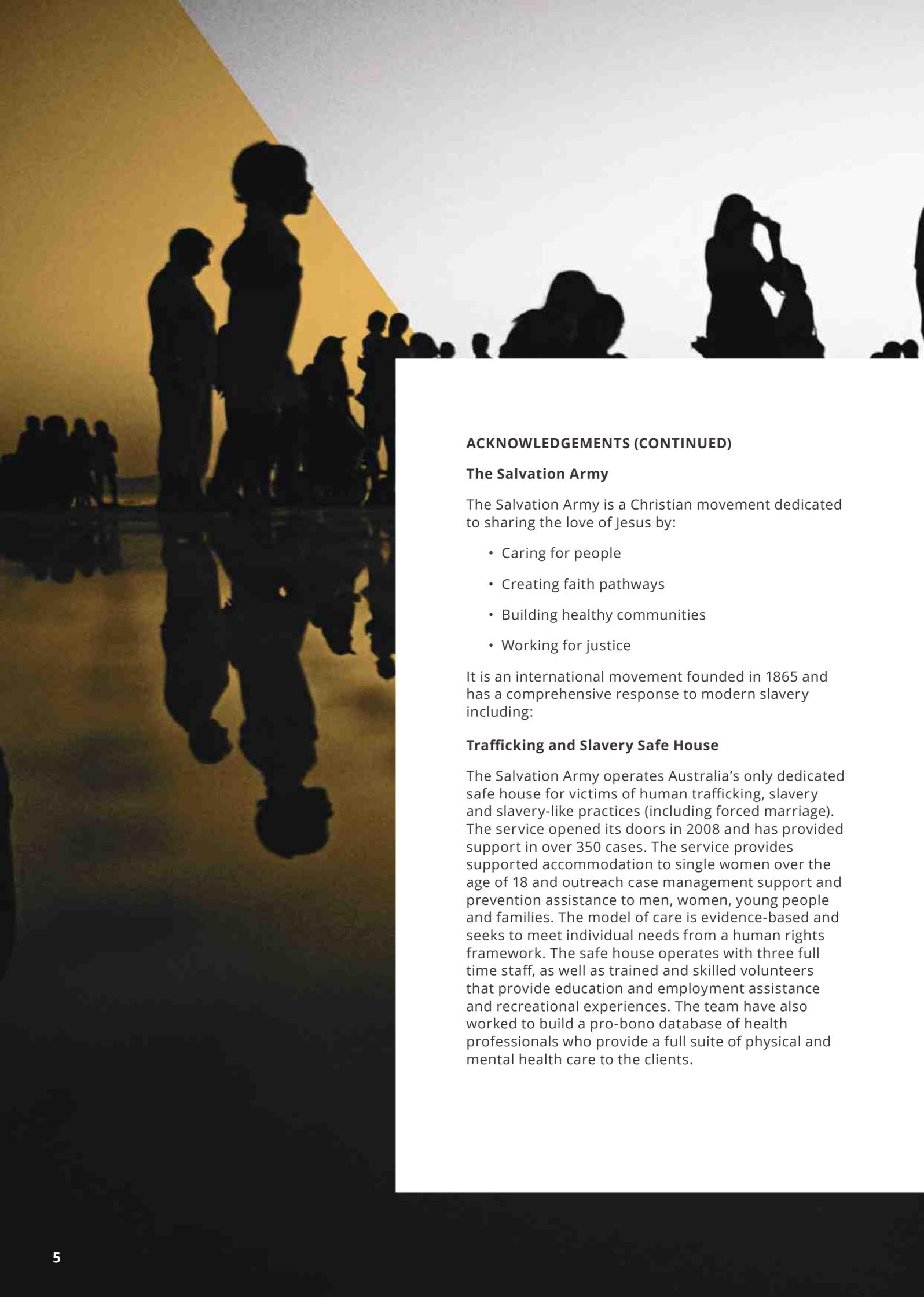
*We would like to acknowledge the support given to this project by Dr. Kaye Quek, Associate Professor Val Colic-Peisker, Mr Andrew Pickering, Ms Diana Lew of RMIT University and Ms Laura Vidal of The Salvation Army, Freedom Partnership-to End Modern Slavery.*

*We also acknowledge Michaela Guthridge as the lead researcher. Michaela is a gender specialist and women's human right advocate, who obtained a Master of International Development (with Distinction, 2015) from RMIT University, Australia and a Bachelor of Arts (1999) from Monash University, Australia.*



**The Freedom Partnership**  
**End Modern Slavery**





## **ACKNOWLEDGEMENTS (CONTINUED)**

### **The Salvation Army**

The Salvation Army is a Christian movement dedicated to sharing the love of Jesus by:

- Caring for people
- Creating faith pathways
- Building healthy communities
- Working for justice

It is an international movement founded in 1865 and has a comprehensive response to modern slavery including:

### **Trafficking and Slavery Safe House**

The Salvation Army operates Australia's only dedicated safe house for victims of human trafficking, slavery and slavery-like practices (including forced marriage). The service opened its doors in 2008 and has provided support in over 350 cases. The service provides supported accommodation to single women over the age of 18 and outreach case management support and prevention assistance to men, women, young people and families. The model of care is evidence-based and seeks to meet individual needs from a human rights framework. The safe house operates with three full time staff, as well as trained and skilled volunteers that provide education and employment assistance and recreational experiences. The team have also worked to build a pro-bono database of health professionals who provide a full suite of physical and mental health care to the clients.



### **The Freedom Partnership to End Modern Slavery**

The Freedom Partnership was launched on 1 July 2014 and is an expansion of the advocacy, research and capacity building work that previously occurred under the safe house. The Freedom Partnership's goals include:

- Mobilising communities to effectively identify and respond to modern slavery with the aim to improve the rate of identification and referral for assistance of survivors and building accountability that collectively addresses a social problem that we all play a part in (directly or indirectly).
- Empowering survivor advocates to contribute to ending modern slavery, in turn yielding survivor-centred and informed public policy and empowering other victims/survivors to make self-determined decisions.
- Partnering with local, state and territory governments to develop and implement a localised response, therefore improving identification of, and assistance to, victims and increasing potential effective prosecutions.
- Advocating for policy reform with the Commonwealth to continuously improve Australia's National Action Plan on Trafficking and Slavery, in turn, ensuring Australia's response is evidence-based and reflects international best practice: (including the 4P strategy: Pursue, Prevent, Protect and Prepare).

The Salvation Army is a member of the Australian Government National Roundtable on Trafficking and Slavery and regularly engages with State and Federal

Government representatives. The Salvation Army was a member of the Australian Government's working group that was consulted on the development of materials on forced marriage.

It is also a member of the NSW Forced Marriage Network, with two staff members chairing different working groups (Education & Training and Direct Service Provision). In addition, The Salvation Army works with schools delivering prevention workshops and providing technical assistance to staff regarding responding effectively to disclosures of forced marriage.

The Freedom Partnership is a team of five staff – four based in Sydney and one in Canberra. For more detailed information on The Freedom Partnership, its website is accessible at:

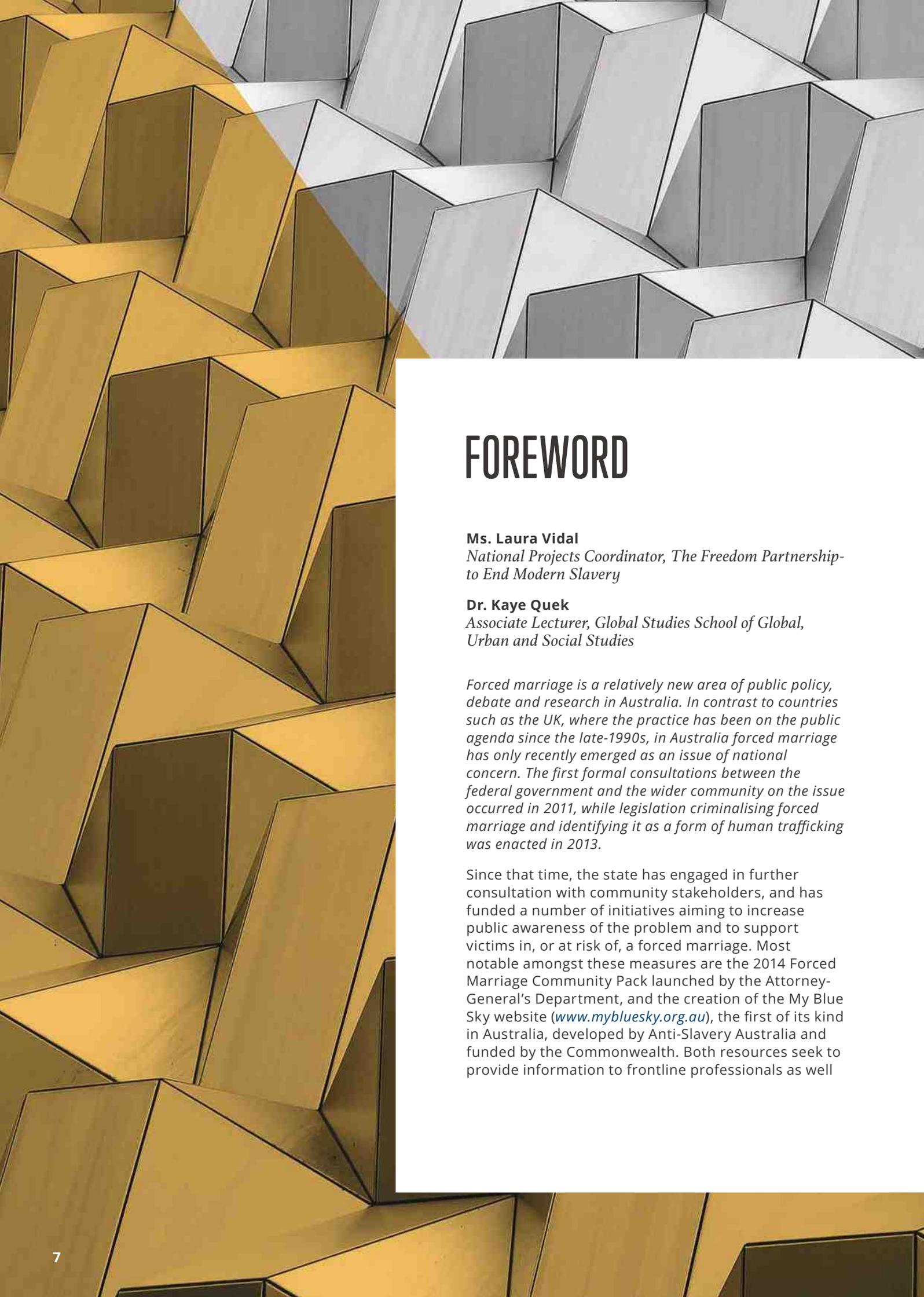
[www.endslavery.salvos.org.au](http://www.endslavery.salvos.org.au)

### **RMIT School of Global, Urban and Social Studies**

Located in the heart of Melbourne on RMIT's City campus, the School of Global, Urban and Social Studies is one of RMIT's largest schools.

The school is a community of socially concerned and globally engaged scholars who instinctively challenge conventional ideas about globalisation, sustainability, language, crime and social care through action-oriented teaching and applied research. The international experience of staff in the school broadens the knowledge of students and challenges their ideas, preparing them for a global career.

The school is also successful in engaging in valuable research, generating more than four million dollars each year of external research funding and continuing to build research networks that extend globally.



# FOREWORD

**Ms. Laura Vidal**

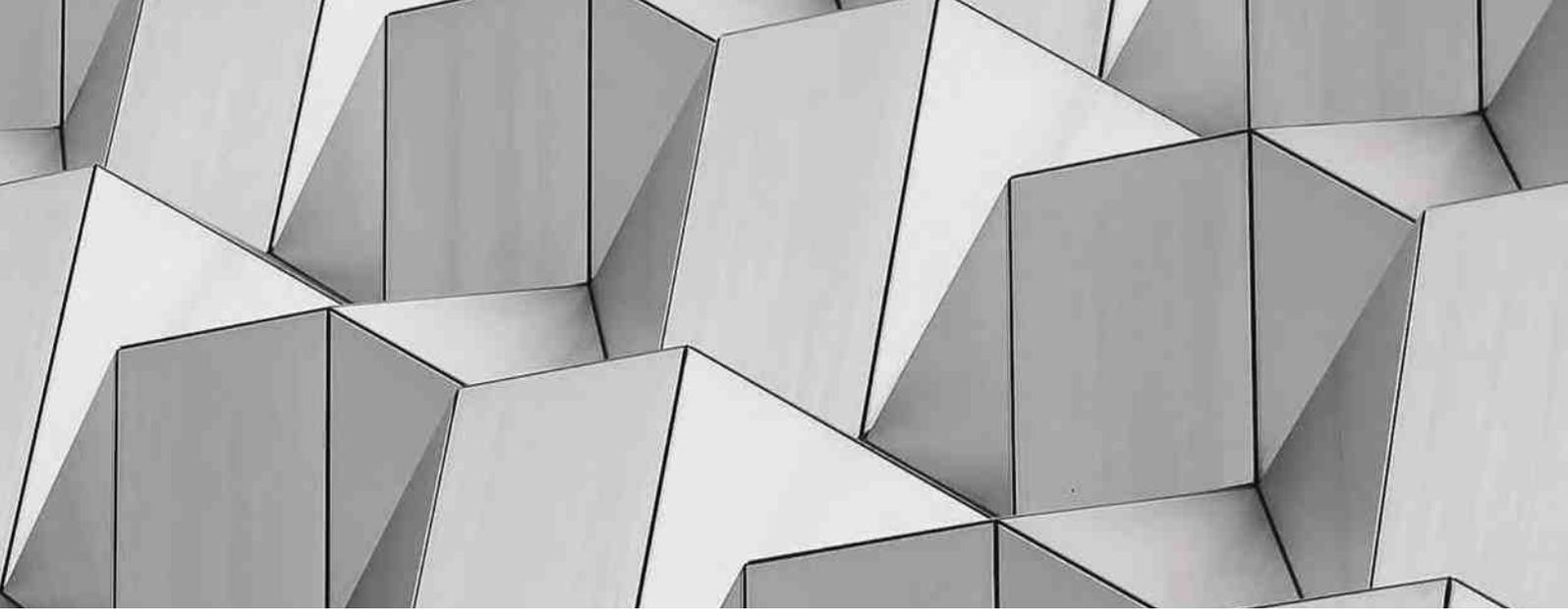
*National Projects Coordinator, The Freedom Partnership-  
to End Modern Slavery*

**Dr. Kaye Quek**

*Associate Lecturer, Global Studies School of Global,  
Urban and Social Studies*

*Forced marriage is a relatively new area of public policy, debate and research in Australia. In contrast to countries such as the UK, where the practice has been on the public agenda since the late-1990s, in Australia forced marriage has only recently emerged as an issue of national concern. The first formal consultations between the federal government and the wider community on the issue occurred in 2011, while legislation criminalising forced marriage and identifying it as a form of human trafficking was enacted in 2013.*

Since that time, the state has engaged in further consultation with community stakeholders, and has funded a number of initiatives aiming to increase public awareness of the problem and to support victims in, or at risk of, a forced marriage. Most notable amongst these measures are the 2014 Forced Marriage Community Pack launched by the Attorney-General's Department, and the creation of the My Blue Sky website ([www.mybluesky.org.au](http://www.mybluesky.org.au)), the first of its kind in Australia, developed by Anti-Slavery Australia and funded by the Commonwealth. Both resources seek to provide information to frontline professionals as well



as to potential and actual victims of the custom, with the latter offering free legal advice and a dedicated telephone helpline to assist those at risk.

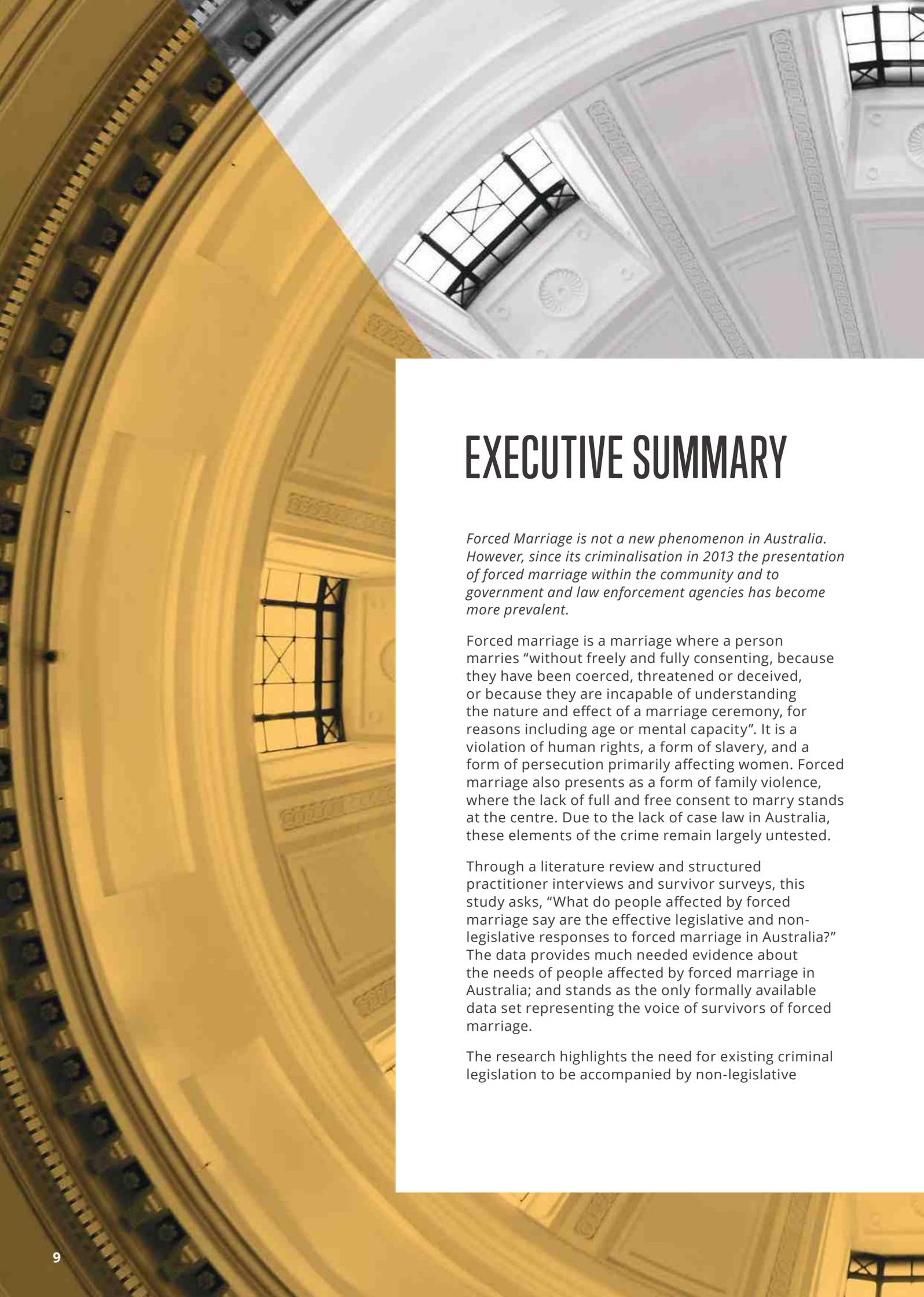
However, remarkably little continues known about the incidence and nature of forced marriage in Australia. Researchers estimate that there are 150 to 250 Australian cases of forced marriage each year, while in 2015-16 the Australian Federal Police received 69 new referrals relating specifically to the practice. Information regarding the processes involved in Australian cases of forced marriage is garnered largely from anecdotal accounts given by service providers seeking to support victims, and from the limited instances of Australian case law involving the custom. In the absence of ongoing and adequate state funding for research on how, where and why forced marriage takes place in Australia, and whom it affects, more questions than answers remain.

It is against this backdrop that this report marks a significant turning point in research on forced marriage in Australia. Though its sample size is small, the report – for the first time – publicly and formally gives voice to those most directly affected by the practice: victims, and frontline practitioners working to ensure their safety and well-being. In doing so, it provides critical information on the gaps that both groups identify as existing in current efforts to support victims and to prevent forced marriages from taking place.

Through its discussion of state and federal responsibilities to victims, the report makes an important conceptual contribution to existing policy debates on forced marriage in Australia. Forced marriage involves multiple, fundamental abuses of human rights. With much work to be done on understanding how and why the practice occurs in Australia, let us hope that this report marks the beginning of finding answers to the many questions that remain.

We would like to thank the participants in the research - the courageous survivors who have raised their voices for others, the practitioners on the ground who work tirelessly to meet needs in times of crisis, lead researcher Michaela Guthridge of RMIT and The Salvation Army in Australia for its ongoing commitment to ending human trafficking and slavery.





# EXECUTIVE SUMMARY

*Forced Marriage is not a new phenomenon in Australia. However, since its criminalisation in 2013 the presentation of forced marriage within the community and to government and law enforcement agencies has become more prevalent.*

Forced marriage is a marriage where a person marries “without freely and fully consenting, because they have been coerced, threatened or deceived, or because they are incapable of understanding the nature and effect of a marriage ceremony, for reasons including age or mental capacity”. It is a violation of human rights, a form of slavery, and a form of persecution primarily affecting women. Forced marriage also presents as a form of family violence, where the lack of full and free consent to marry stands at the centre. Due to the lack of case law in Australia, these elements of the crime remain largely untested.

Through a literature review and structured practitioner interviews and survivor surveys, this study asks, “What do people affected by forced marriage say are the effective legislative and non-legislative responses to forced marriage in Australia?” The data provides much needed evidence about the needs of people affected by forced marriage in Australia; and stands as the only formally available data set representing the voice of survivors of forced marriage.

The research highlights the need for existing criminal legislation to be accompanied by non-legislative



measures, especially in the form of greatly increased crisis accommodation, and education campaigns in schools and within the broader community. Further, it calls attention to the disjuncture that exists in the responsibilities of state and federal governments to assist those trafficked for forced marriage. As the relevant legislation is federal while support services (such as crisis accommodation and family violence protections) are largely administered by states, a great many people affected by forced marriage are falling through the cracks.

The research also demonstrates the need to understand the practice as a form of human trafficking occurring in context of family violence and therefore requiring a specialised framework of its own. The practitioner interviews illustrate, for instance, the difficulties associated with using existing safe housing systems for those threatened with or escaping forced marriage. Compared to the strict household environment from which affected individuals tend to come, the relatively unstructured nature of the housing system often proves too much of a “culture shock” for victims, frequently resulting in their returning home. In this respect, the human trafficking framework appropriately captures the egregiousness of the harms involved in forced marriage but the absence of specialised support services means that there is a failure to account for the particularities of this form of family violence. The consequences for victims are considerable.

In addition to its findings, the report is significant for its identification of areas in need of further research, many of which are specific to the Australian experience. The data set points, for example, to the growing incidence of forced marriage in regional and rural Australia. It highlights the need to investigate the role and expertise of the Australian Federal Police (AFP) relative to state-based services, given that individuals appear to more often seek out the latter when faced with the threat or reality of a forced marriage.

Further, it calls into question the consequences of Australian migration and resettlement policies for potential and actual victims, by raising concerns about the rights of those seeking asylum in Australia to escape forced marriage, and the accessibility of forced marriage-related support services for new migrants, especially those in regional areas. More broadly, the research identifies issues of intergenerational trauma, cultural “fossilisation”, and victim guilt and self-blame, as key areas requiring greater investigation.





# INTRODUCTION

*The Australian Attorney-General's Department defines forced marriage as a marriage where a person marries "without freely and fully consenting, because they have been coerced, threatened or deceived, or because they are incapable of understanding the nature and effect of a marriage ceremony, for reasons including age or mental capacity" (for common terms used in this report see Table 1).*

While some forms of coercion are easy to identify (use of physical or sexual violence), other forms of coercion are less obvious because they include psychological and emotional pressure. These forms of coercion can include making a person feel responsible for, or ashamed of the consequences of not marrying, such as bringing shame on their family.

"Forced marriage is a slavery-like practice, a form of gender-based violence and an abuse of human rights. Forced marriage is not limited to any particular cultural group, religion or ethnicity, and there are reports of forced marriage from all over the world. Anyone can be a victim of forced marriage, regardless of their age, gender or sexual orientation. While men and boys can be victims of forced marriage, most reported victims are young women and girls".

<https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Pages/ForcedMarriage.aspx>

Forced marriages differ from arranged ones. In arranged marriages, parents and/or extended family play an active role in the selection of future spouse, but the intending spouse retains free and full

choice to accept or refuse the marriage (Australian Government: 2014: 114). ). However, contestation surrounds arranged marriages because of the potential for "slippage" (Shariff: 2012: 557) into a forced marriage. Whilst many marriages experience some familial pressure or at least a desire to please family, it is difficult to define when this desire becomes a detriment. Not all arranged marriages are forced, but all forced marriages are arranged. The question is not necessarily about the degree of involvement of the family or community, but the degree of involvement by the prospective bride or groom that begins to blur the boundaries between arranged and forced marriage. When the social binds of the community fabric outweigh the individual choice and participatory process of a proposal, consent to the marriage is undermined.

In 2013, the Commonwealth Criminal Code Act made forced marriage illegal in Australia. It is a crime to cause a person to enter into a forced marriage or to be a party to the forced marriage (unless you are the victim). The offences carry a maximum gaol term of 7 years, or 9 years for an aggravated offence which includes forcing a person under the age of 18 to marry or forcing a person with a disability to marry.

# LITERATURE REVIEW

The Marriage Act makes it clear that if there is no consent, there is no marriage. Yet debate still surrounds the criminalisation of forced marriage both in Australia and overseas.

Forced marriage is not only a violation of the right to choose at the point of marriage, it is often a denial of rights throughout the person's life. According to the *Supplementary Convention on the Abolition of Slavery* (Article 1(c)) it is a form of slavery. Furthermore, in 2008 the Appeals Chamber of the Special Court for Sierra Leone in the *Prosecutor v Brima* set a new precedent in international criminal law finding that forced marriage is a crime against humanity. In finding it a crime against humanity, the Appeals Chamber established it is a "prosecution and punishment of atrocities and persecutions which are so abhorrent that they shock our sense of human dignity" (Goodfellow: 2011). This was hailed as an important evolution not only in the criminalisation of forced marriage, but in the prosecution of gender-based crimes overall, sending a clear and important message that the rights of women are protected (Goodfellow: 2011).

Forced marriage has been recognised in international humanitarian law as an inhumane act (Dauvergne & Millbank 2010). Furthermore, forced marriage has been accepted as a basis for a claim of asylum under the *Convention relating to the Status of Refugees* (Article 1A(2)) where the crime is tantamount to persecution. Moreover, at least ten other international conventions relate to human rights in marriage (see Appendix 1). Despite this jurisprudence, there is no international convention that expressly defines forced marriage. However, there is support at a global level to end

forced marriage as it was included in Goal 5.3 of the United Nations Sustainable Development Goals, which encourages states "to eliminate all harmful practices such as child, early and forced marriage". Australia, as signatory to most of these conventions needs to play a leading role in the prevention, prosecution and protection of forced marriage cases. More importantly, it should seek to address the root causes.

The true extent of forced marriage in Australia is unknown, but is considered an emerging issue that has been given considerable attention since it was criminalised in 2013. Consequently, best practice responses remain under-developed and continued research and analysis of this issue is required.

In accordance with international obligations and to strengthen the patchwork of laws that attempted to address forced marriage, Australia enacted the *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013* (Slavery Act). This amended the *Commonwealth Criminal Code Act 1995* to explicitly recognise forced marriage as a crime. It defined "a marriage as a forced marriage if, because of the use of coercion, threat or deception, one party to the marriage (the victim) entered into the marriage without freely and fully consenting" (s270.7A).

Here, coercion is defined broadly as "force, duress, detention, psychological oppression, abuse of power or taking advantage of a person's vulnerability"



(s270.1A). Section 270.7B outlines the offence for those who cause a forced marriage and are a party to a forced marriage, but are not the victim of that marriage. This includes the husband, the family or even the marriage celebrant. Furthermore, in 2015 the Australian Government increased the penalty for forced marriage and enacted a rebuttable presumption that children under 16 years cannot consent to marriage. These laws also have extraterritorial effect in that they apply in Australia, but also to Australian citizens overseas. To date, there has been no case law to test the parameters and effectiveness of this legislation, (although there have been cases of forced marriage captured by other legislation, including the *Marriage Act 1961*, the *Family Law Act 1975* and immigration law. See Appendix 2 for Australian case law on forced marriage).

Under Section 23(1) (d) of the *Marriage Act*, a marriage may be void if the consent of either of the parties was not a real consent because:

- i. it was obtained by duress or fraud;
- ii. that party was mistaken as to the identity of other party or as to the nature of the ceremony performed; or
- iii. that party was mentally incapable of understanding the nature and effect of the marriage ceremony; or
- iv. either party was not of marriageable age”.

Unlike the Slavery Act, the Marriage Act only has application to marriages that take place in Australia and therefore has no application when an Australian is married overseas. However, a marriage that takes place overseas may be recognised when either party or participant to the marriage arrives in Australia (Australian Government: 2011). Forced marriage also includes variations of marriage-like relationships, including common law marriage, de facto marriage, cultural marriage and religious marriage (Evans: 2014).

The Marriage Act makes it clear that if there is no consent, there is no marriage. Yet debate still surrounds the criminalisation of forced marriage both in Australia and overseas. In the initial Australian Government community consultation in 2011, fears were held that criminalisation would force the practice underground. Ultimately, the Australian Government decided that criminalisation would act as a deterrent to perpetrators and empower victims with the armoury to unequivocally uphold their rights in marriage. However, the Australian Government did acknowledge that victims may not want to go as far as prosecute their own family or community members, who are the usual perpetrators of forced marriage. For this reason, additional measures that perhaps include a hybrid of legislative and non-legislative approaches must be implemented to ensure the realisation of rights of people affected by forced marriage.

Due to the lack of case law in Australia, the elements of the crime remain untested. Of considerable debate is the question of the necessary element of “full and free consent”. Anitha and Gill (2009) place consent and coercion on opposing ends of a continuum, but where the tipping point lies is contentious. Consent may be a subjective test, embedded in cultural norms of patriarchy, rather than an act of pure individual agency (Sabbe et al: 2014). To study this dialectic, a closer examination of socio-cultural constructs is required and notions of control, persuasion, pressure, threat and force must be cognisant of any given subtext (Anitha & Gill: 2009). Victims, who are supposedly endowed with free will, may be extremely vulnerable to subtle manipulation and pressure, and this must not be discounted, especially as the ongoing impact of forced marriage may be for life. In the case of *Re Marriage of S, Watson SJ* found “[the victim] was caught in a psychological prison of family loyalty, parental concern, sibling responsibility, religious commitment and a culture that demanded filial obedience” (Simmons & Burn: 2013: 978).

Forced marriage exists within a cultural context of specific power relations (Chantler: 2012). These complexities mean that cases are not correctly identified and reliable statistics and an accurate evidence-base on which to act are difficult to obtain (Gill & Anitha: 2009).

Culture and religion are sometimes blamed for the manifestation of forced marriage, where “forced marriage is constructed as a culturally sanctioned aberration from the norm of freely contracted marriages” (Anitha & Gill: 2009: 166). Popular media can perpetuate representations of oppressed women lacking agency and autonomy compared to so-called Western liberated women. Here, an unhelpful dichotomy is constructed between the oppressed and the liberated, the archaic and the modern, between the enslaved and the free. However, the reality is more nuanced. Anitha and Gill (2009) point out that adopting racist stereotypes of “us” versus “them” fuels xenophobic fears of the invading “other”.

It is important to recognise there is nothing inherently wrong with collectivist cultures that uphold a sense of duty and value interdependence over independence. This is what makes a community strong and resilient. The reality is that there are varying degrees of interdependence in all cultures. Despite some cultures regarding communal obligations higher than individual pursuits, it does not automatically follow that consent is a Western construct. This assumption only diminishes the many benefits of multiculturalism by perpetuating the demonisation of cultural minorities. In these scenarios, women run the risk of becoming passive recipients of vows and mere vessels of honour and virtue. Furthermore, contextually constructed notions like shame and honour can inhibit the ability for a woman to withhold her consent in the marriage process (Anitha & Gill: 2009). It is often difficult for people experiencing forced marriage to leave or reject a marriage, as it means leaving the family and community that forms a vital role in their life and personal identity (Anitha & Gill: 2009).

This raises questions about the universality of human rights and cultural relativism. This subject was addressed at the United Nations Conference on Human Rights (June 1993), which affirmed that “the universal nature of these rights and freedoms is beyond question” (Cerna: 1994: 741). This was seen to eliminate any double standard in the implementation of human rights and cast aside any claim of human rights being a Western hegemonic construct.

While the law is important in progressing gender rights, legislation alone cannot adequately deal with this highly complex and multifaceted issue without complementary non-legislative responses. The issues a person affected by forced marriage may face include physical assault, indecent assault, rape, emotional and psychological abuse, financial abuse, depression, economic loss, loss of education, loss of employment opportunities, kidnapping, abduction, threatening behaviours, false imprisonment, immigration

offences, deportation, fraud, excommunication, social isolation, estrangement from family, neglect, reduced political participation, human trafficking, slavery, murder, suicide, loss of childhood and early or forced pregnancy. However, the crime need not be fragmented into these individual acts, but may be viewed as an enduring act of grievous family violence (Quek: 2013).

As previously stated, due to the clandestine nature of forced marriage, reliable empirical evidence, both qualitative and quantitative, does not exist (Simmons & Burn: 2013). Some even suggest that it is unquantifiable (Kljun: 2012). Speculation of the numbers of forced marriages in Australia range from 147 (Jelenic & Keeley: 2013) to 250 cases per year (Evenhuis & Burn: 2014). The Australian Federal Police received 169 new referrals in 2015-2016, with 69 of these relating to forced marriage—this is an increase of 36 referrals from the previous year. At present, 41 per cent of all human trafficking referrals received by the Australian Federal Police are matters relating to forced marriage. The Australian Federal Police report that of the referrals they have received, forced marriage primarily involves Australian Citizens under the age of 18 (Australian Government: 2017).

Evenhuis and Burn (2014) estimates 14 million girls worldwide enter forced marriages each year, which is approximately 39,000 per day. If present trends continue, 150 million girls will be married before their 18th birthday over the next decade (ICRW: 2016). While the official reporting rate of forced marriage in Australia is low, practitioners believe this is because the problem is hidden (Simmons & Burn: 2013), and significant fear surrounds disclosure. Consequently, any policy making on the subject lacks an accurate evidentiary base and leads to assessments of community needs based on presumptions.

Across the world, gaps appear in the literature in relation to reliable data sourced from people directly affected by forced marriage. While under reporting is common amongst all types of violence against women (Gill & Anitha: 2009), perhaps none more so than forced marriage. In order to achieve a human rights based approach, participation of those affected or potentially affected must be given priority. Once it is realised that forced marriage is not a dialectic between freedom and tradition, inclusivity will seed awareness (Shariff: 2012). Only then will we demythologise forced marriage, recognise the high value that some communities place on family and community is not a deficit but an asset, and maintain these values in a human rights framework. In fact, such a dialogue based on shared and universal values may be seen as a way forward in today’s multicultural Australia.

**TABLE 1**

TYPE OF MARRIAGE OR COMMON TERMINOLOGY	DEFINITION
<b>Marriage</b>	The union of a man and a woman to the exclusion of all others, voluntarily entered into for life, s5 Marriage Act 1961
<b>Child Marriage</b>	A marriage that involves at least one minor. All child marriages are forced marriages unless consent is given by court. All child marriages are considered aggravated offences under the s270.8(1)(a) Slavery Act
<b>Early Marriage</b>	A marriage where an intending spouse does not have the mental capacity to give full and free consent (i.e. cases of intellectual disability) (UNICEF: 2001: 2)
<b>Arranged Marriage</b>	Parents and/or extended family play an active role in the selection of future spouse, but the intending spouse retains free and full choice to accept or refuse the marriage (Australian Government: 2014: 114)
<b>Servile Marriage</b>	A marriage where one person is a “chattel” that is sold, transferred or inherited (Australian Government: 2011: 3)
<b>Sham or False Marriage</b>	Parties to the marriage lack martial intent and use marriage to achieve alternative purposes, such as to facilitate immigration (Australian Government: N.D.)
<b>Consanguineous Marriage</b>	Marriage to a blood relative (Harnamy: 2012: 185)
<b>Slavery</b>	Ownership of a person (Anti-Slavery Australia: N.D.)
<b>Sexual Slavery</b>	Ownership of another person which includes acts of a sexual nature. Does not imply the social exclusivity that defines forced marriage (Simmons & Burns: 2013)
<b>Servitude</b>	The condition of a person (the victim) who provides labour or services, if, because of the use of coercion, threat or deception a reasonable person in the position of the victim would not consider himself or herself to be free to cease providing the labour or services; or to leave the place or area where the victim provides the labour or services; and the victim is significantly deprived of personal freedom in respect of aspects of his or her life other than the provision of the labour or services.
<b>Forced Labour</b>	The condition of a person (the victim) who provides labour or services, if, because of the use of coercion, threat or deception, a reasonable person in the position of the victim would not consider himself or herself to be free, s270.6(1) Slavery Act
<b>Domestic or Family Violence</b>	Any violent, threatening, coercive or controlling behaviours that occurs in current or past family, domestic or intimate relationships. This includes not only physical injury, but direct or indirect threats, sexual assault, emotional and psychological torment, economic control, damage to property, social isolation and any behaviour which causes a person to live in fear (Department of Human Services: N.D.)
<b>Human Trafficking, People Trafficking, Trafficking in Persons</b>	The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation, Article 3(a) Trafficking Protocol
<b>Polygamy</b>	A marriage that includes more than two spouses (UN Women: N.D.)
<b>Endogamy</b>	Marriage within one’s own caste or kinship (Samad & Eade: N.D.)

# METHODOLOGICAL PARADIGM AND LIMITATIONS

The research question that guides this study is “What do people affected by forced marriage say are the effective legislative and non-legislative responses to forced marriage in Australia?”

The method of practitioner interviews and survivor surveys combines both quantitative and qualitative methodologies. It also acknowledges that methodology is gendered (Oakley: 1998) and seeks to voice the views of women affected by forced marriage in Australia. The qualitative questions from the survivor surveys are included to empower participants to identify and reflect on their own solutions to the problems they face.

The research makes no assumptions as to the cultural or socio-economic background of people affected by forced marriage. Questions about race and religion are excised from the survey to increase the level of trust, confidence and to reassure participants that the research is not apportioning blame or reinforcing stereotypes. For similar reasons, questions about intimate or sexual activity are excluded because they are taboo in many cultures. It is also important to note that some cultures find it difficult to openly discuss problems or to criticise and this may influence the effectiveness of the survivor surveys (Dearden & Kowalski: 2003). It is therefore important to recognise that those who are not used to being asked their opinion or to express themselves may be unsure or guarded when given the opportunity (Liamputtong: 2007).

However, in utilising participatory approaches, the project explores the everyday life of these women, highlighting that their lived experience is critical to understanding the nature and extent of forced

marriage in Australia (Swantz: 2008). In addition to the tabulation of quantitative data from the interviews and surveys, an examination of the commonalities and differences in themes of the qualitative dataset was undertaken to “tell the story” of people affected by forced marriage. Reflexive analysis was utilised to gauge the emotions behind the answers provided to qualitative questions (Maynard: 2004).

The research utilises a mixed-method model of problem-oriented Action Research and solution-oriented Appreciative Inquiry to capture the full story of people affected by forced marriage; both negative and positive. In this research, we used the first two stages of the 4D Model of Appreciative Inquiry, which is Discovery (sharing stories about what worked best), and Dream (sharing what could work best). Furthermore, Mason and Clemens (2008: 66) state when survivor groups are given the opportunity to share their experience, healing can take place, especially when it is in a safe environment and with the ultimate goal to end the harmful practice. This research acknowledges that the survivors are the experts in this field and it is only through their experience that we can begin to build our knowledge and understanding of forced marriage in Australia.

## **Research question**

The research question that guides this study is “What do people affected by forced marriage say are the effective legislative and non-legislative responses



to forced marriage in Australia?" Here, "legislative" refers to all legal and legislative responses and "non-legislative" refers to all other potential responses, including social, cultural and educational.

### **Aim**

The ultimate aim of this research is to establish an evidence-based approach to practice that safeguards individuals against forced marriage in Australia. This is done, not only to give the long-silenced voice to people affected by forced marriage, but simultaneously, to effectively influence government policy from an evidentiary base.

### **Method**

Nine structured practitioner interviews and four survivor surveys were undertaken to collect the primary data for this research. All survivor surveys were received from female participants aged between 17 and 21 years old. Three of these participants entered engagements against their will and the eldest had left a forced marriage. All participants were engaged between 15 and 16 years old to men that were between 23 and 35 years old. All participants were engaged in a country other than Australia.

The nine practitioner interviewees were selected based on their expertise in the field of forced marriage in Australia. The areas of expertise amongst participants included:

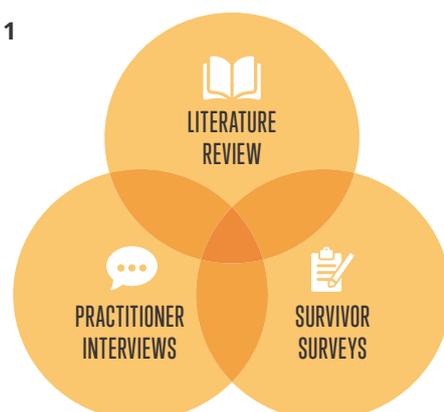
- Case management (including housing, health and education needs);
- Legal services, both public and private (including women's legal clinics, family law and migration advice);
- Academia (including policy papers and research);
- Education (including training workshops, awareness raising and advocacy);
- Supported accommodation provision (including case management).

Five practitioner interviews were face-to-face and four by telephone. The length of interviews varied from 20-80 minutes. The interviewees were first asked closed questions. This was done to elicit definitive answers to questions, which were then followed-up by narrative elaboration. This technique proved very helpful in establishing clear and unambiguous answers.

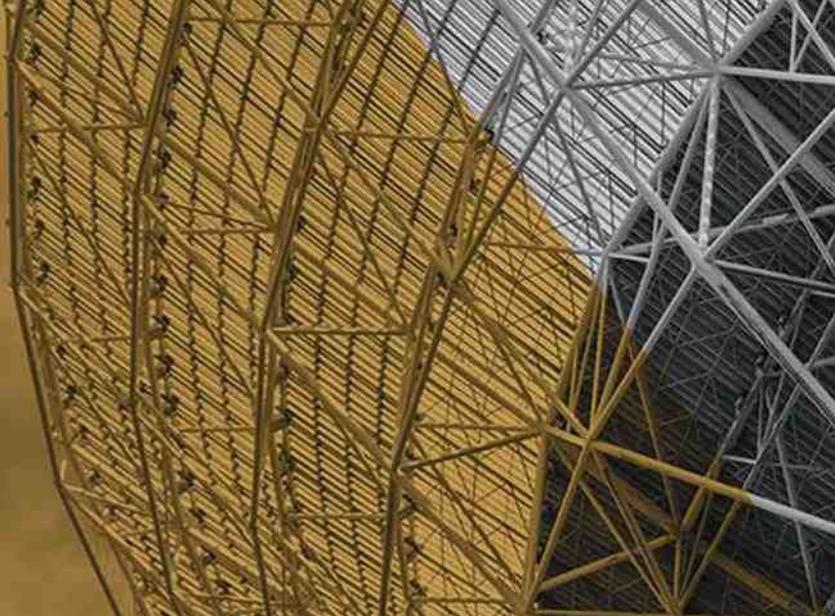
The small sample size for both the practitioner interviews and survivor surveys means generalisations about the population cannot be drawn. However, the data provides much needed evidence about the needs of people affected by forced marriage in Australia and is the only formally available data set representing the voice of survivors of forced marriage.

The mixed method of triangulation was employed in this research to add rigor and richness to the research findings through the corroboration or questioning of evidence by comparing and contrasting datasets (Denscombe: 2010). Ultimately, it is hoped that the use of triangulation will reveal a fuller picture of forced marriage in an Australian context. Figure 1 represents the triangulation used in this project, where the centre-point represents the research findings. While literature will be used as a secondary dataset, the primary data is collected by practitioner interviews and survivor surveys.

**FIGURE 1**



# DATA ANALYSIS



Ultimately, forced marriage is a more complex relationship than any reductionist dichotomy of victim and perpetrator, but it remains important to acknowledge the seriousness of the offence.

Despite criminalisation of forced marriage in 2013, most practitioner interviewees were reluctant to utilise the language of crime in relation to forced marriage. Whilst there are many valid reasons for not using the word “victim”, it was a valuable insight that some interviewees were similarly reluctant to use the word “perpetrator”. The common reason for this reluctance was because it demonised what may otherwise be a loving and caring family or community.

However, just as in domestic violence, the fact that a perpetrator is predominately loving and rarely abusive does not lessen the seriousness of the crime or the responsibility of the perpetrator. In some respects, interviewees were reflecting back the views of those affected by forced marriage and accepted the reality that you can choose your partner, but you cannot choose your family or community. Caution must be given to excusing criminal behaviour because of misguided but essentially “good” intentions, and a more nuanced understanding of the roles of victim and perpetrator needs to be developed. The reluctance to use crime-based language may also highlight the difference between the Australian Government’s criminal justice approach to forced marriage compared to the community-based approach of non-government organisations. Ultimately, forced marriage is a more complex relationship than any reductionist dichotomy of victim and perpetrator, but it remains important to acknowledge the seriousness of the offence.

## Understanding of forced marriage

The first question posed to practitioners was simply: “What do you understand forced marriage to be?” (Appendix 3, p.43). All practitioners cited section 270.7A of the Slavery Act, which defines “a marriage as a forced marriage if, because of the use of coercion, threat or deception, one party to the marriage (the victim) entered into the marriage without freely and fully consenting”.

This bears two observations. Firstly, those working with people affected by forced marriage know and can apply the legal definition of forced marriage. Secondly, it indicates a narrow definition of forced marriage and does not include a recognition that it is a form of slavery or a form of persecution. We may surmise that if the same question was posed to people who have experienced forced marriage a more nuanced and complex understanding of the crime may be retold. It highlights the importance of moving beyond the legal definition and looking more closely at the social, cultural and psychological aspects of the crime. As one practitioner explained:

“When I started working with this client group I thought forced marriage was all about women being dragged to the altar, meeting the person the first time at that point and that was kind of my narrow view of it. Now, I’ve come to understand there’s so much more to it, so



much more to culture and societies and even families and religion that affect women not being able to make a choice about who they marry” (Interviewee 3).

### Reasons for forced marriage

In respect to the survivor responses, they all cited numerous reasons for forced marriage, highlighting the complex and multifaceted nature of the crime. While the practitioners interviewed stated that the pressure experienced by victims was often exerted by an immediate family member, the survivor surveys indicated that multiple actors were involved, including siblings, extended family, fiancé and community members.

The survivor surveys cited numerous reasons for forced marriage, including honour, shame, control and tradition. The research showed that catalysts in developing nations that do not apply to Australia (such as war, civil unrest, poverty, lack of education or natural disasters) still affect Australian families and communities because of migration from developing countries. Furthermore, this research also indicates that forced marriage in Australia, like in developing nations, is prevalent in rural areas. When posed the question of prevalence of forced marriage in remote, rural and regional Australia, one interviewee replied “yes, very much, very much. In fact, regional Victoria is probably the biggest incidence rate I’ve heard of in the last two years” (Interviewee 4). This statement has credibility in light of Australia’s re-settlement policies focusing on remote, rural and regional Australia and should be explored further.

Forced marriage was commonly linked to the following:

- Subvert the influence of Western culture
- Maintain family honour, prevent shame and save face

- Strengthen family relationships
- Preserve religious and cultural traditions
- Migration benefits
- Financial gain (i.e. dowry, bride price)
- Broker a business deal
- Attempt to curtail homosexuality; and
- Control sexual relations in general

However, one explanation for forced marriage appeared distinct from the literature. This was the impact of intergenerational experience of forced marriage and associated intergenerational trauma, the “passing on” from mother to daughter “the way it’s always been” (Interviewee 2). In this regard, the mother’s inability (yet desire) to protect her daughter from the same fate of forced marriage was an intriguing factor yet to be fully explored in the literature. As one respondent noted:

“One of my clients would be crying a lot. Her son had learnt to wipe away her tears and deal with his mother’s constant sadness and fear. I hope it doesn’t have an effect on him for the rest of his life” (Interviewee 3).

This was also confirmed in the survivor surveys, where all participants confirmed their parents were similarly forced to marry. Furthermore, all survivor surveys confirmed knowing between three and “lots” of other people forced into marriage.

There is substantial evidence to suggest that experiencing family violence as a child leads to subsequent family violence in adulthood. Therefore, it may be that the coercion, threat and deception experienced between the husband and the wife in a forced marriage are learnt behaviours and attitudes repeated through exposure to their children (Markowitz: 2001: 205-206) rather than through

the continuation of cultural tradition. Further consideration needs to be given to the children of people affected by forced marriage and assessing the way they are impacted by the crime, how they are able to form healthy relationships and their expectations about family and marriage. In addition to inter-generational trauma, the research suggests that intra-generational trauma, especially among sisters needs further exploration - particularly as a means of identifying potential victims.

Connected to this issue of inter- and intra-generational influence, is the concept of "cultural fossilisation" (Interviewee 2) or a culture being "frozen in time" (Interviewee 4) in order to "maintain family status" (Interviewee 7). Here, people affected by forced marriage are "hanging on to what their life back home represented" (Interviewee 5). In this sense, there was a deep desire among perpetrators to preserve cultural practices when faced with a new cultural experience. Schwartz, Montgomery and Briones (2006: 1-9) suggest:

"Identity has the potential to "anchor" immigrant people during their transition to a new society... in times of tremendous change, people cling to ideas, preferences and fears that bolster a sense of their own group's uniqueness".

This may be done even when the home country has relinquished these traditions. A migrant community may be seen to regress or be "frozen in time," especially when surrounded by more "liberal" cultural beliefs and practices. The research suggests that "cultural fossilisation" particularly occurs when male-headed households lose authority and control in the face of new environments. This can lead the male to seek stricter control over the internal environment at home. In this respect, "cultural fossilisation" may also be compared to survivalist "fight or flight" responses that protect a group amid threat. We must be mindful that "cultural fossilisation" is not necessarily harmful, but when resulting in harmful practices, cannot defeat universal human rights. Further research into understanding "cultural fossilisation" in the context of forced marriage is needed.

The research indicated that guilt or self-blame is experienced by people affected by forced marriage. This is felt because of the presumed selfishness of rejecting a marriage proposal. Shame is often cited in the forced marriage literature as a result of external force of collectivist cultures that are underpinned by family and community belief systems. However, guilt is internal and stems from the idea that one has done something wrong. It may be contended that viewing forced marriage in terms of guilt, as opposed to shame, may reveal a more damaging aspect of forced marriage that requires deeper analysis. In this respect, guilt suggests a sense of responsibility or control over a situation and it is clear from the evidence that people affected by forced marriage do not possess such control over where, when and whom they

marry. Therefore, they should not feel the associated responsibility or moral culpability for rejecting a marriage proposal.

### **Nature of coercion, threat or deception**

When both survivors and practitioners were asked about the nature of the coercion, threat or deception, responses confirmed the literature review. The practitioner interviews indicated that while the coercion, threat or deception may be explicit, it is often implicit: "passive-aggressive" (Interviewee 1); "subtle" (Interviewee 5); and "underhanded" (Interviewee 2). Ultimately, victims only consent to marry "because they felt they could not refuse" (Interviewee 5). As one interviewee explains:

"There are elements of society where women are raised in a very, very formal setting. There are norms and customs that dictate their everyday actions. And if the father says this is the man you're marrying, then that's the man she's marrying. There's no need for physical intimidation because by the time she gets to the age of an adult she's already conditioned to accepting his law as gospel so to speak. I'd be naive to say that there hasn't been violence used in certain instances, but I'd say it's very sporadic and very limited" (Interviewee 1).

This is reflected in comparable family violence literature. Straka and Montminy (2008: 261) recognise that "although men use various strategies to gain power and control over their female partners, this often occurs through psychological abuse". Preserving a sense of morality was perhaps the most cited reason for forced marriage in the practitioner interviews. One interesting aspect of the reasons for forced marriage was they were not viewed as necessarily malicious and there was a sense of "doing the right thing by their child" and that "mum and dad know best" (Interviewee 5).

### **Family violence and human trafficking**

Further to the legal definition, the literature also includes forced marriage within the definitions of family violence, human trafficking, forced migration, child marriage and gender-based violence. All of these frameworks offer a unique lens to the understanding of forced marriage.

The reasons for forced marriage are all underpinned by the notion of power and control, which is the basis of family violence. In this respect, forced marriage may be viewed as a specific form of family violence that sits within a life-time of family obligation and duty to the home. One practitioner interviewee provided the insight that "a woman's life hasn't changed entirely as a result of the marriage" (Interviewee 3). She has merely been "inherited" from one perpetrator to another; from uncle to brother, from father to husband. As Straka and Montminy (2008: 270) state "we can see entire families infected with abuse, with patterns that shift over time as the relative power of family members changes".

Forced marriage is but one of these moments in a lifetime of enslavement. In some cases of forced marriage, the girls knew they were betrothed from a young age. As one interviewee said “I see it as being something women are aware of and go through their whole lives preparing and fearing that’s going to happen to them” (Interviewee 3). However, other women only found out at the point of marriage. Either way, victims often could see “no way out, they absolutely cannot escape”. Another participant noted “I’ve never had a client who felt safe going to their father, or to a male member of the family, to ask them to assist them in leaving the marriage” (Interviewee 3).

With the view that forced marriage is a manifestation of family violence, this research considered the effectiveness of a culturally appropriate family violence prevention strategy and / or the need for specialised services. In providing both mainstream and specialised services, people affected by forced marriage will have options available to cater to their individual needs. However, it was noted that an efficient and effective family violence system is an ideal not yet realised and therefore, the specialised services are evermore crucial. Furthermore, the sense of uniqueness about forced marriage meant that it needed its own understanding and its own funding.

Forced marriage is also framed within the human trafficking and slavery discourse in Australia. Some introductory references to forced marriage have appeared in various state based family violence action plans. However, internationally, forced marriage is largely seen as a standalone issue that does not fit a family violence or slavery framework. What are the implications for individuals at risk, by the way in which forced marriage is defined and conceptualised? This can only be established by a comparative study of cases that have accessed the federal human trafficking process as opposed to cases that have accessed the state-based family violence process. From a discourse point of view, one respondent viewed both frameworks as potentially problematic:

“Because people may see the term trafficking and they don’t identify with trafficking and see it as a different process, so it may then inhibit people from identifying it. And equally, sitting in family violence, it may not get recognised for what it is; the uniqueness of what the issue is, if it is seen as simply a family violence issue” (Interviewee 7).

It may also be said that family violence discourse also has a different sense of justice to the human trafficking discourse and an eclipsing of these dialogues has the potential to benefit those affected by forced marriage. While family violence discourse acknowledges social, cultural, civil and economic justice for victims, human trafficking has traditionally focused solely on criminal justice. However, while most victims do not want to prosecute, this means they are left without justice. While the Australian Federal Police have indicated that their focus is not solely prosecution and conviction,

there is little evidence to suggest that alternative forms of justice are being pursued. In light of this, it would be prudent to consider a hybrid model that applies the best of both the human trafficking framework and the family violence framework, and create a new model that responds to the needs of both individuals and communities affected by forced marriage.

All interviewees believed it might be helpful to disaggregate family violence statistics to show the percentage of forced marriage cases. It was considered that this could generate a better understanding of the issue and contribute to more effective responses to combating forced marriage. Furthermore, it would contribute to the *National Action Plan to Combat Human Trafficking and Slavery* item (2015-19: 62) to implement measures to improve collection of statistical information.

For this reason, it is recommended that forced marriage be included in the family violence *National Data Collection and Reporting Framework* that is to be operational by 2022. It was also noted by some participants that the reliance on statistics from other developing nations was fraught with dangerous assumptions about the manifestation in the Australian context. It was cautioned that even if more innovative approaches to generating statistics were developed, it would still underestimate the prevalence of forced marriage in Australia because of the hidden nature of the phenomenon.

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## Family and cultural dynamics

The research revealed was that the notion of interdependence, interconnectedness and sense of belonging was not formed in the positive connotations of these values in cases of forced marriage. Rather, interdependence was a maladaptive guise or veil for abuse and manipulation that did not allow room for agency on the part of the victim. In this scenario, we must consider the nature of the pressure to marry not only on the victim, but simultaneously on the whole family and the consequences to the whole family on a decision not to marry. Furthermore, the presence of a highly dependent family dynamic is also critical to understanding the capacity of an individual to consent.

“Young people [affected by forced marriage] are growing up in a very interdependent environment; a helicopter environment so to speak. They don’t really have much independence, particularly girls... making a decision about a marriage based on their own feelings and not taking into account the family’s feelings is quite different to what [other Australians] experience” (Interviewee 2).

Self-identity can never be understood in a vacuum. It can only be understood in a social context - complex web of family, community, religion, work and school relations. It is in this web of relations that our identity, including our values, is formed. In this respect, our interconnectivity with others is the essence of our identity and our humanity. In some communities an individual’s identity is understood in relation to a husband or father. Feminist literature has long recognised that women and girls are often viewed only through a paternalistic lens of wife, mother and daughter. In the case of forced marriage, the “at risk” group of 16 to 18 year olds are in the formative stages of identity development. As marriage is another identity-conferring relationship, many believe that for a marriage to be successful it must align with other existing identity-conferring interdependent relationships. Practically, this often means marriage within the same community, culture, religion, or at the very least, within the same value system.

However, identity formation may be stymied or thwarted when consent to marriage is removed or denied. In forced marriages, the marriage can be viewed by perpetrators as a means to re-align or correct a person’s identity that has “strayed” from a given community’s values. People affected by forced marriage may then feel if they question these values they are at risk of losing their identity. This is a traumatic and anxiety-provoking experience. Waterman (1985: 15-16) states:

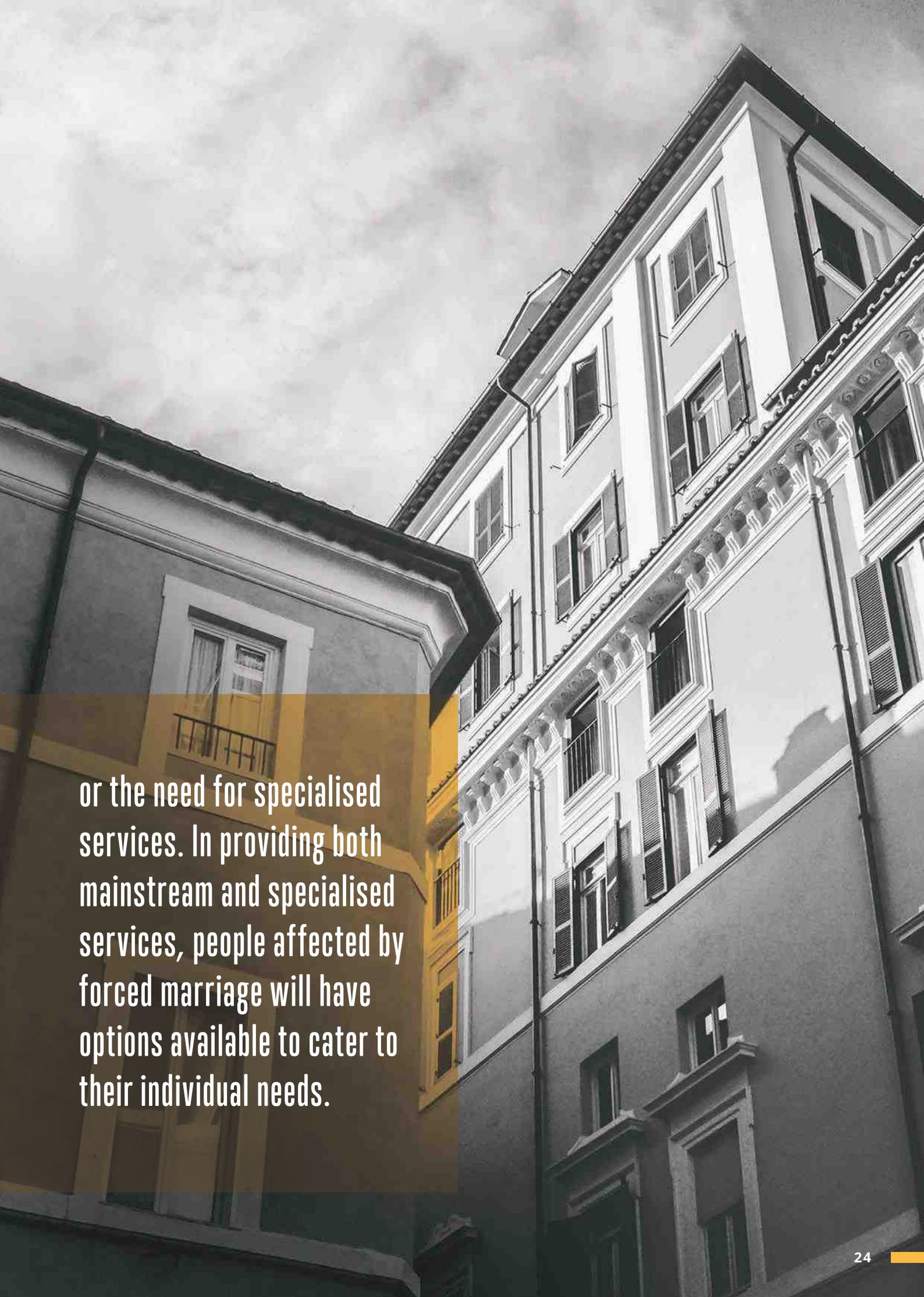
“In these instances the adolescent has given up on efforts to make identity choices because there appears to be no viable alternatives worthy of providing a basis for commitment... The subjective discomfort typically associated with a prolonged identity crisis provides

grounds for abandoning efforts when there are no prospects for a successful resolution”.

In contrast, identity-formation appears more robust when values are selected, rather than assigned. In this respect, self-exploration is vital. At the same time, group identity is equally important as it manifests a sense of belonging. Healthy identity formation requires a healthy interdependence that recognises both mutual dependence and independent freedom. “Alienation associated with issues of common identity may occur when young people are forced to take on roles or are expected to comply with group expectations to which they do not subscribe” (Newman & Newman: 2001: 526). Furthermore, Cote and Schwartz (2002: 772) note “foreclosed individuals tend to show low developmental complexity associated with a conformist and obedient orientation, as evidenced by such tendencies as closed-mindedness, rigidity and over-identifying with their parents”. This understanding is critical to developing effective interventions for both individuals and communities affected by forced marriage.

Any support services for young people affected by forced marriage must be aware of the potential for identity crisis. In this respect, the three survivor surveys who were engaged against their will stated that the opinion of their family was “very important” to them. The survivor who had left a forced marriage, noted that while originally family was very important to them, now they were not. We must all acknowledge that this transition would be traumatic and requires support.

With the view that forced marriage is a manifestation of family violence, this research considered the effectiveness of a culturally appropriate family violence prevention strategy and /



or the need for specialised services. In providing both mainstream and specialised services, people affected by forced marriage will have options available to cater to their individual needs.

# LEGAL & LEGISLATIVE RESPONSES

## CRIMINAL, CIVIL AND INTERNATIONAL LAW

Whilst the criminal justice system is but one in a suite of potential responses for people affected by forced marriage, it remains the most prominent response in Australia.

### **Criminal law**

Whilst the criminal justice system is one in a suite of responses for people affected by forced marriage, it remains the most prominent response in Australia. However, a fear of authority remains as a barrier to seeking legal assistance, including engaging with police. At a state level, there is no evidence to suggest that people affected by forced marriage are not able to seek legal assistance, such as intervention orders.

However, it appears to be a different experience federally. When people affected by forced marriage are informed they must make a formal statement to the Australian Federal Police in order to receive further support, they disengage because “there’s too much to lose” (Interviewee 6). If the same regime was applied to broader incidences of family violence there would be legitimate public outrage and individual safety could be compromised.

Comparative studies can be made to domestic violence victims who are reluctant to report the crime, but actively seek and need community services. When supported by a human rights based approach, interviewees unanimously said that support services should be “delinked” from the criminal justice process. Victim-centred support services need to be paramount to the response to forced marriage. Making a police statement should only ever be an option in order to receive ongoing support. As a consequence,

it would now seem that forced marriage no longer remains underground only because it is hidden, but because the system discourages victims from seeking contingent-free ongoing support.

However, three of the four participants in the survivor surveys did contact the police because they wanted to “feel safe”. All three participants stated that as a result of contacting the police they did feel safe:

“They were calm. They didn’t ask too many questions. I didn’t want my parents to get in trouble. I just wanted to leave the abusive environment and the AFP did what I thought I needed, which was just to take me to my girlfriend’s house and not press any charges. The following day, they took me to get my things, which I couldn’t have done without them as I felt unsafe”.

All practitioner interviewees agreed that in addition to the Australian Government interdepartmental approach to forced marriage, there should be greater dialogue between state and federal agencies, especially state-based child protection agencies and local police. The *National Action Plan to Combat Human Trafficking and Slavery* (2015-29: 2) recognises that there is a need to strengthen the connectedness with states and territories. However, action on this appears limited and under-resourced. The Salvation Army advocates for the proposed *National Policing*



*Protocol to Combat Human Trafficking, Slavery and Slavery-like Practice* to address this issue in respect to communication between federal and state police on the issue of forced marriage. Evidence indicates people affected by forced marriage are more likely to access state-based law and services, requiring state police and service providers to be appropriately trained and resourced.

The Australian Government (2015: 27) does acknowledge that “operational evidence has demonstrated that forced marriage matters require a different investigative approach from other human trafficking and slavery matters”. Whilst anecdotal evidence suggests that the uniqueness of forced marriage is recognised in an ad hoc fashion by practitioners in the sector, this acknowledgement must be supported by clear policy and operational frameworks. One respondent also reflected on the interdepartmental approach as overly policy driven, with a focus on legislation and advocacy at the expense of service provision that acknowledges bio-psycho-social and trauma-informed approaches (Interviewee 8). Concern was expressed that when legislation and advocacy are successful, services will be required without the formulation of best practice models (Interviewee 8). Consideration must be given to the meaningful inclusion of survivor voices in these processes.

At a state-level, if a person affected by forced marriage is under eighteen years of age, child protection services would have to determine if they are in need of protection. Forced marriage has been recognised in a number of states as a risk of harm. If the young person is then removed from the family, the state takes responsibility for decision-making on behalf of the young person. However, at the federal-level, the young person, supported by the Australian Federal Police, may retain decision-making capacity. To overcome this discord an interviewee noted:

“There should be put in place a clear group of people who support a young person... these sort of things are happening, but on a somewhat ad hoc basis now... but things have only developed because workers on the ground have put in place arrangements... but there’s not a clear structured process in place at this point between state and federal” (Interviewee 9).

This indicates a need for greater coordination and collaboration between all levels of government and agencies. There also needs to be recognition that in respect to child protection issues, forced marriage may not present as an issue of physical harm or physical neglect. Unlike many child protection cases, families affected by forced marriage can present as high-functioning. Therefore, victims may easily fall between the gaps if agencies do not receive appropriate training, especially with regard to mandatory reporting.

Despite these concerns, respondents generally believed that the criminal legislation has successfully empowered victims to seek help and deterred perpetrators, leading to a positive impact on the community-at-large. One respondent remarked:

“We know that forced marriage has been practised in Australia for a number of years, but it has been something that has been hidden. I think the legislation has helped bring some of that to light and start to enable organisations and communities to start to have conversations” (Interviewee 6).

It was suggested that the legislation provides a “very firm ground for the whole of society to eventually understand that this behaviour is illegal” (Interviewee 2). One interviewee retold a case of a solicitor informing a father that it was a crime to force his daughter into marriage and that he may be gaoled.

Based on this advice, the father decided not to force his daughter into marriage, evidencing the power of legislation to influence behaviour change (Interviewee 9). However, criminalisation is viewed only as the beginning of a much larger conversation:

“What we’re seeing is that communities want to talk about it, service providers, government want to talk about it, and really since the laws were enacted we’ve seen a lot of discourse, so I think it has probably brought it more out in the open” (Interviewee 2).

## Civil law

It is clear from both the literature and this research that civil remedies should be readily available to people affected by forced marriage in Australia. In fact, all interviewees believed that civil remedies were urgent and vital. As one respondent noted “I think that criminalising forced marriage was a positive first step in terms of highlighting the issue and having it brought into the public, but I think there need to be civil measures in place as an alternative” (Interviewee 6). In practice, this may include an expansion of the family law and forced marriage protection orders, adult applications for the airport watch list:

“There should be some kind of discretion in relation to judges hearing ex parte applications in relation to annulments to cater for people who may be in a position to come forth on their own and discreetly seek some judicial relief” (Interviewee 1).

In the *Legal Aid NSW Submission to the Family Law Council* (2015: 1) they noted “the Family Court and Children’s Court jurisdictions overlap and there are significant “investigatory” and “jurisdictional” gaps between the two systems”. It is within these gaps that young people affected by forced marriage are vulnerable to the inadequacies of the law, particularly as the forced marriage legal framework traverses both state and federal jurisdictions.

The Salvation Army supports Legal Aid NSW’s proposal for one federal court system that would better serve applicants that require both family law and care and protection matters. This should include granting the Children’s Court jurisdiction to make airport watch list orders. Legal Aid NSW (2015: 6) states “as the court has no power to compel Family and Community Services to join the proceedings as a party, [people affected by forced marriage] could be left without financial support, accommodation and care and protection”. As Legal Aid’s proposal of a “one court model” is a long-term goal, we advocate for interim legislation. This includes Forced Marriage Protection Orders as part of the federal civil law response to forced marriage and to enable Children’s Courts to make airport watch list orders.

The Australian Government has fallen short of meeting the obligations under the *National Plan of Action to Combat Human Trafficking and Slavery* (2015-19: 50)

which is to provide civil remedies to trafficked people. Furthermore, the Australian Government states in its *Seventh Report in the Interdepartmental Committee on Human Trafficking and Slavery* (2014-15) that it continues to consider the need for civil measures. The time has now passed for consideration. It is now time to act on these long-standing and unanimously agreed upon discussions. By not providing civil measures, the Australian Government effectively leaves people affected by forced marriage without a real avenue to justice, relegating current action ineffective as it only provides one solution to a multifaceted problem.

In terms of current possible civil law avenues, if a person affected by forced marriage wants to pursue orders through the Family Court and no one is willing to do this on their behalf, they must personally make the application. If they are a child or young person, the court must grant permission to be the applicant. Furthermore, they must seek permission to bypass the mediation process. The respondents in the application (usually, the parents) will be notified of the proceedings. There are many possible barriers for people affected by forced marriage seeking protection through this process.

Firstly, they have to be willing to openly defy their family in a legal setting. Secondly, they must be granted legal standing. Thirdly, they may be forced to mediate with the alleged perpetrators. In order to address these unacceptable barriers to protection against forced marriage, a civil Commonwealth Forced Marriage Protection Order is recommended. Under the filing procedures of a Commonwealth Forced Marriage Protection Order, a third party, such as the Australian Federal Police could apply, removing both the burden from the victim applying (as in intervention orders) and removing any question of the applicant’s legal standing. Furthermore, it would not mandate mediation with the family. This would also overcome the impediment that the Children’s Court do not have jurisdiction to apply for the airport watch list and remove the age restriction that those on the list must be under eighteen. Forced Marriage Protection Orders have been successfully enacted in the United Kingdom and have been long touted in Australia. However, real steps must be taken to provide people such important protection. Without introducing these additional protective measures, we are increasing the risk of safety and well-being of those affected by forced marriage in Australia.

Practitioners were also asked to reflect on the fact that the current law allows 16 and 17 year olds to marry with consent of the court. There were mixed reviews as to whether this exception to the marriageable age impacts people affected by forced marriage. Some expressed that this provision provided leverage in communities to pressure victims into marrying against their will, stating “there has been a lot of interest in the community in that law” (Interviewee 6). There was no suggestion that the law was actively used or could be used in cases of forced marriage.

However, there was concern for how the law was perceived in the community and its potential impact on the 16-17 year old “at risk” demographic. One respondent said “it’s the fact that they’ve come to an age in the eyes of mum and dad, an age of maturity is more important to them than some legally defined number” (Interviewee 5). Although there are civil libertarian arguments for this law, it must be assessed in respect to international legal standards that stipulate eighteen years as the age of consent to marry without exception.

### International law

In respect to international law, all respondents believed the Australian Government should sign and ratify the *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages* 1964 that stipulates all nations should take appropriate steps to abolish forced marriage. The Australian Government has acceded to the United Nations Sustainable Development Goal 5.3 “to eliminate all harmful practices such as child, early and forced marriage.” This implies a stronger commitment to overseas development assistance for forced marriage initiatives, particularly in the Asia-Pacific region and a strengthening of relationships between nations known to be source and destination countries of forced marriage. This is particularly for those countries who are not signatories to the *Hague Convention*. Although the Australian Government has invested heavily in the *Australia-Asia Program to Combating Trafficking in Persons* (AAPTIP), this program appears to be silent on forced marriage.

The policy *Amplifying Our Impact: Australia’s International Strategy to Combat Human Trafficking and Slavery* (2016: 30) does mention forced marriage, but only in reference to the Australia’s response to requests for information about the domestic

criminalisation of forced marriage. It does not address any regional or international response. Furthermore, the *ASEAN Convention Against Trafficking in Persons* does not explicitly seek to address the issue of forced marriage. Similarly, *The Bali Process on People Smuggling, Trafficking and Related Transnational Crime* is a regional criminal justice response to human trafficking that does not explicitly consider forced marriage as a form of human trafficking. Rather, it appears to only view human trafficking in the context of labour exploitation and denies that human trafficking can also manifest in migration for other purposes, such as marriage. This has led to a regional response to human trafficking driven by combating criminal syndicates and disregards other forms of exploitation. In this respect, it is the unique role of the family in perpetuating human trafficking through the recruitment and movement of people between and over borders that requires greater attention in our region, in addition to the present focus on transnational organised crime.

The Australian NGO Cooperative Program (ANCP) may provide opportunities for NGOs to educate people about the risks and harms of forced marriage in the region. We are mindful that the Asia-Pacific region has divergent views on forced marriage, but this presents an opportunity, rather than a barrier, to advocate for a human rights based response to forced marriage. There is further opportunity to advocate at the United Nations Working Group on Trafficking in Persons to strengthen the global response to forced marriage. Similarly, the Australian Ambassador for Women and Girls could advocate for greater protective measures against forced marriage both nationally and internationally. The cumulative effect of these recommendations will ensure the Australian Government meets Principle Three of the *National Action Plan to Combat Human Trafficking and Slavery* (2015-19: 19) to be a regional leader.

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“There should be some kind of discretion in relation to judges hearing *ex parte* applications in relation to annulments to cater for people who may be in a position to come forth on their own and discreetly seek some judicial relief” (Interviewee 1).

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# NON-LEGISLATIVE RESPONSES

...non-legislative responses may enable people affected by forced marriage to more effectively engage with legislative responses through the support of caseworkers...

While criminal, civil and international law provides an enabling environment for the eradication of forced marriage in Australia, non-legislative responses are imperative in achieving a holistic suite of options in addressing forced marriage. Furthermore, non-legislative responses may enable people affected by forced marriage to more effectively engage with legislative responses through the support of caseworkers, creating in an all-encompassing approach to support for victims. Thankfully, all those that completed the survivor surveys did seek support. School counsellors proved to be the vital link to seeking support. Once this vital link was established, many services supported the survivors, including social and legal services, police, teachers and trusted friends. However, help was often sought at high-risk times, such as when tickets were bought to travel overseas to be married.

## **Supported Accommodation**

Supported accommodation is continually earmarked as the most urgent need the Australian Government must resolve in relation to people experiencing forced marriage. Accommodation for people affected by forced marriage currently transverses foster care, youth services, homeless services, women's refuges, migrant services and mental health facilities. According to our survivor surveys, sanctuary was ultimately sought through friends, rather than any of these services. As one practitioner put it "they

often return home for a number of factors, but the contributing factor is the lack of housing and community support to give them viable options" (Interviewee 6). Another practitioner explained:

"We don't have access to supportive housing. We generally put our clients in a serviced apartment where they can stay, but if you're sixteen or seventeen, it's not appropriate to put a young person on their own and they don't have anyone they can stay with. Our program doesn't provide 24 hour support, so we would then be trying to access the service system in place, which is inadequate at the best of times. These young women often don't speak English, or speak English as a second language. They haven't been through the housing system before, they don't have any substance misuse, they are new to that sector, and so it's not appropriate to put them through that system a lot of the time. What we know is that what is currently in the community is not adequate and we need more resources put in the community by government in order to ensure that young people are not just returning back to the family home if that is not the most appropriate place for them" (Interviewee 6).

Our survivor surveys confirmed that the many services offered within supported accommodation



were critical, including financial support, assistance attaining education or employment, physical and mental health, and most importantly, comfort in knowing they were finally in an understanding and safe environment. One practitioner reflected on the child protection dimensions of the issue by saying “forced marriage brings up a number of complexities with places to go. And the age issue brings up a whole other layer of complexities” (Interviewee 2). The practitioner commented on guardianship issues in protecting someone “who isn’t particularly street smart.”

“To have a young person who’s sixteen go and stay at a refuge is probably very much out of their comfort zone. They’ve been involved in a very interdependent family relation; they haven’t really had much independence at all. To have them go and stay somewhere where everyone is living fairly independently, is culture shock for them” (Interviewee 2).

One respondent retold a story of a seventeen year old girl who fled from a prospective forced marriage and sought help from the Australian Federal Police and the Red Cross. Because of her age she was placed in a youth homelessness service with other young people with very different backgrounds from her strict family household. She stayed one night in the youth homelessness service and then asked to go home. The respondent said, “This girl is not supported by our law. We’ve got a law, but where’s the support for her? It’s non-existent!” (Interviewee 4).

What this research has established is that people affected by forced marriage are falling between the cracks, particularly where it relates to supported accommodation. While The Salvation Army has a safe house, and other services are trying to fill gaps, there is currently no service that is funded to support 16-18 year olds at risk of forced marriage who decide to leave home that meets the AFP’s security and

safety requirements. Furthermore, with the increase in community awareness and victim identification, options for young people have become ever more urgent. The accommodation crisis is such that some respondents suggested engaging with the family as a means of resolving the housing problem. This is not a best practice method according to the literature or other jurisdictional experiences. It may be that any solution is only applied on a case-by-case basis, but those solutions need to be adequate and appropriate. An expansion of the service currently provided by The Salvation Army may be one means to ameliorate this crisis.

The Australian Government’s strategy to combat forced marriage includes indicators for the prosecution of the crime. However, we suggest that these indicators should also include markers for protection of victims, such as supported accommodation. While the Australian Government may be seen to meet three of the four pillars to combat human trafficking, (prevention, detection and prosecution), the fourth pillar of protection, particularly in relation to supported accommodation for young people, remains inadequate. The Australian Government (2015: 38) does acknowledge that securing safe accommodation remains a challenge:

“Suitable housing, particularly for children, assessing risk, safety planning and engagement with the family are all areas that have required significant consideration and casework support. Providing support to this client group also highlighted the complexities of working across Commonwealth, state and territory jurisdictions and agencies”.

“The particular physical, psychological and psychosocial harm suffered by trafficked children and their increased vulnerability to exploitation means that they may require additional or particular supports different

from those of adult trafficked persons in terms of laws, policies, programs and interventions. The operational protocol will ensure that all minors identified by Australian authorities as suspected victims of human trafficking or slavery are afforded appropriate protections and support in line with Australia's international and domestic obligations" (Australian Government: 2015-19: 20).

In this respect, child protection agencies should be considered key stakeholders in any such framework. In order to accede to Principle Two of the National Action Plan to Combat Human Trafficking (2015-19:18) Australia needs to provide "holistic and victim-centred support . . . regardless of age". The National Plan to Reduce Violence Against Women and their Children (2010-22:12) also states that "Governments will respond to emerging priorities as new evidence becomes available". However, in the provision of supported accommodation for minors affected by forced marriage, this remains to be seen. While homeless and crisis accommodation services come under the purview of state government, we maintain that in the case of people affected by forced marriage, the federal government is ultimately responsible to address their needs as it primarily falls under Commonwealth law. Furthermore, the development of a holistic model of support must include both material and psychological interventions in order to be effective.

## **Education**

### *Education in schools*

Many respondents cited that potential victims of forced marriage are often identified at school and they do engage with health and welfare support. This is positive as "their needs are very obviously emotional" (Interviewee 6). However, this research revealed an anomaly compared to the experience in developing nations, where education acts as a "safety net" (Interviewee 7) against being forced into marriage. While the literature indicates that staying in school longer delays marriage, traditional school education is not the silver bullet because it only accounts for the capacity or agency of the student and not the capacity or agency of the family or community. Any Australian awareness raising campaign should be mindful of this distinction.

It was also acknowledged that while schools are key sites for education on forced marriage, it remains a taboo topic that is seen to stigmatise students, parents and communities. Many respondents felt that focusing on healthy relationships in regard to choice and consent as part of the national curriculum beginning in primary school was key to the generational change required to eliminate forced marriage in Australia. At the same time, school education on healthy relationships cannot only target relationships between young people if it is going to combat forced marriage. It must simultaneously

educate on healthy relationships between young people and adults, including parent-child relationships. In this respect, we support the Council of Australian Government's (2010-22: 19) commitment to supporting adults to model respectful relationships.

One respondent stated that currently "schools are being overwhelmed with potential cases and they don't know how to handle it" (Interviewee 6). This raises the issue of professional development for teachers in schools, particularly school counsellors and staff with student welfare responsibilities. In this respect, we look forward to the positive outcomes of ACRAH's forced marriage education kit My Rights – My Future for secondary schools to raise awareness and educate people about what they can do if they suspect someone is being forced into marriage. Education based on a human rights framework and embedded in the notion of gender empowerment was key to effective cultural change and a vehicle in which to educate boys and girls about value of gender equality in Australia.

We advocate for the allocation of resources for its implementation.

### *Community awareness raising*

Three of the four participants in the survivor surveys stated they did not seek help because neither their family nor their community were aware that forced marriage is a crime. Survivors also stated that lack of information on forced marriage and the available services was unhelpful. All participants who completed the survivor surveys stated that there is not enough community awareness in Australia about forced marriage. Furthermore, none had seen information produced by the Australian Government about forced marriage, such as a pamphlet or a website. Most importantly, three survivor surveys said more information would help prevent forced marriage.

The Australian Government has acknowledged the need for community awareness-raising on forced marriage and in 2014-2015 made a concerted effort to raise community awareness. As a result, Anti-Slavery Australia has now launched the first Australian website dedicated to the issue of forced marriage, My Blue Sky ([www.mybluesky.org.au](http://www.mybluesky.org.au)), which includes advice about how to get help and take action against forced marriage. Furthermore, in December 2014 the Australian Government launched the Forced Marriage Community Pack. The evidence shows that the community sector is enthusiastic about undertaking awareness-raising, but questions remain on how to effectively engage all sectors in a national campaign, particularly in relation to rural and regional communities.

When asked if community awareness campaigns should take a broad or a targeted approach, all practitioners agreed that both approaches are critical. Respondents acknowledged that targeted campaigns may be prone to stereotyping and apportioning blame

to some communities. Furthermore, as a result of the underground nature of the phenomenon, it was acknowledged that we do not know all communities affected and it is therefore inappropriate to speculate and make assumptions. However, targeting not only means targeting communities, it also means targeting a specific age and gender. In this regard, awareness raising campaigns must focus on the role of influencers, spouses, families and community leaders in all cultures and all religions in perpetrating this crime.

Furthermore, it was noted that effective awareness-raising needed a greater grassroots approach, as communities viewed the Attorney-General's community pack as a top-down approach. In addition, awareness raising campaigns in Australia had traditionally taken an ad hoc approach, with many organisations undertaking their own education programs. However, participants expressed a desire to undertake a nation-wide response in order to effectively create generational change. This may take the form of a unified social media campaign shared amongst all community stakeholders. As one respondent commented:

“we don't want to have all these little flyers with different labelling so people are confused. A buy-in by individual groups into one image, one slogan, one set of rubrics would be ideal” (Interviewee 4).

This would also be consistent with the National Plan of Action to Combat Human Trafficking and Slavery (2015-19:18) to promote collaborative responses to achieve sustainable change. However, this can only be achieved if the response is inclusive of all organisations and services, rather than based on a select few. Concern was also raised whether there was enough education and training provided to those on mandatory reporting lines (Interviewee 8) and some are currently advocating for a dedicated forced marriage hotline.

Education specifically aimed at the issue of consent was also considered vital. A practitioner said “a lot of young people think consent is what my parents tell me to do . . . they're thinking they are consenting to a marriage, but they're just obeying their parents” (Interviewee 2). One of the barriers to an effective discussion on consent is the lack of an Australian test case. Further discussion on how one independently consents within an interdependent culture would enrich the literature's understanding of the issue.

It is also instructive to consider the comparative example of female genital mutilation (FGM) in implementing effective community campaigns. Both practices share common aspects (Ahanonu & Victor: 2014):

- links to family honour, concepts of purity and controlling behaviours
- gender-based “underground” practices that violate human rights

- transcend culture, class and religion
- inter- and intra-generational
- “the most complex and secretive forms of child abuse” (Thandi: 2014: 85).
- communities believe the practices helps secure a good marriage
- parents often genuinely believe it is in their child's best interest
- victims have little say and have severe and traumatic consequences
- require responses that go beyond criminalisation alone

Of particular interest in effective FGM campaigns is the focus on the role of mothers in the perpetuation of this generational abuse, as one study found mothers to be ambivalent to the practice (Ahanonu & Victor: 2014: 683). For this reason, targeting mothers for community education would seem imperative. As Lien and Schultz (2013: 8) state “the most effective strategy for change appears to be when the recipient obtains information from a trusted person with authority”. Furthermore, the World Health Organisation, aware of the limited success of campaigns addressing FGM, recommended a behavioural change approach to be implemented (Brown, Beecham & Barrett: 2013: 1). In terms of FGM, there is little evidence to suggest that focusing on particular communities yields this behavioural change (Brown, Beecham & Barrett: 2013: 2).

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“we don't want to have all these little flyers with different labelling so people are confused. A buy-in by individual groups into one image, one slogan, one set of rubrics would be ideal” (Interviewee 4).

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# RECOMMENDATIONS

## Policy recommendations

1. Resource and develop a multi-disciplinary, multi-stakeholder stand-alone response to forced marriage in Australia; recognising that it intersects with various frameworks, including that of family violence;
2. Address the provision of supported accommodation (particularly for those aged 16-18 years old) regardless of an individual's capacity or willingness to engage with the criminal justice process. The absence of safe and supported accommodation services remains a barrier to preventing early and forced marriage;
3. In cooperation with states and territories, revise the National Action Plan to Combat Trafficking and Slavery to include specific, measurable and funded steps to facilitate a more coordinated response to early and forced marriage.
  - a. As part of this process, the federal government should work with states to update relevant legislation ensure it is effectively synchronised with federal legislation. This can include, but is not limited to, powers afforded to the Children's Court to grant Airport Watch List Orders
  - b. The federal government should then work with states to develop clear response protocols between key stakeholders and provide supplemental funding to build states' capacity to efficiently identify and appropriately respond to disclosures of early and forced marriage; and
4. Enact civil Commonwealth Forced Marriage Protection Orders for all individuals affected by forced marriage, irrespective of age.
5. Address compliance with International Conventions and Standards in relation to Forced Marriage including:
  - a. Sign and ratify the international Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages 1964.
  - b. Enhance commitments to overseas development for regional forced marriage initiatives, acceding to 5.3 of the United Nations Sustainable Development Goals.
  - c. Advocate for measures to address forced marriage at the United Nations Working Group on Trafficking in Persons, and with its regional counterparts (and in consultation with civil society), draft a regional response to child, early and forced marriage.
6. Resource schools and communities to promote awareness of forced marriage, utilising a community engagement approach which draws upon pre-existing networks and relationships with communities at a local level.



## Research Recommendations

1. Commission a broad body of research that addresses the gaps in knowledge and occurrence of forced marriage in Australia, which is contributing to inefficient and ineffective responses to individuals at risk. The research should consider:
  - a. An in-depth field study to map the occurrence and risk factors of forced marriage, including the nature and extent of forced marriage in regional, rural and remote Australia
  - b. Comparison of cases accessing federal human trafficking process versus state-level family law processes; with the view of uncovering strengths, weaknesses and opportunities in both approaches
  - c. The links between family violence and forced marriage, particularly in relation to power and control dynamics
  - d. Psycho-social impacts including inter-generational, and intra-generational impact of forced marriage on relationships and identity; analysis of fight or flight responses and the role of victim-guilt
  - e. The importance of interdependence over independence in cases of forced marriage, including effects on capacity to fully and freely consent

**APPENDIX 1: INTERNATIONAL LAW**

INTERNATIONAL INSTRUMENT	ARTICLE/RESOLUTION	REFERENCE
<b>Universal Declaration of Human Rights (UDHR)</b>	Article 16(2)	Marriage shall be entered into only with the free and full consent of intending spouses
<b>International Convention of Civil and Political Rights (ICCPR)</b>	Article 23(3)	No marriage shall be entered into without the free and full consent of intending spouses
<b>International Convention on Economic, Social and Cultural Rights (ICESCR)</b>	Article 10(1)	Marriage must be entered into with the free consent of the intending spouses
<b>Convention on the Elimination of all forms of Discrimination against Women (CEDAW)</b>	Article 16(1) & (2)	<p>1. State Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:</p> <ul style="list-style-type: none"> <li>(a) the same right to enter into marriage;</li> <li>(b) the same right freely to choose a spouse and to enter into marriage only with their free and full consent;</li> <li>(c) the same rights and responsibilities during marriage and at its dissolution;</li> </ul> <p>2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory</p>
<b>CEDAW Recommendation</b>	No. 21	<p>A woman’s right to choose a spouse and enter freely into marriage is central to her life and to her dignity and equality as a human being. An examination of States parties’ reports discloses that there are countries which, on the basis of custom, religious beliefs or the ethnic origins of particular groups of people, permit forced marriages or remarriages. Other countries allow a woman’s marriage to be arranged for payment or preferment and in others women’s poverty forces them to marry foreign nationals for financial security. Subject to reasonable restrictions based for example on woman’s youth or consanguinity with her partner, a woman’s right to choose when, if, and whom she will marry must be protected and enforced at law</p>

APPENDIX 1: INTERNATIONAL LAW

INTERNATIONAL INSTRUMENT	ARTICLE/RESOLUTION	REFERENCE
<p><b>Convention relating to the Status of Refugees</b></p>	<p>Article 1A(2)</p>	<p>As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, <b>membership of a particular social group</b> or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it</p>
<p><b>Convention on the Elimination of all forms of Racial Discrimination (CERD)</b></p>	<p>Article 5 (iv)</p>	<p>The right to marriage and choice of spouse</p>
<p><b>Supplementary Convention on the Abolition of Slavery</b></p>	<p>Article 1(c)</p>	<p>[The abolition of]</p> <p>(c) Any institution or practice whereby:</p> <ul style="list-style-type: none"> <li>i. A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or</li> <li>ii. The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or</li> <li>iii. A woman on the death of her husband is liable to be inherited by another person</li> </ul>
<p><b>Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime</b></p>	<p>Article 3(a)</p>	<p>Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs</p>

## APPENDIX 1: INTERNATIONAL LAW

INTERNATIONAL INSTRUMENT	ARTICLE/RESOLUTION	REFERENCE
<b>Convention on Consent to Marriages, Minimum Age for Marriage and Registration of Marriages NB. Australia is not a signatory to this Convention</b>	Article 1(1)	No marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person after due publicity and in the presence of the authority competent to solemnise the marriage and of witnesses, as prescribed by law
<b>Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages</b>	Resolution 2018 (XX), Principle 1(a)	No marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person, after due publicity and in the presence of the authority competent to solemnise the marriage and of witnesses, as prescribed by law
<b>Hague Convention on Celebration and Recognition of the Validity of Marriages</b>	Article 11	<p>A Contracting State may refuse to recognise the validity of a marriage only where, at the time of the marriage, under the law of that State –</p> <ul style="list-style-type: none"> <li>(1) one of the spouses was already married; or</li> <li>(2) the spouses were related to one another, by blood or by adoption, in the direct line or as brother and sister; or</li> <li>(3) one of the spouses had not attained the minimum age required for marriage, nor had obtained the necessary dispensation; or</li> <li>(4) one of the spouses did not have the mental capacity to consent; or</li> <li>(5) one of the spouses did not freely consent to the marriage.</li> </ul>
<b>Universal Islamic Declaration of Human Rights</b>	Article XIX(i)	No person may be married against his or her will, or lose or suffer diminution of legal personality on account of marriage
<b>United Nations General Assembly’s Procedural Resolution on “Child, Early and Forced Marriage”</b>	Sixty-ninth session Agenda item 65(a) 69/XX	Recognizing that child, early and forced marriage is a harmful practice that violates abuses, or impairs human rights and is linked to and perpetuates other harmful practices and human rights violations, that these violations have a disproportionately negative impact on women and girls, and underscoring States’ human rights obligations and commitments to promote and protect the human rights and fundamental freedoms of women and girls and to prevent and eliminate the practice of child, early and forced marriage

APPENDIX 1: INTERNATIONAL LAW

INTERNATIONAL INSTRUMENT	ARTICLE/RESOLUTION	REFERENCE
<p><b>United Nations General Assembly Resolution on Child, early and forced marriage;</b></p>	<p>A/C.3/69/L.23</p>	<p>Calls on States, with the participation of relevant stakeholders, including girls, religious and community leaders, civil society, women’s and human rights groups, men and boys, and youth organisations, to develop and implement holistic, comprehensive and coordinated responses and strategies to eliminate child, early and forced marriage and to support already married adolescents, including through the sharing of best practices across borders</p>
<p><b>United Nations Human Rights Council Procedural Resolution on “Strengthening efforts to prevent and eliminate child, early and forced marriage: challenges, achievements, best practices and implementation gaps”</b></p>	<p>A/HRC/24/L.34/Rev.1</p>	<p>Deeply concerned that the practice of child, early and forced marriage is widespread and occurs in all regions of the world, and recognizing that it constitutes a violation, abuse or impairment of human rights, that it prevents individuals from living their lives free from all forms of violence and that it has adverse consequences on the enjoyment of human rights, such as the right to education, the right to the highest attainable standard of health, including sexual and reproductive health</p>
<p><b>United Nations Human Rights Council Resolution “Preventing and eliminating child, early and forced marriage”</b></p>	<p>A/HRC/26/22</p>	<p>The Committee on the Elimination of Discrimination against Women and the Committee against Torture have also identified child marriage as a harmful practice which leads to the infliction of physical, mental or sexual harm or suffering... The Special Rapporteur on the sale of children, child prostitution and child pornography has indicated that child marriage may be considered as sale of children for the purposes of sexual exploitation</p>
<p><b>The Report of the High-Level Panel of Eminent Persons on the post-2015 Development Agenda</b></p>		<p>Recommended a zero target for child marriage</p>
<p><b>Commonwealth Heads of Government Meeting</b></p>	<p>Final Communiqué 2013, 43</p>	<p>Heads of Government agreed that the Commonwealth will continue to address the issue of child, early and forced marriage, giving due consideration to the domestic legislation of member countries and relevant international law. In this context, Heads noted the recent Commonwealth Roundtable on Early and Forced Marriage and mandated the Commonwealth Secretariat, within the scope of its strategic plan, to continue with this area of work, including the sharing of best practices, challenges, achievements, and to address implementation gaps to prevent and eliminate child, early and forced marriage.</p>

## APPENDIX 2: AUSTRALIAN CASE LAW

CASE	SUMMARY
<p><b>Department of Human Services v Brouker and Anor [2010] FamCA 742</b></p>	<p>An order to prevent the removal of a 14 year old child from Australia for the purposes of forced marriage. Mushin J found that the child did not understand the consequences of marriage, was deprived of education and was at risk of sexual exploitation and emotional harm. The child’s mother was on record as being relieved that the Court had made the order, which calls into question who really is the perpetrator?</p>
<p><b>Kreet &amp; Sampir [2011] FamCA 22</b></p>	<p>The applicant, who was 17 years old, was in a relationship with Mr U, who was from a caste her father objected to. The father prevented her from attending school, confiscated her phone and denied her internet access. Eventually, the parents convinced the daughter she could marry Mr U in India, but once in India her passport was taken and she was introduced to a different man. Under the threat that her father would kidnap and rape Mr U’s mother and sisters, the applicant agreed to marry the suitor. The applicant considered suicide. The applicant fled to be with Mr U and she withdrew her sponsorship of her husband and applied for an indefinite Intervention Order. Cronin J found her consent was not real because it was obtained by duress.</p>
<p><b>Madley v Madley [2011] FMCAfam 1007</b></p>	<p>An order to restrain the respondents from removing a 16 year old child from Australia to prevent a forced marriage in Lebanon. Harman FM noted, “this young person... is indeed a young woman whose voice can and should be heard... I am also cognisant of the strength of conviction and opposition to the proposed wedding shown by this young woman who might be suggested to have betrayed or, at least, bucked the authority of her parents in circumstances that would create some real stress for all concerned. What has occurred is, in fact, an act of great bravery by this young woman in taking the steps this young person has taken in seeking assistance”.</p>
<p><b>Kandal &amp; Khyatt &amp; Ors [2010] FMCAfam 508</b></p>	<p>Kandal et al were restrained from removing their child from Australia and she was placed on the Airport Watch List to prevent a forced marriage.</p>
<p><b>Nagri &amp; Chapal [2012] FamCA 464</b></p>	<p>Application by the husband for a decree of nullity on the grounds that his consent to marriage was obtained by duress based on culture, religion, family loyalty and financial dependence. The applicant was born in India and had fallen in love, but the applicant’s mother and uncle had arranged a marriage to someone else. The applicant underwent a cultural ceremony called a Roka, but later confessed to his wife he married her out of a sense of duty to his family. The court agreed that the applicant’s family had absolute authority over him and he was overborne by their will. Collier J stated “it is the effect of the oppression on his mind that should be the operative factor, not the form of such oppression”.</p>

## APPENDIX 2: AUSTRALIAN CASE LAW

CASE	SUMMARY
<b>Essey &amp; Elia [2013]</b> <b>FCCA 1525</b>	The Respondent Ms Elia was forced into marriage with the Applicant Mr Essey when she was 14 and he was believed to be 21. At this time, sexual assaults against Ms Elia began. The Respondent's mother pushed her into the marriage saying "You will have fun. Your dad is strict. You can come and go as you please... You get to go to the movies, have popcorn, lollies, ice-cream and chocolate. You get to have fun and live life. What you see of everyone having fun on the TV, this is what it is going to be like. You're very, very lucky". Some years later Ms Elia separated from Mr Essey, but her mother forced them back together saying "You live and die. We're all living like that. You have to accept it. It's normal". And the Respondent's father said "The only way you can come back to me is in a coffin to pray on you". Judge Harman said "That she survived that relationship as well as she has is a testament to her inner strength [and that Mr Essey is] a most heinous, capricious and revolting misogynist".
<b>1204063 [2012]</b> <b>RRTA 694</b>	The applicant is a lesbian from Kenya and believes she will be forced to live as a straight person in a marriage to gain acceptance. If she fails to, she will be assaulted according to Kikuyu tradition. Her father has demanded she marry a man in his sixties as his fourth wife to "correct" her status as an unmarried woman. Her uncle has chosen a Masai man who will marry her "no questions asked". Circumcision will be used to remove her sexual urges and make her a good, obedient wife. The Tribunal found she had a well-founded fear of persecution.
<b>1104028 [2011]</b> <b>RRTA 1038</b>	The applicant came to Australia because he is gay and his parents want him to get married. The applicant fears if he is returned to Lebanon he will be forced to marry against his will. The Tribunal found that there is "more than a remote chance that [his family] will respond... by inflicting serious harm upon him which is capable of amounting to persecution".
<b>1008440 [2010]</b> <b>RRTA 1136</b>	The applicant is a Christian woman from Zambia whose husband died in 2006 and she was being forced to marry her deceased husband's elder brother who had paid a dowry of eight cows to the applicant's uncle. She also claims she was forced to undergo the traditional rituals of sexual cleansing and marital rape. The applicant claims that when she discovered that her husband's brother had paid a dowry she fled to Australia. The brother-in-law is a big business man and very influential and rich. She does not feel she can resist the marriage because the dowry is paid. The Tribunal was satisfied that there was a very real chance she will suffer harm in the form of forced marriage and is protected under the Refugee Convention.

## APPENDIX 2: AUSTRALIAN CASE LAW

CASE	SUMMARY
<b>1005354 [2010]</b> <b>RRTA 863</b>	The applicant is a Hindu Indian gay man who is arranged to be married. He had a lover, but his parents forced him into marriage with someone else. The applicant's study in Australia has so far delayed the marriage, but his studies will end soon and he will be forced to marry against his will. It has brought shame on the family to have an unmarried son over 30. The Tribunal accepts that if the applicant were to return to India he would have to marry and lead a double life and therefore deserves protection.
<b>071426303 [2007]</b> <b>RRTA 132</b>	The applicant fled Saudi Arabia because her guardian (G – under Saudi law, a woman must have a male guardian, the “Waly Alamar”, who is responsible for her) wishes to kill her because she refuses to marry an older man who is already married. G was offered a dowry by this man who is quite wealthy. The applicant claims if she refused he would attack her and lock her up. The Tribunal found the applicant was of a “particular social group of Saudi Arabian women who refuse to consent to arranged marriage” who believes G will attempt to kill or otherwise seriously harm her in order to avenge the family's honour following her escape to Australia.
<b>V0618399 [2006]</b> <b>RRTA 95</b>	The applicant is a Catholic woman that claims that she has a well-founded fear of persecution in Albania because she has brought great shame on her family because she has gone against their “word”. She fears that her father, as well as the family of her fiancé, Mr D, will try to harm her according to the Kanun because she has dishonoured them. The applicant told her parents that she was in love with someone else and did not want to marry Mr D. They told her that she had to marry him else she would bring dishonour upon her family and the family of Mr D would want to take revenge. The applicant's mother said it was fate and there was nothing she could do because it would instigate a blood feud. She fled on a false passport because she feared Mr D would find her and kill her because a man's failure to keep his wife obedient was enormously shameful and allowed for extreme forms of punishment on the errant woman. The applicant fears both Mr D's family and her own because she has dishonoured both. Her sister had told her that her parents were searching for her everywhere because they wanted to kill her for breaking the law of the village. The Tribunal found that if the applicant were to return to Albania she would face serious harm for reasons of her membership of the particular social group constituted by women in northern Albania who have failed to honour an arranged marriage.
<b>N98/25465 [2001]</b> <b>RRTA 27</b>	The applicant claims that she ran away from Ghana because her family was forcing her to marry a much older man with other wives and he required her to become a Muslim. The applicant states that the family has already taken money from the powerful and influential potential husband so they had committed her to it. She heard that her family and the Muslim man wanted to kill her as they believe they have been robbed. The Tribunal found that being forced into a marriage in which the applicant, who is a devout Christian, would be forced to convert to another religion and would be circumcised is sufficiently serious to amount to persecution.

## APPENDIX 3: INTERVIEW QUESTIONS

NB. The following questions can be answered based on one case of forced marriage you know about, or a generalisation based on more than one case you know about. All cases cited will be de-identified for the safety of all those concerned. The interview has two parts. Firstly, the cases of forced marriage you know about, and finally, the legislative and non-legislative responses to forced marriage in Australia.

### 1. Cases of forced marriage

1. Please describe the nature of your work with people affected by forced marriage.
2. Please describe what you understand forced marriage to be.
3. How many people do you know that were affected by forced marriage in the last 12 months?
4. In cases of forced marriage you know about, please describe the nature of the pressure to marry?
5. Is the pressure experienced similar to family violence, except that the victims are younger, and instead of there being one perpetrator, the pressure experienced is from the whole community?
6. What was the reason given to the person/s as to why they had to marry?
7. Is the value of interdependence over independence relevant in forced marriages?
8. 8. In forced marriage, does the wife have a particular role?
9. 9. Do people affected by forced marriage seek social or legal services for help? If no, what do you think the barriers to seeking this help are?
10. Do people affected by forced marriage generally contact the police?
11. Do people affected by forced marriage require specific help from immigration?
12. Do people affected by forced marriage generally have a safe place to go?
13. Currently, people affected by forced marriage access a wide variety of services for their accommodation needs, from foster care, youth services, homeless services, women's refuges, mental health services and migrant's services. How can we establish a best practice solution in terms of accommodation for people affected by forced marriage? What are your recommendations for this solution?
14. Do you believe there is enough training for service providers about forced marriage in order for them to effectively help?
15. Do you think community awareness raising on forced marriage should take a broad or targeted approach?
16. A number of service providers have educational, training and awareness raising materials. Should awareness raising campaigns take a network-wide response, or an individual agency response?
17. Should interventions be also aimed at perpetrators?
18. Is trans-generational trauma and/or experience of forced marriage relevant?
19. Should marriage celebrants be mandated to interview potential spouses separately? NB. It is an offence for marriage celebrants to officiate a forced marriage.
20. Does forced marriage in Australia occur for different reasons than it does in other countries?—need to add a question about what people understand the underlying reasons for forced marriage to be?
- 20.1. Is forced marriage an issue in rural Australia?
- 20.2. Education is seen to protect potential victims from forced marriage in developing countries. Do you think this is the case in Australia?
- 20.3. Is early pregnancy and honour killings an issue in forced marriages in Australia as it is in other countries?
21. Given that poverty and lack of access to education are less likely to be reasons for forced marriage in an Australian context, do you think forced marriage is then an aberration of family violence and therefore, is more about control, than tradition or heritage?
- 21.1. Have people affected by forced marriage been disadvantaged by the fact that the crime is framed within the human trafficking discourse rather than the family violence discourse?
- 21.2. Should family violence statistics be disaggregated to show the percentage of cases affected by forced marriage?
- 21.3. Would a more efficient and effective family violence prevention strategy that is culturally appropriate adequately support people affected by forced marriage or are specialised services needed?

## APPENDIX 3: INTERVIEW QUESTIONS

### 2. Legislative and non-legislative responses to forced marriage

22. When the Australian Government made the forced marriage laws in 2013, they said it would empower victims to seek help and deter perpetrators. Do you think this has happened?
  - 22.1. When the Australian Government consulted with the community before making the current forced marriage laws there was concern criminalisation would drive the issue underground. Do you believe this happened?
  - 22.2. Do you believe that making forced marriage a crime in Australia has caused more forced marriages to take place overseas, even though the laws are extraterritorial?
  - 22.3. In cases of forced marriage, victims may not want to prosecute their own family. For this reason, should there be other options?
23. Should there be an alternative referral pathway from the criminal justice process?
24. Would people affected by forced marriage benefit from an interdepartmental approach?
25. The current law allows 16 and 17 year olds to marry with the consent of court. Are cases of forced marriage affected by this exception to the marriageable age?
26. The Convention on Consent to Marriages, Minimum Age for Marriage and Registration of Marriages states that all countries should take appropriate measures to abolish forced marriage. Should the Australian Government sign and ratify this international Convention?
27. The proposed United Nations Sustainable Development Goals includes Goal 5 to achieve gender equality and empower all women and girls". This proposed goal includes target 5.3 to eliminate all harmful practices, such as child, early and forced marriage. What should the Australian Government do to fulfil this internationally set target?
28. Forced marriage was common in Judeo-Christian, White Australia up until the 1960s where women were forced to marry if pregnant or to sanction sexual relations. Can we learn anything from the Sexual Revolution that maybe helpful to communities experiencing forced marriage today?
29. Would teaching boys and girls about gender equality in Australia decrease forced marriage?
30. What should the government prioritise in order to help people affected by forced marriage?
31. What can be done in Australia to prevent forced marriage?
32. What should future research on forced marriage focus on?
33. Is there anything else you would like to say?

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