



THE LAW SOCIETY
OF NEW SOUTH WALES

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1 December 2023

Brigid O'Connor
A/Director, Strategic Policy
Women, Family and Community Safety Directorate
Department of Communities and Justice
Parliament House, Macquarie Street
Sydney NSW 2000

Dear Ms O'Connor

Review of NSW's Forced Marriage Protections

Thank you for the opportunity to contribute to the Department of Communities and Justice's Review of NSW's Forced Marriage Protections (**Review**). The Law Society's Human Rights and Criminal Law Committees have contributed to this submission.

Our members working with victim-survivors of forced marriage have expressed some concern that the focus of the Review, which is directed to the protections available under the NSW AVO regime, is too narrow. In this submission we take the opportunity to offer some general comments in relation to legal policy concerns in the area of forced marriage, particularly in light of Australia's obligations under international human rights instruments.¹

Australia's response in relation to forced marriage is largely through the criminal justice framework, for example through offences contained in the *Criminal Code Act 1995* (Cth) and, in NSW, through the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (**DPV Act**) and the *Crimes Act 1900* (NSW). The inclusion of forced marriage in the definition of a 'serious offence' at ss 39 and 40 of the DPV Act relating to the making of interim and final AVOs by courts is a relatively recent amendment. It was introduced by the Modern Slavery Bill in 2018 but these provisions did not commence in the DPV Act until 1 January 2022.

While we recognise that strengthening the AVO regime, including making express reference to forced marriage, is one tool in responding to circumstances related to domestic and family violence, this issue should not be considered in isolation if the Government's response is to be effective in addressing systemic factors. We suggest this review takes a more holistic approach, by addressing the drivers of forced marriage, examining the availability of

¹ See, for example, the *General Recommendation No 35 on Gender-based Violence against Women, Updating General Recommendation No 19*, UN Doc CEDAW/C/GC/35 (26 July 2017); and *Resolution adopted by the United Nations General Assembly 'Child, Early, and Forced Marriage'*, A/RES/75/167 (16 December 2020).

community-led prevention initiatives, further developing protective civil legislation and prioritising the experiences of victim-survivors.²

We make the following general comments in relation to the Review:

The coordination between State and Commonwealth agencies

The Law Society emphasises the need for coordination between State and Commonwealth agencies, given that the task of preventing or responding to a forced marriage in NSW captures a range of behaviours and activities which may trigger criminal, civil, family, migration, and/or child protection responses.

Any amendment to the AVO regime must therefore contemplate the interactions described above. One example is a victim-survivor who applies to NSW Police for an AVO, but who would be required to approach Commonwealth agencies if they wanted to be referred to the Support for Trafficked People Program administered by the Department of Social Services, or have an alert placed on the Passenger Analysis Clear and Evaluation System by the AFP.

Training for those who receive reports of forced marriage (e.g. police) should ensure that victim-survivors are referred to appropriate support services and made aware of the availability of opportunities to obtain independent and confidential legal advice, for example through community legal centres. As far as possible, such training should include awareness of trauma informed support, such as ensuring a victim-survivor has to tell their story as few times as possible.

We are aware that, since 2018, the Commonwealth Government has been working on the development of a Forced Marriage Protection Order or similar scheme. As part of this Review, it may be timely for the NSW Government to consider what is being contemplated at a Commonwealth level to ensure cohesion between the jurisdictions in relation to such civil orders.

Applications for AVOs and standing

In our view, AVOs should not be mandated under any circumstances, as there can be detrimental consequences for victim-survivors where an AVO is made without their consent. We note that situations of forced marriage often involve complex family, cultural and community situations, and that a victim-survivor who does engage with the criminal justice system may be subject to violence and estrangement from family and community networks, which in turn underpin the victim-survivor's economic and social security.

While in some circumstances it may be beneficial to allow other parties to make an AVO application on behalf of a victim-survivor (for example, police, carers, protective family members, support organisations, or friends), we emphasise that this should only occur with the informed consent of the affected victim survivor.

As recognised in the Discussion Paper, the risks of not obtaining this consent include systems abuse by the perpetrator, as well as a failure of the person/party making the application to act in the interests of the victim survivor. It is also important to recognise that many victim-survivors, or individuals at risk of forced marriage, have often had constraints placed upon their autonomy for prolonged periods. In our view, a best practice approach would empower victim-survivors to regain autonomy and make their own decisions in relation to accessing any

² Simmons, Frances; Wong, Grace --- "Learning from Lived Experience: Australia's Legal Response to Forced Marriage" (2021) *University of New South Wales Law Journal* 44(4) 1619; and Askola, Heli 'Responding to Vulnerability? Forced Marriage and the Law' (2018) *University of New South Wales Law Journal* 41(3) 977.

remedies, including AVOs, rather than enabling other individuals to make those decisions on their behalf without their consent, and potentially against their wishes.

Thank you again for the opportunity to contribute to this inquiry. Should you require any further information, please contact Sophie Bathurst, Policy Lawyer on 02 9926 0285 or email Sophie.Bathurst@lawsociety.com.au.

Yours sincerely,

A handwritten signature in black ink that reads "C Banks". The signature is written in a cursive, slightly slanted style.

Cassandra Banks
President