



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: HRC/FLC:BMsb030924

3 September 2024

Dr James Popple
Chief Executive Officer
Law Council of Australia
PO Box 5350
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By email: jessica.neal@lawcouncil.au

Dear Dr Popple,

Enhancing civil protections and remedies for forced marriage

Thank you for the opportunity to contribute to the Law Council's submission to the Attorney-General's Department's Consultation Paper, *Enhancing civil protections and remedies for forced marriage* (**Consultation Paper**). The Law Society's Human Rights and Family Law Committees contributed to this submission.

Our comments are directed to Parts 1 and 2 of the Consultation Paper.

Part 1 – Building a shared understanding of forced marriage as a form of family and domestic violence to improve victim-survivors' access to family and domestic violence services

Part 1 of the Consultation Paper is directed to a discussion of the legal and policy changes required to better recognise forced marriage as a form of family and domestic violence across Australian states and territories. In NSW, the *Crimes Domestic and Personal Violence Act 2007* (NSW) (**CDPV Act**) was amended through the *Modern Slavery Amendment Act 2021* to expressly define NSW and Commonwealth criminal offences involving forced marriage as personal violence offences. These amendments sought to ensure access to apprehended violence orders (**AVOs**) by potential adult and child victims of forced marriage, if they fear the commission of such an offence. However, at the current time, we are not aware of published data around the use of AVOs for forced marriages since the commencement of the relevant provisions in January 2022.

The Law Society supports including forced marriage in the definition of domestic and family violence, as has occurred in NSW. Further, we recognise that alignment of definitions with s 270.7A of the *Criminal Code Act 1995* (Cth), as the basis for a shared understanding of forced marriage as a form of family and domestic violence across Australia, is desirable. The CDPV Act incorporates the s 270.7A definition, as well as the definition of 'child forced marriage' found in s 93AC of the *Crimes Act 1900* (NSW).

It is important to emphasise, however, that addressing this issue should not be confined to a criminal justice response. As noted by the Office of the NSW Anti-Slavery Commissioner, 'an AVO will typically be an instrument of last resort for those at risk of forced marriage and the service providers seeking to protect them from forced marriage'.¹ Strategies to address forced marriage need to take a holistic approach, including expanding the availability of community-led protection initiatives, and prioritising the perspectives of victim-survivors.

In the experience of our members, individuals affected by forced marriage may be reticent to engage with a criminal justice response, particularly due to fear around the impacts on close family members, as well as the prospect of alienation from their family and community. Stigma and shame, coupled with the fact that victim-survivors may be financially dependent on their spouse, are other contributing factors. These are exacerbated for victim-survivors with poor English language skills, as well as migrants, who may fear potential repercussions on their visa status as a result of engaging with the criminal justice system.

Part 2 – Enhancing education and awareness raising

In terms of education and awareness raising, programs for 'frontline responders', including teachers, healthcare professionals, child protection workers and religious and/or community group leaders, are important, given they may have sustained contact with the at-risk person and community over a longer period and therefore may be well placed to respond.

Any training should seek to develop the responders' awareness of legislative and non-legislative options. They should be equipped to provide accurate advice and information, while respecting the autonomy and views of the affected individual as to the intervention and/or support that they may require. This is particularly important given that many victim-survivors experience a lack of agency and autonomy. In cases where disclosure to another agency or professional is required, responders should be trained on how to communicate this to the affected individual in a safe way.

Police and other government agencies who receive reports of forced marriage should be trained to make the affected person 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 re-tell their story as few times as possible.

It is important to report on the delivery of such education and awareness raising. We note that in NSW, in accordance with s 19(3)(a) of the *Modern Slavery Act 2018* (NSW), the NSW Anti-Slavery Commissioner's Annual Report is required to set out the extent to which the NSW Government has provided mandatory training on modern slavery to front-line government agencies and the public.

The benefits of education and awareness raising will only be as effective as the available support arrangements to which a first responder can refer an affected individual. Responding to a forced marriage captures a range of behaviours and activities which may trigger criminal, civil, family, migration, and/or child protection responses. Supports are often spread across state and Commonwealth agencies, which can cause great difficulty for a victim in navigating the assistance available to them. 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. A lack of effective inter-agency coordination may undermine the

¹ Office of the Anti-Slavery Commissioner, [Submission to the Review of NSW Legal Protections for Victim Survivors or Forced Marriage](#), December 2023.

confidence and trust of the affected individual, and create additional barriers to a safe exit from a situation of forced marriage.

Dedicated resourcing, and a response that is grounded in social and welfare principles and the best interests of the individuals affected, is essential. We commend the Government on the establishment of the new Forced Marriage Specialist Support Program from January 2025 to provide individualised need-based and early intervention support, rather than engagement of law enforcement options from the outset.

Thank you for the opportunity to contribute to the Law Council's submission. Questions at first instance may be directed to Sophie Bathurst, Policy Lawyer, at (02) 9926 0285 or Sophie.Bathurst@lawsociety.com.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Brett McGrath', with a stylized flourish extending to the right.

Brett McGrath
President