

# Review of NSW legal protections for victim- survivors of forced marriage

## Discussion Paper

# Table of Contents

<b>Glossary and key abbreviations .....</b>	<b>3</b>
<b>Consultation questions .....</b>	<b>4</b>
<b>Introduction .....</b>	<b>5</b>
<b>Background to this review .....</b>	<b>5</b>
<b>Scope of this review .....</b>	<b>6</b>
<b>Terminology .....</b>	<b>6</b>
<b>Vulnerable cohorts and forced marriage .....</b>	<b>6</b>
<b>Responding to this discussion paper .....</b>	<b>7</b>
<b>Current legal responses to forced marriage in NSW .....</b>	<b>8</b>
<b>Civil protections against forced marriage in NSW .....</b>	<b>8</b>
<b>Apprehended Violence Orders (AVOs) .....</b>	<b>8</b>
Applications for an AVO .....	9
Applications for AVOs and standing .....	10
Grounds for making an ADVO .....	11
Grounds for making an APVO .....	12
Prohibitions and restrictions on behaviour imposed by an AVO .....	13
Practice and Procedure for AVOs .....	15
<b>Forced marriage criminal offences .....</b>	<b>15</b>
<b>Commonwealth offences .....</b>	<b>15</b>
Marriage Act 1961 .....	15
Commonwealth Criminal Code .....	16
<b>NSW offences.....</b>	<b>17</b>
NSW Offence of Child Forced Marriage .....	17
Offences under the CDPV Act .....	18
<b>Appendix A - Existing supports for victim-survivors of forced marriage .....</b>	<b>19</b>
<b>Commonwealth .....</b>	<b>19</b>
<b>NSW .....</b>	<b>19</b>
<b>Appendix B – <i>Children and Young Persons (Care and Protection) Act 1998</i> .....</b>	<b>21</b>
<b>Endnotes.....</b>	<b>22</b>

# Glossary and key abbreviations

<b>ADVO</b>	Apprehended Domestic Violence Order
<b>AFP</b>	Australian Federal Police
<b>APVO</b>	Apprehended Personal Violence Order
<b>AVO</b>	Apprehended Violence Order
<b>Care Act</b>	<i>Children and Young Persons (Care and Protection) Act 1998</i> (NSW)
<b>CDPV Act</b>	<i>Crimes (Domestic and Personal Violence) Act 2007</i> (NSW)
<b>Committee</b>	NSW Legislative Council's Standing Committee on Social Issues
<b>Commonwealth Criminal Code</b>	<i>Criminal Code Act 1995</i> (Cth)
<b>Crimes Act</b>	<i>Crimes Act 1900</i> (NSW)
<b>Department</b>	Department of Communities and Justice
<b>DVU</b>	Legal Aid NSW Domestic Violence Unit
<b>EIU</b>	Legal Aid NSW Early Intervention Unit
<b>FCFCA</b>	Federal Circuit and Family Court of Australia
<b>Marriage</b>	the union of two people to the exclusion of all others, voluntarily entered into for life, as outlined in section 5 of the <i>Marriage Act 1961</i> (Cth)
<b>Marriage Act</b>	<i>Marriage Act 1961</i> (Cth)
<b>MS Act</b>	<i>Modern Slavery Act 2018</i> (NSW)
<b>NSWPF</b>	NSW Police Force
<b>STPP</b>	Support for Trafficked People Program

# Consultation questions

## Applications for AVOs

1. Is the obligation to apply for a provisional AVO in the context of forced marriage appropriate, sufficiently clear and consistently complied with?
2. Are there any other circumstances in which the making of an AVO should be mandated in matters involving forced marriage?

## Applications for AVOs and standing

3. Should section 48 of the CDPV Act be amended to give additional people or entities standing to apply for AVOs in situations of forced marriage? If so, who else should have standing?
4. Are there any risks if additional people or entities have standing to apply for AVOs in situations of forced marriage? If so, what are these risks? Are there ways to mitigate against these risks?

## Grounds for making an AVO

5. Do the grounds for making an AVO effectively recognise and respond to circumstances of forced marriage? Could these grounds be further strengthened for this purpose and, if so, how?
6. Under what circumstances will individuals involved in facilitating a forced marriage not be in a domestic relationship with the victim-survivor? Do the grounds for making an AVO effectively protect victim-survivors in these cases? If not, how could these grounds better respond to the needs and circumstances of victim-survivors of forced marriage?

## Prohibitions or restrictions under AVOs

7. Are the existing prohibitions and restrictions that may be imposed under an AVO adequate and effective to safeguard against forced marriage? Are any changes needed to the prescribed form?
8. Should provisional AVOs be able to prohibit behaviour of the defendant that might coerce, threaten or deceive the protected person to enter into a forced marriage, as court-ordered AVOs have the power to do?

## Practice and procedure for AVOs

9. Are there any practice changes that could be made to better support victim-survivors of forced marriage to have access to the protections under AVOs? If so, what are they?
10. Is additional guidance necessary or helpful to assist victim-survivors and support services to make use of AVOs in cases of forced marriage? If so, what should this guidance consist of?
11. Are there additional barriers for specific cohorts of the community in obtaining protections against forced marriage under the AVO system?

## Forced marriage offences

12. Are the existing criminal offences under NSW legislation adequate and appropriate as criminal justice responses to forced marriage (also noting the Commonwealth forced marriage offences)?

# Introduction

A forced marriage takes place when a person is married without that person's free and full consent. The person may be coerced, threatened or deceived into marrying or may not have the capacity to give consent. There is growing awareness of forced marriage as a form of modern slavery and an act of domestic and family violence. It is not limited to a problem that happens overseas: it can happen, and is happening, within Australia. The Australian Federal Police (**AFP**) received 79 reports of forced marriage Australia-wide in 2020-2021 and 84 reports in 2021-2022.<sup>1</sup> Globally, in 2021, there was an estimated 22 million people living in situations of forced marriage, with over two-thirds being female.<sup>2</sup>

The Department of Communities and Justice (**the Department**) is undertaking a review into the legal protections for victim-survivors of forced marriage in NSW. This review seeks to assess the adequacy of existing legal protections in NSW to determine whether any further protections are necessary. The purpose of this discussion paper is to invite feedback from stakeholders about the operation of these existing legal protections in order to generate discussion about any need for reform.

This review focuses on the legal protections for victim-survivors in NSW. In doing so, it is acknowledged that responding to incidents of forced marriage is complex and requires not only a legal response but also the co-ordinated delivery of social supports at both Commonwealth and NSW levels. Currently, the Commonwealth Government runs the Support for Trafficked People Program (**STPP**), which provides accommodation, financial support, counselling and legal and immigration advice to victim-survivors of forced marriage.<sup>3</sup> NSW provides support through the Legal Aid NSW Early Intervention Unit (**EIU**) and Domestic Violence Unit (**DVU**), which offer advice and legal assistance to victim-survivors and, in some instances, legal representation. Supports may also be available through Victims Services NSW. A summary of available support services is provided at **Appendix A**.

## Background to this review

This review follows the enactment of the *Modern Slavery Act 2018* (NSW) (**the MS Act**) and the subsequent Parliamentary inquiry into the MS Act, conducted shortly after its introduction.

In 2018, NSW Parliament passed the MS Act, which aimed to prevent modern slavery practices and provide support and assistance to victim-survivors of modern slavery, including those of forced marriage.

The MS Act did not immediately commence after it was passed. Rather, in 2019, the NSW Legislative Council Standing Committee on Social Issues (**the Committee**) undertook an inquiry into the Act to consider, among other things, its operability and its interaction with Commonwealth law.<sup>4</sup>

The Committee handed down its [report](#) on 25 March 2020. In relation to the issue of forced marriage, the Committee recommended, at Recommendation 17, that the NSW Government establish a working group to develop further amendments to the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (**the CDPV Act**) to protect victim-survivors.<sup>5</sup>

The NSW [Government Response](#) to the Committee's inquiry supported Recommendation 17 in principle. The Response noted that the Department of Communities and Justice was undertaking a review to consider whether further legislative protections for victims-survivors of forced marriage were necessary under NSW law, in particular under the apprehended violence order (**AVO**) regime. The Response noted that this review was to be informed by consideration of the Standing Committee's report and would include consultation with key stakeholders.<sup>6</sup>

Following release of the Committee's final report, the *Modern Slavery Amendment Act 2021* (NSW) was passed on 29 November 2021. It amended the MS Act. In respect of forced marriage, it created a new criminal offence of child forced marriage under section 93AC of the *Crimes Act 1900* (NSW) (**the Crimes**

**Act**). It also introduced changes to the CDPV Act, which were aimed at better protecting victim-survivors of forced marriage through the AVO framework. For example, it expressly referred to the NSW and Commonwealth criminal offences involving forced marriage as personal violence offences, which, when someone fears the commission of such an offence, can be a ground for making an AVO. The MS Act, as amended by the *Modern Slavery Amendment Act 2021*, commenced on 1 January 2022.

Work on the Department's review of forced marriage was suspended while the amendments to the MS Act were considered and enacted. This Discussion Paper considers these further developments now that they have been in operation for over a year to ensure that the review is able to address all relevant matters.

## Scope of this review

The scope of this review is informed by the recommendations of the Committee's 2020 final report, particularly Recommendation 17, and the NSW Government's Response to the Committee's report. It follows that this review is limited to a consideration of the protections for victim-survivors under key NSW laws and any need for reform to those laws. It has a particular focus on the protections that are available under the AVO regime in the CDPV Act. It takes account of the changes to the AVO regime introduced by the MS Act and considers whether these changes go far enough in protecting victim-survivors in NSW. The review also considers the offence against child forced marriage under the Crimes Act.

It is acknowledged that there are other relevant laws that are beyond the scope of this review but that nevertheless have an impact on the protections available to victim-survivors in NSW. The NSW child protection framework established under the *Children and Young Persons (Care and Protection) Act 1998* (NSW) (**the Care Act**) plays an important role in responding to child victim-survivors of forced marriage. However, the Care Act is outside the scope of the current review.

Similarly, there are Commonwealth laws that provide some protection to victim-survivors. These laws are referred to in the ensuing discussion but are outside the scope of this review for the purpose of proposing any possible reforms. Although this review solely focuses on NSW legislation, we will share any relevant findings with the Commonwealth for their consideration.

Lastly, as stated in the Introduction above, while this review acknowledges the importance of non-legal supports and services in protecting victim-survivors, it is outside its scope to consider any proposals in respect of the operation of those services.

## Terminology

This discussion paper adopts the word 'victim-survivor' throughout. This is used as an inclusive term to describe both people who have been subjected to forced marriage as well as people who may be at risk of forced marriage.

## Vulnerable cohorts and forced marriage

It is acknowledged that different members and groups within the NSW community may be disproportionately affected by the issue of forced marriage. Experiences in relation to forced marriage may be unique for women, children and young people, people from culturally and linguistically diverse backgrounds and LGBTIQ+ communities. These experiences can also be shaped by intersectional identities.

In responding to the consultation questions set out in this discussion paper, the Department invites feedback on the experiences of forced marriage for vulnerable and marginalised cohorts as well as any measures that could be put in place to strengthen protections for these victim-survivors.

## Responding to this discussion paper

As part of this review, the Department is conducting public consultation, alongside additional targeted consultation with key government and non-government stakeholders. Responding to this discussion paper is the key mechanism through which stakeholders can provide their input and expertise to inform the review.

The discussion paper outlines the current legal protections against forced marriage available in NSW and seeks to explore the adequacy of those protections as they apply to adult and child victim-survivors of forced marriage.

Following stakeholder feedback, a report and recommendations will be provided to the Attorney General for consideration.

The Department welcomes feedback on any or all of the questions presented in this paper. You can upload your submission or complete the submission form on the Have Your Say website, which you can access here: <https://www.haveyoursay.nsw.gov.au/reviewing-forced-marriage-legal-protections>. Alternatively, you can provide feedback by submitting a written submission and sending it to [DFVlawpolicy@dcj.nsw.gov.au](mailto:DFVlawpolicy@dcj.nsw.gov.au). If you wish to include case studies to highlight the views and experiences of clients, they should be de-identified to protect the privacy of those individuals.

Please provide your written submission or completed submission form by close of business on **1 December 2023**.

The Department may identify or reproduce any part of submissions in its report. If you wish for your submission to be treated confidentially, please advise at the time of providing your submission.

# Current legal responses to forced marriage in NSW

NSW legislation responds to the issue of forced marriage in the following ways:

- By providing for civil protections under the AVO framework of the CDPV Act
- By providing for a criminal offence of child forced marriage under section 93AC of the Crimes Act.

Other criminal offences in NSW may also apply in circumstances of forced marriage. Commonwealth legislation also deals with the issue of forced marriage, predominantly through the criminal law and, to a limited extent, family law.

## Civil protections against forced marriage in NSW

Civil protections are available under Commonwealth and NSW laws to respond to incidents of forced marriage.

At the Commonwealth level, the *Family Law Act 1975* (Cth) provides some protections for children at risk of being taken overseas for the purposes of entering into a forced marriage. The Australian Federal Police (**AFP**) maintains the Family Law Watch List (**Watch List**), which is designed to alert police to the movement of children. People under 18 years of age can be placed on the Watch List under a Federal Circuit and Family Court of Australia (**FCFCA**) order or by way of a filed application for an FCFCA order. This list can be used to prevent a child or young person from being taken out of Australia for the purposes of entering into a forced marriage. Once a person turns 18 years old, there are no Commonwealth-based civil protections available.<sup>7</sup>

In NSW, AVOs are the primary civil protection order that may apply to situations of forced marriage. These orders prohibit or restrict the subject of the order ('the defendant') from engaging in certain behaviours where victim-survivors have reasonable grounds to fear and in fact fear for their safety and/or welfare.

The Care Act also provides authority to the Department to act to protect children who are at risk of significant harm, including at risk from forced marriage (see **Appendix C** for more information).

## Apprehended Violence Orders (AVOs)

AVOs are important tools in responding to circumstances relating to domestic and family violence and personal violence. The CDPV Act provides for two types of AVOs in NSW: Apprehended Domestic Violence Orders (**ADVOs**) and Apprehended Personal Violence Orders (**APVOs**). An ADVO operates to protect a person who is or has been in a domestic relationship and an APVO operates to protect a person where no domestic relationship exists.

An AVO is a civil order made by a court. It may be made independently and in the absence of any criminal proceedings. An AVO may be applied for to protect a person's safety and welfare. While an AVO itself is a civil order, breaching an AVO is a criminal offence. In the 12 months to September 2022, the number of final ADVOs made in NSW was 37,395 and the number of final APVOs made was 4,932.<sup>8</sup>



An AVO can be made as a provisional or interim order or as a final order. Interim and final AVOs can only be made by a court. A provisional AVO can be made by the NSW Police Force (**NSWPF**). A provisional AVO is taken to be an application by the applicant officer to the court for determination. The defendant on a provisional AVO should be brought before a court on the next AVO list day or, at the latest, 28 days after the making of the provisional order.<sup>9</sup>

Where it is suspected that a forced marriage has taken place, or may take place in the future, an AVO can be made to provide certain protections to victim-survivors. For example, an AVO may place restrictions on the behaviour of an individual trying to coerce someone into marriage, such as prohibiting that individual from threatening or intimidating the other person or from having any contact with that person.

## Applications for an AVO

### Circumstances requiring an application for a provisional AVO

A provisional AVO is an AVO applied for by an investigating officer and made by a police officer or an authorised officer,<sup>10</sup> such as a registrar. There are circumstances in which the NSWPF is legally required to apply for a provisional AVO, including in circumstances relating to forced marriage.

The NSWPF is obliged to apply for a provisional AVO on behalf of a victim-survivor if:

- First, the investigating police officer believes or suspects that a specified offence has been committed or is likely to be committed or is imminent or that proceedings for such an offence have been commenced. These specified offences include:
  - a domestic violence offence. This includes NSW and Commonwealth forced marriage offences and the NSW child forced marriage offence.
  - a stalking and intimidation offence, noting that intimidation is defined under section 7 of the CDPV Act to include conduct amounting to the coercion or deception of, or a threat to, a person to enter into a forced marriage whether there is a domestic relationship or not;
  - an offence of child or young person abuse (Care Act section 227), and
- Secondly, the investigating police officer has good reason to believe that an order needs to be made immediately to ensure the safety and protection of the person who would be protected by the order or to prevent substantial damage to any property of that person.

Where a report of child forced marriage is raised with the NSWPF, or a report is made to the Child Protection Helpline, the NSWPF is notified about the matter and investigates whether or not an offence has been committed. In such cases, the NSWPF is notified regardless of the final child protection response. Under section 27(1)(a)(ii) of the CDPV Act, the NSWPF is obliged to apply for a provisional AVO for the child in need of protection if they believe or suspect that an offence involving child or young person abuse has been or is being committed or is imminent or likely to be committed, and the police officer has good reason to believe an order needs to be made immediately to ensure the safety and protection of the person who would be protected by the order. The NSWPF must also contact the AFP as part of existing information-sharing arrangements. NSW child protection agencies seek updates from the NSWPF and AFP to continue to assess the risk to the child or young person.

### Circumstances mandating the making of AVOs

#### *Interim AVOs on charge of a serious offence*

Section 40 of the CDPV Act requires the Court to make an interim AVO against a person who is charged with a serious offence, whether or not the NSWPF or other party applied for an AVO, unless the court considers that it is not required. A serious offence is defined in section 40(5) of the CDPV Act to include,

relevantly, a domestic violence offence, a stalking and intimidation offence and the NSW and Commonwealth forced marriage offences.

### ***Final AVOs on conviction of a serious offence***

Similarly, under section 39 of the CDPV Act, if a person pleads guilty or is found guilty of a serious offence, the court must make a final AVO against the person for the protection of the victim-survivor, whether or not the NSWPF or another party applies for an AVO, unless the court considers that it is not required. The term, “serious offence”, has the same meaning as in section 40, and therefore includes the NSW and Commonwealth forced marriage offences.

#### **Consultation Questions**

1. Is the obligation to apply for a provisional AVO in the context of forced marriage appropriate, sufficiently clear and consistently complied with?
2. Are there any other circumstances in which the making of an AVO should be mandated in matters involving forced marriage?

### **Applications for AVOs and standing**

Victim-survivors of forced marriage may face barriers in seeking the protections provided by the AVO regime.

Section 48(2) of the CDPV Act gives standing to apply for a final or an interim AVO to:

- the person in need of protection;
- a guardian of a person in need of protection, if the person is subject to a guardianship order; or
- a police officer.

However, only a police officer has standing to apply for an AVO if each of the protected persons under the order is a child.

In cases of a child being coerced to enter a forced marriage, both the Department and the NSWPF have standing to apply for a final or interim AVO according to section 48(2)(c) of the CDPV Act.

While individuals can make private applications to the court for AVOs, it can be extremely challenging for a victim-survivor of forced marriage to make a private application for an AVO against a family member, member of their kinship circle, a family friend or community member. As noted in submissions to the Inquiry,<sup>11</sup> victim-survivors may want the behaviour surrounding forced marriage to stop but not want to implicate a person/s with whom they have familial or personal affiliation in a crime, to jeopardise temporary immigration status or to be alienated from their family or social networks.

Noting these barriers, stakeholder submissions to the Inquiry argued that pressure on victim-survivors to make applications for AVOs needs to be reduced. Some called for an expansion of the people eligible to make an AVO application on behalf of a victim-survivor.<sup>12</sup> For example, currently the AFP manages the vast majority of criminal prosecutions of forced marriage cases. However, we understand that the AFP does not have standing under the CDPV Act to apply for an AVO on behalf of a victim-survivor because a “police officer” is defined as a member of the NSWPF.<sup>13</sup> Stakeholder submissions to the Committee also suggested other categories of persons that could be eligible to make an AVO application on behalf of victim-survivors such as carers, protective family members, organisations or friends.<sup>14</sup>

Expanding the eligibility of those who can apply for an AVO may have unforeseen consequences and should be considered carefully. Expanding the list of those who can apply for an AVO may make it difficult for a court to determine which parties are acting in the true interests of a victim-survivor in applying for an order. Consideration needs to be given to the risk of undesirable consequences, such as systems abuse. Systems abuse is the abuse of official processes by a perpetrator to exert their power and control over a victim-survivor.

There may be other existing and possible mechanisms to achieve the policy objective of providing victim-survivors with AVO protections without expanding the range of possible AVO applicants. For example, NSW child protection services and NSWPF already work very closely in matters of child protection, including child forced marriage. As part of child protection responses, the NSWPF can and do apply for AVOs on behalf of the Department even though, in principle, the Department also has standing to apply directly for an AVO. The Department makes a request to NSWPF for an AVO. Additionally, the NSWPF and AFP work together to progress both Commonwealth and NSW-based responses to cases of forced marriage.

### Consultation Questions

3. Should section 48 of the CDPV Act be amended to give additional people or entities standing to apply for AVOs in situations of forced marriage? If so, who else should have standing?
4. Are there any risks if additional people or entities have standing to apply for AVOs in situations of forced marriage? If so, what are these risks? Are there ways to mitigate against these risks?

## Grounds for making an ADVO

Section 16 of the CDPV Act outlines the grounds on which a court can make an ADVO.

For an ADVO to be made, an application must be made to the court and the court needs to be satisfied that, on the balance of probabilities, a person who has or has had a domestic relationship with another person has reasonable grounds to fear that:

- the defendant will commit a domestic violence offence against them; or
- the defendant will engage in conduct in which they intimidate the person (which includes conduct amounting to coercion of a person to enter into a forced marriage) or someone the person has a domestic relationship with, or stalks the person;

being conduct that, in the opinion of the court, is sufficient to warrant the making of the order.

The court must also be satisfied, on the balance of probabilities, that the person in need of protection in fact fears the conduct above, except where that person:

- is a child or young person under 18-years-old;
- is a person with a cognitive impairment;
- has been subjected on more than one occasion to conduct by the defendant amounting to a personal violence offence, there is a reasonable likelihood that the defendant may commit a personal violence offence against the person, and the making of the order is necessary to protect that person from further violence; or
- the court is satisfied on the balance of probabilities that the person has reasonable grounds to fear the commission of a domestic violence offence against the person.

## **Domestic violence offence**

A domestic violence offence is an offence of the following kinds, committed by a person in a domestic relationship with, or who was in a domestic relationship with, the victim-survivor:

- a) a personal violence offence; or
- b) an offence (other than a personal violence offence) arising from substantially the same circumstances as those from which a personal violence offence has arisen; or
- c) an offence (other than a personal violence offence) the commission of which is intended to coerce or control the person against whom it is committed or to cause that person to be intimidated or fearful (or both) (section 11(1) of the CDPV Act).

Section 11(2) of the CDPV Act specifically incorporates an offence under the Commonwealth Criminal Code into the definition of a domestic violence offence. Both the NSW child forced marriage offence and the Commonwealth forced marriage offences are prescribed as ‘personal violence’ offences.

From 2024,<sup>15</sup> the definition of a domestic violence offence in section 11 of the CDPV Act will include the offence relating to coercive control under section 54D(1) of the Crimes Act (yet to commence) and an offence in which the conduct that constitutes the offence is domestic abuse. Section 6A of the CDPV Act, which is yet to commence, will define domestic abuse as any of the following behaviours directed by one person (the first person) against another person (the second person) with whom the first person has a domestic relationship—

- a) violent or threatening behaviour
- b) behaviour that coerces or controls the second person,
- c) behaviour that causes the second person to fear for the person’s safety or wellbeing or the safety and wellbeing of others.

Section 5 of the CDPV Act provides that a person is in a domestic relationship with another person if they are, or have been:

- in a marriage;
- in a de facto partnership;
- in an intimate personal relationship;
- living in the same household;
- living in the same residential facility as a long-term resident, at the same time as the other person;
- in relationships where a person is dependent on another for ongoing paid or unpaid care;
- relatives;
- in the case of an Aboriginal person or Torres Strait Islander, part of the same extended family or kin as the other person according to the Indigenous kinship system of their culture; or
- in a marriage, de facto or intimate personal relationship with the same person (for example, a woman’s ex-partner and current partner would have a domestic relationship with each other for the purposes of the CDPV Act even if they had never met).

## **Grounds for making an APVO**

There may be cases where a victim-survivor does not have a ‘domestic relationship’ with a person (or people) who are seeking to facilitate, or are involved in, a forced marriage. This may arise, for instance, where the person is a member of the victim-survivor’s local or cultural community, or is a family friend, but is not a family member. In these cases, victim-survivors may be afforded protections under an APVO if there are grounds for making this order.

The grounds for making an APVO are very similar to those for an ADVO set out above, but refer to the commission of a personal violence offence rather than a domestic violence offence (section 19(1), CDPV

Act). That is, the distinction between these two orders is based on the nature of the relationship between the defendant and person in need of protection. Additionally, the person must actually fear the relevant conduct, except where they are a child or are suffering from an appreciably below average general intelligence function (section 19(2), CDPV Act), which is a narrower series of exceptions than those for ADVOs noted above.

### **Personal violence offence**

A 'personal violence offence' is defined in section 4 of the CDPV Act by reference to a number of specified criminal offences under the Crimes Act and the CDPV Act. Relevant personal violence offences include:

- the offence of stalking or intimidation with intent to cause fear of physical or mental harm (CDPV Act, section 13)
- the NSW child forced marriage offence (Crimes Act, section 93AC)
- the Commonwealth forced marriage offence (Commonwealth Criminal Code, section 270.7B).<sup>16</sup>

### **Consultation Questions**

5. Do the grounds for making an ADVO effectively recognise and respond to circumstances of forced marriage? Could these grounds be further strengthened for this purpose and, if so, how?
6. Under what circumstances will individuals involved in facilitating a forced marriage not be in a domestic relationship with the victim-survivor? Do the grounds for making an APVO effectively protect victim-survivors in these cases? If not, how could these grounds better respond to the needs and circumstances of victim-survivors of forced marriage?

## **Prohibitions and restrictions on behaviour imposed by an AVO**

Every AVO is taken to include prohibitions against:

- Assaulting, threatening, stalking, harassing or intimidating a protected person or person with whom the protected person has a domestic relationship and
- Intentionally or recklessly destroying or damaging property or harming an animal belonging to or in the possession of a protected person or person with whom the protected person has a domestic relationship.<sup>17</sup>

In addition to these standard conditions, section 35 of the CDPV Act gives the court the power to impose any such prohibitions or restrictions on the behaviour of the defendant in an AVO as appear necessary or desirable to the court. Section 35(2A) of the CDPV Act specifically states that an AVO may prohibit any behaviour of a person that might coerce, threaten or deceive the victim to enter into a forced marriage.

The review is interested in stakeholder views on whether these provisions are adequate to protect against forced marriage.

### **Provisional AVOs**

Unlike the courts, the NSWPF and authorised officers do not have a general power when issuing provisional AVOs to impose such prohibitions or restrictions as appear necessary or desirable and do not have the power to impose a specific prohibition about forced marriage. Under section 35(3) of the CDPV Act, their powers are limited to making restrictions or prohibitions against the defendant about:

- Approaching the protected person;
- Accessing particular premises or places occupied or frequented by the protected person;
- Approaching the protected person within 12 hours of consuming intoxicating liquor or illicit drugs;
- Locating or attempting to locate the protected person;
- Possessing firearms or prohibited weapons; and/or
- Interfering with the protected person's property.<sup>18</sup>

In urgent circumstances where action is needed to prevent a forced marriage from occurring, it is reasonable to question whether the Police or an authorised officer should have the power to impose a specific order in a provisional AVO to prohibit behaviour that might coerce, threaten or deceive another to enter into a forced marriage.

### ***Interim and final AVOs***

While the court can impose any restriction or prohibition on a defendant's behaviour in an AVO that it considers necessary or desirable, there is a prescribed form for application notices for apprehended violence orders that contains standard orders, and a space for other orders to be listed.<sup>19</sup> Order 2 says that a defendant cannot contact the protected person except through a lawyer. Order 5 says that a defendant must not try to find the protected person, except as ordered by a court. Orders 7 – 9 are orders about where the defendant cannot go. Order 10 prohibits the defendant from possessing firearms or prohibited weapons. Order 11 is a blank space that allows the court to draft a free text order to meet the particular circumstances of an individual matter. For example, in matters involving a risk that a victim-survivor will be taken overseas to enter into a forced marriage outside of Australia, the Court could consider including in Order 11 a prohibition on the defendant from facilitating overseas travel for the protected person.

In its submission to the Committee, Legal Aid NSW noted that the current protections provided by AVOs do not address the biggest risk to victim-survivors, that is, their removal from Australia.<sup>20</sup> This issue is acknowledged, noting that passports and international travel fall within the Commonwealth jurisdiction. There is provision under section 12(1)(b)(i) of the *Australian Passports Act 2005* (Cth) for the States and Territories to apply to the Department of Foreign Affairs and Trade for the cancellation of a person's passport if that person is prevented from travelling internationally under a court order. In principle, at least, there may be scope for a NSW authority to apply to the Commonwealth for the cancellation of a person's passport if an AVO carries with it a condition to prevent that person from leaving Australia. Any further reforms aimed at strengthening protections against overseas travel are likely to require the Commonwealth Government's involvement.

### ***Commonwealth Civil Protections for Victim-Survivors***

At present there are limited Commonwealth civil protections for victims-survivors of forced marriage, particularly adults. Under the [National Action Plan to Combat Modern Slavery 2020-2025](#), the Commonwealth Government committed to develop a model for enhanced civil protections and remedies in response to the issue of forced marriage. This work is being progressed under the governance of the Standing Council of Attorneys General (**SCAG**). This work is outside the scope of this review.



### Consultation Questions

7. Are the existing prohibitions and restrictions that may be imposed under an AVO adequate and effective to safeguard against forced marriage? Are any changes needed to the prescribed form?
8. Should provisional AVOs be able to prohibit behaviour of the defendant that might coerce, threaten or deceive the protected person to enter into a forced marriage, as court-ordered AVOs have the power to do?

## Practice and Procedure for AVOs

Difficulties for victim-survivors in gaining access to AVO protections under the CDPV Act may arise from the practice and procedure concerning AVOs.

### Consultation Questions

9. Are there any practice changes that could be made to better support victim-survivors of forced marriage to have access to the protections under AVOs? If so, what are they?
10. Is additional guidance necessary or helpful to assist victim-survivors and support services to make use of AVOs in cases of forced marriage? If so, what should this guidance consist of?
11. Are there additional barriers for specific cohorts of the community in obtaining protections against forced marriage under the AVO system?

# Forced marriage criminal offences

Incidents of forced marriage may attract criminal charges under both Commonwealth and NSW law.

## Commonwealth offences

### Marriage Act 1961

The *Marriage Act 1961* (Cth) (**Marriage Act**) sets out the legal age at which people can marry, the grounds on which a marriage can be void and relevant offences.

#### ***Legal age of marriage***

Section 11 of the Marriage Act provides that, subject to section 12, a person can get married if they are 18 years old or older. Section 12 provides that a person can get married when they are between 16 years and 18 years if they have sought authorisation from a judge or magistrate to get married, and the judicial officer is satisfied that there are circumstances so exceptional and unusual as to justify the order. In addition, section 14 requires consent to be obtained from a parent, guardian or a person with parental responsibility.

## ***Void marriages***

Part 3 of the Marriage Act sets out the circumstances in which a marriage is void. Among others, these circumstances include:

- Where the consent of either of the parties was not a real consent because it was obtained by duress or fraud; or that party was mistaken as to the identity of the other party or as to the nature of the ceremony performed; or that party was mentally incapable of understanding the nature and effect of the marriage ceremony; or
- Where either party was not of marriageable age (see sections 23 and 23B of the Marriage Act).

## ***Offences under the Marriage Act***

The Marriage Act provides protection against forced marriage in so far as it bars it from taking place. Marriage celebrants, ministers of religion and other officials have a part to play in preventing underage marriages and ensuring that they obtain real consent from both parties. The Marriage Act provides for criminal sanctions to apply to participants in a marriage ceremony, including:

- Section 95(1), which makes it an offence to marry someone who is not of marriageable age, with a criminal penalty of imprisonment for up to five years
- Section 95(2), which makes it an offence for a person to marry someone between the ages of 16 and 18 unless the necessary consents are obtained or the young person has been married before, with a criminal penalty of six months' imprisonment or five penalty units (that is, a \$550 fine).
- Section 98, which makes it an offence to witness a marriage of a young person (or "minor", that is, someone under 18 years of age) with a penalty of six months' imprisonment or five penalty units (that is, a \$550 fine).

These offences apply only to marriages in Australia.

These offences are noted for context only; they are not within the scope of this review.

## **Commonwealth Criminal Code**

Section 270.7A(1)(a) of the Commonwealth Criminal Code defines a forced marriage as a marriage where the victim-survivor enters into the marriage without freely and fully consenting, due to coercion, threat or deception, or because the victim was incapable of understanding the nature and effect of the marriage ceremony.

Under section 270.7A(1)(b), the marriage of a person under 16 years of age is considered a forced marriage.<sup>21</sup> In such cases, there is no need to prove that a victim entered into the marriage due to coercion, threats or deception, or because the victim was incapable of understanding the nature and effect of the marriage ceremony.

Section 270.7B provides that it is an offence for:

- a person to engage in conduct causing someone to enter into a forced marriage (section 270.7B(1)); and
- a person who is not a victim-survivor of the forced marriage to be a party to the forced marriage, without a reasonable excuse (section 270.7B(2)).

The maximum penalty for both offences is seven years' imprisonment, or nine years if it is an aggravated offence.

Under section 270.8, offences under section 270.7B are aggravated if the victim-survivor is under 18 years old, the offender in committing the offence subjects the victim-survivor to cruel, inhuman or



degrading treatment, or if the offender engages in conduct that gives rise to a danger of death or serious harm to the victim-survivor or another person and is reckless to that danger.

A person who takes or arranges to send a child overseas to be married offshore may also be guilty of the criminal offence of trafficking in children under section 271.4(2) of the Commonwealth Criminal Code. This offence carries a maximum penalty of imprisonment for 25 years.

In the year 2021-2022, the Australian Federal Police received 84 reports alleging forced marriage offences under Division 270.7B of the Commonwealth Criminal Code. Between 1 July 2017 and 31 June 2022, approximately 23 per cent of reports alleging forced marriage offences related to persons between the ages of 16 and 18 at the time of the report. There have been no convictions recorded for the Commonwealth forced marriage offences since their establishment in 2013.<sup>22</sup>

The Commonwealth Attorney-General's Department, in collaboration with the Australian Federal Police and the Commonwealth Director of Public Prosecutions (CDPP), recently conducted a review of human trafficking, slavery and slavery-like offences in Division 270 and 271 of the Criminal Code Act 1995 (Cth) and released its final report on 22 August 2023.<sup>23</sup> With regard to forced marriage, the final report of this review noted that the Commonwealth forced marriage offences do not capture conduct relevant to preparing for, or forcing a person to remain in, a forced marriage.<sup>24</sup> The final report suggested that consideration be given to additional measures to address this conduct.

## NSW offences

### NSW Offence of Child Forced Marriage

On 1 January 2022, Division 17 of Part 3 of the Crimes Act commenced, which included a new offence of child forced marriage at section 93AC. Under section 93AC(2)(a), a marriage is forced if a child (defined as a person under 18 years of age) enters into the marriage without free and full consent due to the use of coercion, threat or deception or because the child was incapable of understanding the nature and effect of the marriage. Under section 93AC(2)(b), the marriage of a person under 16 years of age is defined to be a forced marriage. This definition of forced marriage in 93AC aligns with the Commonwealth forced marriage provisions under section 270.7A.

For the purpose of section 93AC, 'marriage' includes marriages recognised under the law of a foreign country or marriages that are void, invalid or not recognised by law.

Section 93AC provides for an offence where:

- a person causes a child to enter a forced marriage, and intends to cause or is reckless as to causing that forced marriage (section 93AC(3)); and
- a person enters into a marriage with a child and knows that it is a forced marriage, if they are not a victim of the forced marriage (section 93AC(4)).

Both offences have a maximum penalty of nine years' imprisonment.

While the new forced marriage offences and the associated amendments to the CDPV Act create new legislative protections for children, stakeholders have noted that there is a need for a more expansive understanding of this issue. Good Shepherd noted in their submission to the Committee that young people aged 16 – 18 years old represent a significant number of those at risk from forced marriage and that in their experience, people are at an increased risk of forced marriage as they get closer to 18 years old.<sup>25</sup>

Up to December 2022, there have been no finalised charges for the offence of child forced marriage under section 93AC of the Crimes Act.<sup>26</sup> There have been no convictions under the Commonwealth forced marriage offences since their establishment in 2013.<sup>27</sup>

## Offences under the CDPV Act

The CDPV Act establishes a limited number of criminal offences.

### ***Stalking and intimidation offence***

Section 13 of the CDPV Act provides that a person who stalks or intimidates another person with the intention of causing the other person to fear physical or mental harm commits an offence. The penalty for this offence is five years, or 50 penalty units, or both.

The offence of stalking and intimidation is applicable both where parties have a domestic relationship (classified as a domestic violence offence) and where no domestic relationship exists between parties (classified as a personal violence offence in section 4 of the CDPV Act).

The *Modern Slavery Act 2018* amended the definition of intimidation to expressly cover conduct relevant to forced marriage. Section 7(1) of the CDPV Act defines intimidation to mean:

- conduct amounting to harassment or molestation;
- an approach made to the person that causes the person to fear for their safety;
- conduct that causes reasonable apprehension of:
  - a. injury to the person or to someone with whom they are in a domestic relationship;
  - b. violence or damage to any person or damage to property or harm to an animal that belongs or belonged to, or is or was in the possession of, the person or another person with whom the person has a domestic relationship; or
- conduct amounting to the coercion or deception of, or a threat to:
  - a. a child to enter into a forced marriage within the meaning NSW child forced marriage offence (section 93AC, Crimes Act); or
  - b. a person to enter into a forced marriage within the meaning of the Commonwealth definition of forced marriage (Commonwealth Criminal Code section 270.7A).<sup>28</sup>

### ***Offence of contravening an AVO***

Under section 14 of the CDPV Act, a person who knowingly contravenes a prohibition or restriction specified in an AVO made against the person is guilty of an offence. The maximum penalty is imprisonment for two years and/or 50 penalty units.

#### **Consultation Question**

- 12.** Are the existing criminal offences under NSW legislation adequate and appropriate as criminal justice responses to forced marriage (noting also Commonwealth forced marriage offences)?

# Appendix A - Existing supports for victim-survivors of forced marriage

Social supports for victim-survivors of forced marriage are outside the scope of the review and discussion paper, however, a summary of existing social supports is included below to provide additional context to the other factors impacting victim-survivors of forced marriage.

## Commonwealth

The AFP can refer victim-survivors of forced marriage to the STPP, which can provide accommodation, financial support, medical treatment, counselling and legal and immigration advice to victims of forced marriage.<sup>29</sup> Victim-survivors willing to be part of a criminal investigation are supported by the STPP's Justice Support Scheme. This scheme provides ongoing support for victim-survivors until the investigation and prosecution is finalised.<sup>30</sup> Victim-survivors unwilling to participate in criminal investigations can access the Forced Marriage Support Scheme, which provides up to 200 days of support for people in, or at risk of, a forced marriage.<sup>31</sup> The decoupling of support from criminal justice processes may address some concerns that have been raised, that victim-survivors may not want to report in order to avoid subjecting their families to criminal charges. The Salvation Army's Freedom Partnership program provides support and advocacy and, in some matters, case management to people at risk of forced marriage. Anti-Slavery Australia's initiative known as My Blue Sky is a service dedicated to preventing forced marriage through their national website and the Forced Marriage helpline, providing free support to anyone at risk of forced marriage.<sup>32</sup>

The Commonwealth Government released a *National Action Plan to Combat Modern Slavery* in December 2020. The plan sets the strategic direction of Australia's response to modern slavery. More information about the National Action Plan is available [here](#). As part of the National Action Plan, the Commonwealth has committed to building on supports for individuals in or at risk of forced marriage by developing a model for enhanced civil protections and remedies.

## NSW

Legal Aid NSW provides legal advice to victims-survivors of forced marriage, and in some cases, legal representation. The Early Intervention Unit (**EIU**) within Legal Aid NSW specialises in Family Law and Care and Protection law. EIU runs regular legal advice outreaches at community centres and local courts throughout NSW. It also provides daily duty solicitor legal support at the FCFCAs and can quickly apply for Family Law Watch List orders if a person is in imminent threat of being taken overseas for a forced marriage. Additionally, the Legal Aid NSW Domestic Violence Unit (**DVU**) has a pilot program in partnership with Australian Red Cross to provide integrated legal and non-legal support services to strengthen supports for women on temporary visas at risk of domestic and family violence. The scope of this project extends to victims in cases of forced marriage and provides an avenue of access to advice, information, referrals and in some cases ongoing legal representation.

Section 17 of the *Victims Rights and Support Act 2013* provides that the object of the Victims Support Scheme is the provision of support for victims of acts of violence and acts of modern slavery. An act of violence is defined under section 19 to be an act or acts that occur during the commission of an offence and involve violent conduct and result in injury or death. Violent conduct is defined under section 19(3) as including 'sexual assault and domestic violence', which is defined under section 19(8). This includes under section 19(8)(f) personal violence offences committed against someone with whom the person has

a domestic relationship. As noted above, both the Commonwealth and NSW forced marriage offences are considered personal violence offences.

The Victims Support Scheme offers victims-survivors of acts of violence and acts of modern slavery counselling, financial assistance for immediate needs, financial assistance for economic loss, funeral expenses and recognition payments.

## **Appendix B – *Children and Young Persons (Care and Protection) Act 1998***

Under section 27 of the Care Act, mandatory reporters (i.e. people who deliver services to children as part of their professional work or other paid employment, including those in management positions in organisations that deliver these services and people in religious ministries, those that provide religious based activities to children and registered psychologists<sup>33</sup>) are required to make a report to the Department's Child Protection Helpline where they reasonably suspect that a child is at risk of serious harm. Additionally, members of the public, including victim-survivors, can call the Child Protection Helpline to seek advice and assistance. If the Department forms an opinion, on reasonable grounds, that a child or young person is in need of care and protection, the Department can take whatever action is necessary to protect the child or young person according to section 34 of the Care Act. Such action can include the removal or assumption into care of a child or young person, with a subsequent application to the Children's Court for care orders (Care Act section 34(2)(c) and (d), sections 43-45).

Section 23(1) of the Care Act outlines the grounds for determining that a child is at risk of serious harm. The grounds that are of particular relevance to incidents of child forced marriage are:

- the child or young person's basic physical or psychological needs are not being met, or are at risk of not being met,
- the parents or caregivers of a child or young person who is required to attend school have not arranged or are unwilling to arrange for the child or young person to receive an education,
- the child or young person has been or is at risk of being physically or sexually abused or ill-treated,
- a parent or other caregiver has behaved in such a way that the child or young person has suffered or is at risk of suffering serious psychological harm.

Where an individual reports a case of child forced marriage to the NSWPF, the AFP or the Child Protection Helpline, the Department is required to assess the report and take all necessary steps to ensure the safety and wellbeing of the child or young person. This may include referring the matter to the AFP, who would take carriage of any Commonwealth related aspects, including family law and immigration matters. The NSWPF is notified when a criminal offence is suspected. If the case involves allegations of child sexual abuse, serious physical abuse or serious neglect, then the matter will be dealt with by the Joint Child Protection Response Program (JCPRP). The JCPRP is a tri-agency program that involves the NSWPF, the Department and NSW Health. It provides a co-ordinated safety, criminal justice and health response to children and young people for whom such abuse is alleged.

# Endnotes

<sup>1</sup> Australian Government, Attorney-General's Department, *Targeted Review of Divisions 270 and 271 of the Criminal Code Act 1995 (Cth)*, Discussion Paper, 2022 at 17: [https://consultations.ag.gov.au/crime/modern-slavery-offences/user\\_uploads/targeted-review-of-divisions-270-and-271-of-the-criminal-code.pdf](https://consultations.ag.gov.au/crime/modern-slavery-offences/user_uploads/targeted-review-of-divisions-270-and-271-of-the-criminal-code.pdf)

<sup>2</sup> International Labour Organization, Walk Free, IOM UN Migration, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* (September 2022) at 5: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---ipec/documents/publication/wcms\\_854733.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_854733.pdf)

<sup>3</sup> Australian Government Department of Social Services. Support for Trafficked People Program, <https://www.dss.gov.au/women/programs-services/reducing-violence/anti-people-trafficking-strategy/support-for-trafficked-people-program>

<sup>4</sup> See Terms of Reference, NSW Legislative Council Standing Committee on Social Issues. Modern Slavery Act and Associated Matters, Final report 56 March 2020, at v-vi.

<sup>5</sup> NSW Legislative Council Standing Committee on Social Issues, *Modern Slavery Act and Associated Matters*, Final report 56 March 2020, Recommendation 17: *That the NSW Government establish a working group which includes the Anti-Slavery Commissioner, NSW Police, the Department of Justice and Communities and other relevant stakeholders to develop further amendments to the Crimes (Domestic and Personal Violence) Act 2007 to protect potential victims of forced marriage, to be introduced following the statutory review recommended in Recommendation 2.* (paragraph 4.25) <https://www.parliament.nsw.gov.au/lcdocs/inquiries/2546/Final%20Report%20No.56%20-%20Modern%20Slavery%20Act%202018%20and%20associated%20matters%20-%2025%20March%202020.pdf>

<sup>6</sup> Letter of the Hon Don Harwin MLC, Leader of the Government in the Legislative Council, Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs and the Arts, Vice-President of the Executive Council (24 September 2020), Attachment A at 6: <https://www.parliament.nsw.gov.au/lcdocs/inquiries/2546/Government%20response%20-%20Modern%20Slavery%20Act%202018%20and%20associated%20matters%20-%20received%20on%20the%2024%20September%202020.pdf>

<sup>7</sup> It is noted that as part of the National Plan to Combat Modern Slavery, the Commonwealth Government has committed to the development of a model for a Commonwealth Forced Marriage Protection Order, which is intended to complement existing criminal offences and provide a flexible civil remedy for people in, or at risk of forced marriage.

<sup>8</sup> [https://www.bocsar.nsw.gov.au/Pages/bocsar\\_pages/Domestic-Violence.aspx](https://www.bocsar.nsw.gov.au/Pages/bocsar_pages/Domestic-Violence.aspx)

<sup>9</sup> CDPV Act section 29.

<sup>10</sup> Authorised officer, as defined in *Law Enforcement (Powers and Responsibilities) Act 2002* and referred to in the CDPV Act, means a Magistrate, or Children's Magistrate, or a registrar of the Local Court, or an employee of the Attorney General's Department authorised by the Attorney General as an authorised officer for the purposes of the Act either personally or as the holder of a specified office.

<sup>11</sup> Good Shepard Australia New Zealand and Monash University, Submission to the NSW Legislative Standing Committee on Social Issues - Inquiry into Modern Slavery Act 2018 and Associated Matters <https://www.parliament.nsw.gov.au/lcdocs/submissions/66128/0048%20Good%20Shepherd%20Australia%20New%20Zealand%20and%20Monash%20University.pdf>

<sup>12</sup> Domestic Violence NSW, Submission to the NSW Legislative Standing Committee on Social Issues - Inquiry into Modern Slavery Act 2018 and Associated Matters <https://www.parliament.nsw.gov.au/lcdocs/submissions/66228/0096%20Domestic%20Violence%20NSW.pdf> Legal Aid NSW, Submission to the NSW Legislative Standing Committee on Social Issues - Inquiry into Modern Slavery Act 2018 and Associated Matters <https://www.parliament.nsw.gov.au/lcdocs/submissions/66314/0100%20Legal%20Aid%20NSW.pdf>

<sup>13</sup> Section 48(2) of the CDPV Act gives standing to a "police officer" to apply for an AVO. The term, "police officer", is defined in section 21 of the *Interpretation Act 1987* (NSW) as a member of the NSW Police Force who is a police officer within the meaning of the *Police Act 1990* (NSW).

<sup>14</sup> Anti-Slavery Australia, Submission to the NSW Legislative Standing Committee on Social Issues - Inquiry into Modern Slavery Act 2018 and Associated Matters <https://www.parliament.nsw.gov.au/lcdocs/submissions/66173/0080%20Anti-Slavery%20Australia.pdf>

<sup>15</sup> Section 11 of the CDPV Act will be amended when the relevant schedules of the *Crimes Legislation Amendment (Coercive Control) Act 2022* commence between February and July 2024.



<sup>16</sup> By February 2024 at the latest, the meaning of a domestic violence offence under section 11 of the CDPV Act will be expanded to include domestic abuse conduct. Domestic abuse will be defined in section 6A of the CDPV Act. Between February and July 2024, the meaning of a domestic violence offence will be further expanded to include the stand-alone coercive control offence under section 54D(1) of the Crimes Act.

<sup>17</sup> CDPV Act section 36.

<sup>18</sup> See CDPVA section 35(3).

<sup>19</sup> Crimes (Domestic and Personal Violence) Regulation 2019 Schedule 1 Form 1 (APVO) and Form 2 (ADVO).

<sup>20</sup> Legal Aid NSW, Submission to the NSW Legislative Standing Committee on Social Issues - Inquiry into Modern Slavery Act 2018 and Associated Matters <https://www.parliament.nsw.gov.au/lcdocs/submissions/66314/0100%20Legal%20Aid%20NSW.pdf>; see also Anti-Slavery Australia, Submission to the NSW Legislative Standing Committee on Social Issues - Inquiry into Modern Slavery Act 2018 and Associated Matters <https://www.parliament.nsw.gov.au/lcdocs/submissions/66173/0080%20Anti-Slavery%20Australia.pdf>.

<sup>21</sup> As part of the Commonwealth's Combatting Child Sexual Exploitation Legislation Amendment Act 2019, the definition of forced marriage in subsection 270.7A(1) was amended to ensure that any marriage involving young people under 16 is considered a forced marriage.

<sup>22</sup> Commonwealth of Australia, Attorney General's Department, *Targeted Review of Divisions 270 and 271 of the Criminal Code Act 1995 (Cth)*, Discussion Paper (2022) at 17, 37-38. : [https://consultations.ag.gov.au/crime/modern-slavery-offences/user\\_uploads/targeted-review-of-divisions-270-and-271-of-the-criminal-code.pdf](https://consultations.ag.gov.au/crime/modern-slavery-offences/user_uploads/targeted-review-of-divisions-270-and-271-of-the-criminal-code.pdf)

<sup>23</sup> Commonwealth of Australia, Attorney General's Department, *Targeted Review of Divisions 270 and 271 of the Criminal Code Act 1995 (Cth): Final Report*. [https://consultations.ag.gov.au/crime/modern-slavery-offences/user\\_uploads/targeted-review-of-modern-slavery-offences-in-divisions-270-and-271-of-the-criminal-code-act-1995.pdf](https://consultations.ag.gov.au/crime/modern-slavery-offences/user_uploads/targeted-review-of-modern-slavery-offences-in-divisions-270-and-271-of-the-criminal-code-act-1995.pdf)

<sup>24</sup> Ibid 17. The Final Report notes that preparatory conduct may or may not be captured upon reliance on an extension of criminal responsibility provision such as the attempt provision contained at subsection 11.1(1) of the Criminal Code.

<sup>25</sup> Good Shepard Australia New Zealand and Monash University, Submission to the NSW Legislative Standing Committee on Social Issues - Inquiry into Modern Slavery Act 2018 and Associated Matters <https://www.parliament.nsw.gov.au/lcdocs/submissions/66128/0048%20Good%20Shepherd%20Australia%20New%20Zealand%20and%20Monash%20University.pdf>

<sup>26</sup> BOCSAR KF23-22345.

<sup>27</sup> Australian Government, Attorney-General's Department, *Targeted Review of Modern Slavery Offences in Divisions 270 and 271 of the Criminal Code Act 1995 (Cth) – Findings Report* (2023) at 102 [https://consultations.ag.gov.au/crime/modern-slavery-offences/user\\_uploads/targeted-review-of-modern-slavery-offences-in-divisions-270-and-271-of-the-criminal-code-act-1995.pdf](https://consultations.ag.gov.au/crime/modern-slavery-offences/user_uploads/targeted-review-of-modern-slavery-offences-in-divisions-270-and-271-of-the-criminal-code-act-1995.pdf)

<sup>28</sup> Section 7(1)(d) (concerning Crimes Act, section 93AC) and (e) (concerning Commonwealth Criminal Code division 270.7A) were amendments made to the CDPV Act through the MS Act, Schedule 5.3(3).

<sup>29</sup> Australian Government Department of Social Services. Support for Trafficked People Program, <https://www.dss.gov.au/women/programs-services/reducing-violence/anti-people-trafficking-strategy/support-for-trafficked-people-program>

<sup>30</sup> Ibid

<sup>31</sup> Ibid - To access the Forced Marriage Support scheme a victim-survivor must be assessed by the AFP as at risk of forced marriage, be an Australian citizen, permanent resident or have a visa that allows them to stay in Australia. If a victim-survivor does not have a valid visa to stay in Australia but are suspected victim-survivors of human trafficking, they can access the Bridging F visa or Referred Stay visa, which allows them to access the STPP.

<sup>32</sup> <https://mybluesky.org.au/>

<sup>33</sup> Department of Communities and Justice, Reporting and responding to child wellbeing and safety concerns <https://www.facs.nsw.gov.au/providers/children-families/interagency-guidelines/reporting-and-responding-to-child-wellbeing-and-safety-concerns/chapters/mandatory-reporting>