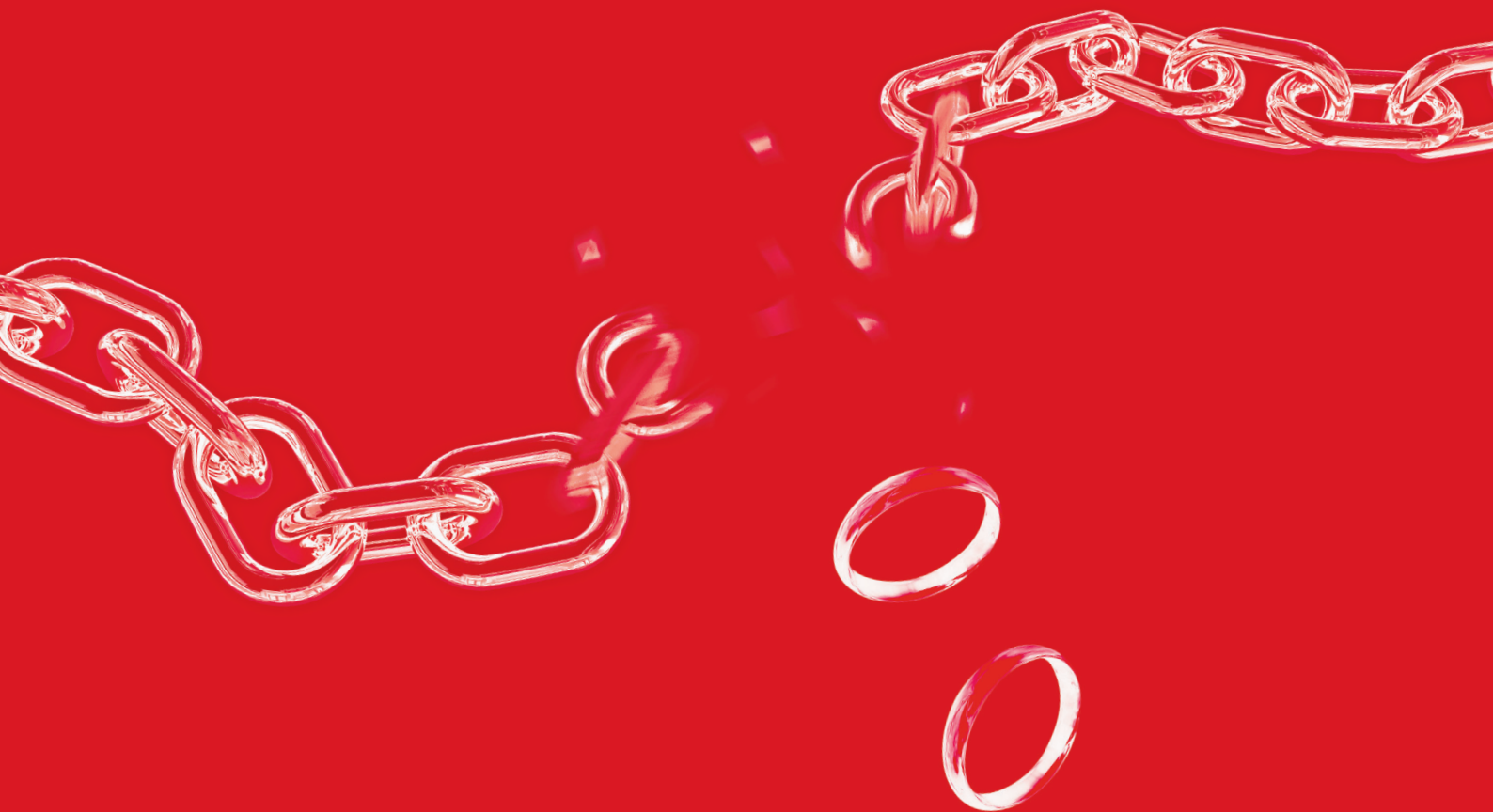


# END CHILD MARRIAGE

A U S T R A L I A

RESEARCH REPORT ON THE  
FORCED MARRIAGE OF CHILDREN IN AUSTRALIA



## **The National Children's and Youth Law Centre**

The National Children's and Youth Law Centre (NCYLC) is Australia's national legal centre dedicated to working for and in support of children and young people, their rights and access to justice. NCYLC advances this mission by providing young Australians with meaningful advice and information about the law and their rights and responsibilities; advocating for changes to laws, policies and practices to advance their rights; creating opportunities for their participation in decision making; and promoting the implementation of the *Convention on the Rights of the Child*.

NCYLC actively promotes legal information for children and young people through Lawstuff ([www.lawstuff.org.au](http://www.lawstuff.org.au)), provides legal advice to them through Lawmail ([www.lawstuff.org.au/lawmail/send-a-lawmail](http://www.lawstuff.org.au/lawmail/send-a-lawmail)) and conducts research, law reform and policy development aimed at increasing young people's access to legal assistance and improving the legal status of children and young people in Australia.

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## **For more information contact:**

Matthew Keeley  
Director

National Children's and Youth Law Centre  
Level 1, Law Building, University of NSW 2052  
(02) 9385 9588

[matthew.keeley@ncylc.org.au](mailto:matthew.keeley@ncylc.org.au)

[www.ncylc.org.au](http://www.ncylc.org.au)

[www.lawstuff.org.au](http://www.lawstuff.org.au)

# END CHILD MARRIAGE

A U S T R A L I A

RESEARCH REPORT ON THE  
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TINA JELENIC AND MATTHEW KEELEY  
NATIONAL CHILDREN'S AND YOUTH LAW CENTRE

MAY 2013

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We thank the Commonwealth Attorney General's Department for inviting us to present at the 2012 National Roundtable on People Trafficking and at the Interdepartmental Committee's Trafficking Operational Working Group. Our attendance at these functions facilitated consultations with key Australian Government departments on the issue of forced child marriage. We also thank the Department for coordinating the Australian Government response to the *Multi-Agency Early Response Guidelines*.

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The principal researcher and author of this report is Ms Tina Jelenic. I thank her for producing this, Australia's first significant research report on the issue of forced child marriage in Australia.



**Matthew Keeley**

Director

National Children's and Youth Law Centre

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## SECTION 1

# EXECUTIVE SUMMARY

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As an outcome of End Child Marriage Australia, a project undertaken by the National Children's and Youth Law Centre (NCYLC), this report provides children's rights-based analysis and evaluation of the current responses of service providers to child victims of forced marriage.

The End Child Marriage Australia project grew out of concern that children facing the risk or reality of forced marriage were not receiving the protection and services they needed. Case experience with child victims demonstrated the gaps in knowledge, understanding, response and coordination that existed among community service providers and responsible agencies on the issue.

The project aimed to build the capacity of community service providers to respond to the needs of children under the age of 18 who are at risk of child abuse due to threatened or actual forced marriage. In particular, the project aimed to:

- equip service providers with evidence-based early response guidelines to better protect and care for children;
- educate children about the law, their rights, responsibilities, and provide recommendations as to appropriate support networks and advocates through educational factsheets and an animation; and
- promote early intervention strategies to meet the needs of children through undertaking extensive consultation with existing service providers and evaluating their current practices.

Key project activities included:

- qualitative research into current responses to forced child marriage victims in Australia, engaging directly with over 50 non-government/community service organisations, academics, individual professionals, and State, Territory and Commonwealth Government departments across the spectrum of services potentially engaged with the forced marriage of children;
- face to face consultations in the Australian Capital Territory, New South Wales, Victoria, South Australia and Western Australia from September to November 2012;
- an in-depth literature review about current practice internationally and domestically; and
- quantitative data gathering through an online survey about experiences with and views of forced child marriage, resulting in 91 responses spread across government and non-government organisations in each State and Territory in Australia.

The literature review confirmed that there was very little research about the nature and extent of forced marriage in Australia. There was no research at all into the particular needs of child victims, and the particular framework that applies to responses to children in or at risk of forced marriage.

This report presents research into current practice, examines the legal framework that applies to forced child marriage in Australia, identifies available protections, surveys the views and experiences of caseworkers and practitioners on the issue and, on these bases, makes recommendations for law and policy makers with regard to effective prevention and response.

Ideally, this report would be read in conjunction with the *Multi-Agency Early Response Guidelines on the Forced Marriage of Children*, the principal deliverable of the project.

## SECTION 2

## BACKGROUND

Forced child marriage is a violation of children's rights and a direct form of discrimination against the girl child who, as a result of the practice, is often deprived of her basic rights to safety, autonomy, health, education, development and equality.

There is very little information regarding the extent or impact of forced marriage in Australia to date.<sup>1</sup> Notwithstanding this, forced marriage is an issue that has received recent recognition by the Australian Government through the passage of the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012 which criminalises forced marriage under the Commonwealth Criminal Code.

International research and statistics indicate that forced marriage is not only a growing problem but an issue in which service providers may only have one opportunity to assist potential victims.<sup>2</sup> In Australia, there have been a number of cases that raise concerns about children being removed from Australia for the purposes of forced marriage.<sup>3</sup> This substantiated the need for a holistic understanding of

the issue. The promotion of an evidence-based early-response approach is imperative to ensure that the needs and rights of children in the domestic setting are addressed to secure better outcomes for present and future generations of potential victims.

At the time of the application for funding for this project, there was no Australian research regarding best practice procedures, no factsheets or online resource aimed at educating children about their rights and no recommended guidelines for service providers on this subject.<sup>4</sup>

The project aimed to build the capacity of community service providers to respond to the needs of children under the age of 18 who are at risk of child abuse due to proposed or actual forced marriage. It aimed to do this by equipping service providers with evidence-based early response guidelines and accompanying educational resources to better protect and care for children. The educational resources were to outline the law, children's rights, responsibilities, and provide relevant recommendations as to appropriate support networks and advocates.

The project is geared towards promoting early intervention strategies to meet the needs of children through undertaking extensive consultation with existing service providers and evaluating their current practices. The consultations were used to foster the development of an empirical evidence base. The research phase explored the intersection of child abuse and neglect with the risk factors of sexual abuse and domestic/family violence, which appeared to be inherent in forced marriage cases.<sup>5</sup> The project also sought to explore and provide an evidence base for the gender bias toward girls being subject to forced marriage.

- 1 Numerous reports have recognised the lack of research on this issue and called for research to be undertaken, see: Australian Immigrant and Refugee Women's Alliance, 'Submission to the Attorney General: Forced and Servile Marriage Discussion Paper', (Report, Federation of Ethnic Communities Council of Australia, 25 February 2011) [www.fecca.org.au/images/stories/documents/Submissions/2011/submissions\\_20110228.pdf](http://www.fecca.org.au/images/stories/documents/Submissions/2011/submissions_20110228.pdf); Attorney-General's Department, Parliament of Australia, *Discussion Paper: Forced and Servile Marriage*, Discussion Paper, Criminal Justice Division [www.ag.gov.au/CrimeAndCorruption/PeopleTrafficking/Documents/DiscussionPaperTheCriminalJusticerespontetoslavery-andpeopletraffickingreparationandvulnerablewitnessprotections.pdf](http://www.ag.gov.au/CrimeAndCorruption/PeopleTrafficking/Documents/DiscussionPaperTheCriminalJusticerespontetoslavery-andpeopletraffickingreparationandvulnerablewitnessprotections.pdf); Samantha Lyneham, 'Forced and Servile Marriage in the Context of Human Trafficking', (Research Discussion Paper No 32, Australian Institute of Criminology, 2013) [www.aic.gov.au/media\\_library/publications/rip/rip32.pdf](http://www.aic.gov.au/media_library/publications/rip/rip32.pdf); Good Shepherd Australia New Zealand, 'Hidden Exploitation: Women in Forced Labour, Marriage and Migration', (Report, Anti-Slavery Australia, February 2012); Jatinder Kaur, 'Cultural Diversity and Child Protection: Australian Research Review on the Needs of Culturally and Linguistically Diverse (CALD) and Refugee Children and Families', (Report, JK Diversity Consultants, July 2012) [www.jkdiversityconsultants.com.au/Cultural\\_Diversity\\_&Child\\_Protection\\_Kaur2012\\_A4.pdf](http://www.jkdiversityconsultants.com.au/Cultural_Diversity_&Child_Protection_Kaur2012_A4.pdf).
- 2 The Scottish Government, 'Responding to Forced Marriage: Multi-Agency Practice Guidelines' (Multi-Agency Practice Guidelines, 23 March 2011) 31.
- 3 For example *Madley & Madley and Anor* [2011] FMCAfam 1007; *Kandal & Khyatt & Ors* [2010] FMCAfam 508.

- 4 Attorney-General's Department, Parliament of Australia, *Discussion Paper: Forced and Servile Marriage*, Discussion Paper, Criminal Justice Division, 2010.
- 5 Edwidgee Rude-Antoine, 'Forced Marriage in Council of Europe Member States: A Comparative Study of Legislation and Political Initiatives', (Report, The Council of Europe, Directorate General of Human Rights, 2005) [www.coe.int/t/dghl/standardsetting/equality/03themes/violence-against-women/CDEG\(2005\)1\\_en.pdf](http://www.coe.int/t/dghl/standardsetting/equality/03themes/violence-against-women/CDEG(2005)1_en.pdf) 31.

The research and consultations formed the basis of the *Multi-Agency Early Response Guidelines* and culminated in this report, which identifies areas for and provides recommendations about potential policy and program reform; details justification for the *Multi-Agency Early Response Guidelines*; and identifies future research directions.

In line with other publications on domestic and family violence, since the large proportion of victims is female, the term ‘victims’ in this report refers to girl children and is gendered female. However, the report and the accompanying *Multi-Agency Early Response Guidelines* also apply to boys facing forced child marriage and they should be given the same assistance when they need it. The report deals with this issue further in the *Findings* section.



## SECTION 3

## THE ISSUE

This report does not provide a comprehensive examination of the incidence of forced child marriage in Australia, but instead provides evidence of the nature of frontline encounters with child victims and the nature of victims' needs.

## 3.1 DEFINITIONS

**Child:** For the purposes of marriage, a child is a person under the age of 18.<sup>6</sup>

**Marriage:** Under Australian law marriage means the union of a man and woman to the exclusion of all others, voluntarily entered into for life.<sup>7</sup>

**Forced marriage:** A forced marriage is a marriage in which one or both spouses do not fully and freely consent to the marriage because of the use of coercion, threat or deception. Forced marriage is a criminal offence punishable by 4 years imprisonment.<sup>8</sup>

**Child marriage:** Child marriage is the marriage of a person under 18 years of age. Under the *Marriage Act 1961* (the Marriage Act), the marriage of a person under the age of 18 is an offence, unless that person is aged 16 or 17 and has both parental and court consent.<sup>9</sup>

**Forced child marriage:** The marriage of a person under the age of 18, obtained through coercion, threat or deception. A forced marriage of a child is an aggravated forced marriage offence, punishable by up to 7 years imprisonment.<sup>10</sup> In this report and

associated resources, forced child marriage includes child marriage (as at law persons under the age of 18 are incapable of consenting to marriage), along with forced marriage-like relationships where one partner is a child.

**Forced marriage-like relationship:** A forced marriage-like relationship may be found where a marriage registered with the State does not occur, but, without the full and free consent of one partner, a 'common law marriage', 'de facto relationship', 'cultural marriage' or 'religious marriage' takes place and includes arrangements for a 'promised bride' or a formal betrothal that is said to be irrevocable. It includes any marriage considered as such by the parties and their community, such as polygamous marriages or other arrangements that may not meet the requirements of a valid marriage under Australian law. The offence of forced marriage can include forced marriage-like relationships.

**Arranged marriage:** Not to be confused with forced marriage, an arranged marriage arises where the families of the spouses play a leading role in arranging the marriage, but both of the spouses have the right and ability to accept or refuse the arrangement.<sup>11</sup> Consent has to be real for an arranged marriage to be valid and lawful. Consent cannot be obtained through coercion or from a person incapable under the law of consenting, such as a child.

## 3.2 NATURE

Reliable statistics on forced child marriage are difficult to compile due to the largely hidden and undocumented nature of most child marriages. Victims are often resistant to speaking out against their families or communities, and this poses another obstacle to the collection of reliable data.<sup>12</sup> Nevertheless, both

6 *Marriage Act 1961* (Cth), s 5(1).

7 *Ibid.*

8 *Criminal Code Act 1995* (Cth), Criminal Code ss 270.7A and 27.7B.

9 *Marriage Act 1961* (Cth), s 95. There is a very limited exception for individuals who are 16 or 17 and want to get married to someone who is over 18. The presumption behind this exception is that the underage individual is a genuinely willing party to the arrangement and the circumstances are both exceptional and unusual, see *Marriage Act 1961* (Cth) s 12. In this exception, the person needs permission from a judge or magistrate and permission from both parents or guardians. The judge or magistrate in exercising his or her discretion in these instances closely examines whether the person who is applying to be married is doing so freely without coercion or force.

10 *Criminal Code Act 1995* (Cth) ss 270.7A and 270.7B.

11 Nazir Ahmed and Pola Manzila Uddin 'A Choice by Right: the Report of the Working Group on Forced Marriage' (London: Home Office Communications Directorate 2000).

12 Tahirih Justice Centre, '2011 Survey on Forced Marriage in Immigrant Communities in the United States', (Research Paper, Tahirih Justice Centre, 17 September 2011) [www.tahirih.org/advocacy/policy\\_areas/forced\\_marriage\\_initiative](http://www.tahirih.org/advocacy/policy_areas/forced_marriage_initiative).

the international and growing domestic research reveal significant insights into the nature of forced child marriage.

In some cases it is parents forcing their child to get married or sometimes it can be the extended family, the spouse or the spouse's family that is forcing a child to marry. It can happen between people within Australia or between someone in Australia and someone overseas.

Forced child marriage constitutes child abuse. This is discussed later in the report with regard to the child protection framework and the grounds for intervention. The reason that forced child marriage constitutes child abuse is that harm is present before the marriage takes place, when the parents or family are coercing a child into marriage through psychological, physical or emotional pressure. At this stage, the behaviours may also constitute distinct offences such as harassment, kidnap, and threats to kill.

Harm is also present after a marriage has been entered, usually (but not always) with someone significantly older than the child spouse. The acts that constitute offences at this stage can include the offence of forced marriage, sexual assault, physical assault, slavery and an offence under the marriage legislation.

Forced marriage is distinct from arranged marriage. The distinction between arranged marriage and forced marriage is critical. Arranged marriages must be carried out with the full ongoing consent of both parties. It is common for children to refuse many partners before agreeing to marry, and some may never agree.<sup>13</sup> A marriage becomes forced when a child feels they cannot question their parents' or others' wishes and the parents or others abuse their power over the child.<sup>14</sup>

There are many motivating factors behind families forcing children to marry, and parents often believe that they are building stronger families, protecting their children and/or upholding perceived cultural or religious traditions.<sup>15</sup> Forced child marriage is often perceived by parents as a means of securing both their own and their daughter's future.<sup>16</sup> Forced marriages may also be used to enhance a family's status, or to gain economic security.<sup>17</sup>

Forced child marriage is an issue that results from a complexity of social, cultural and economic dimensions and widespread gender discrimination. First and foremost it is a form of violence against women and girls, and effective responses to it will be situated within the framework of protection from violence and exploitation. Whatever the rationale for it may be, the result may subject a child to severe and sustained abuse, including domestic violence, marital rape and other forms of violence, decreased levels of education, health complications, and a life of submission and dependence.<sup>18</sup>

While it is important to understand the motives of parents who force their children to marry, they cannot be seen as justification for denying children their basic rights and subjecting them to the serious harms inherent in child marriage.

Worldwide, the backgrounds of victims range from across Asia, Europe, South America and Africa, and child marriage is common in more than half the member countries of the United Nations. In the research leading to the development of the *Multi-Agency Early Response Guidelines*, cases of forced child marriage were identified in every State and Territory of Australia, across a wide range of cultural, ethnic, religious and other societal backgrounds.

13 Anne Kazimirski, Peter Keogh, Vijay Kumari, Ruth Smith, Sally Gowland, Susan Purdon with Nazia Khanum, National Centre for Social Research, 'Forced Marriage - Prevalence and Service Response', July 2009, available at [www.education.gov.uk/publications/.../DCSF-RR128.pdf](http://www.education.gov.uk/publications/.../DCSF-RR128.pdf)

14 Monique Deveaux, 'Personal Autonomy and Cultural Tradition: The Arranged Marriage Debate in Britain' in Barbara Arneil, Monique Deveaux, Rita Dhamoon and Avigail Eisenberg, *Sexual Justice/Cultural Justice: Critical Perspectives in Political Theory and Practice*, (Routledge, 2007).

15 The Forced Marriage Unit, 'The Right to Choose: Multi-Agency Statutory Guidance for Dealing with Forced Marriage,' (Report, Foreign and Commonwealth Office, Home Office Unit, June 2009).

16 Tahirih Justice Centre, '2011 Survey on Forced Marriage in Immigrant Communities in the United States', (Research Paper, Tahirih Justice Centre, 17 September 2011) [www.tahirih.org/advocacy/policy\\_areas/forced\\_marriage\\_initiative](http://www.tahirih.org/advocacy/policy_areas/forced_marriage_initiative).

17 The Forced Marriage Unit, 'The Right to Choose: Multi-Agency Statutory Guidance for Dealing with Forced Marriage,' (Report, Foreign and Commonwealth Office, Home Office Unit, June 2009).

18 Tahirih Justice Centre, '2011 Survey on Forced Marriage in Immigrant Communities in the United States', (Research Paper, Tahirih Justice Centre, 17 September 2011) [www.tahirih.org/advocacy/policy\\_areas/forced\\_marriage\\_initiative](http://www.tahirih.org/advocacy/policy_areas/forced_marriage_initiative).

Forced child marriage occurs within families from all major religions, as well as in families that are not religious. In fact, all the major religions require full and free consent to marriage. Marriage customs across and within countries and cultures vary significantly and are subject to class and economic and structural changes. In spite of this, individuals and some families use religious or cultural arguments to impose marriage on vulnerable individuals.<sup>19</sup>

Cultural justifications for this practice are not acceptable or useful and can in fact hinder intervention to protect victims. The label of child marriage as a 'cultural' phenomenon encourages a semantic blanket which obscures underlying structural influences; hides the fact that culture is dynamic and fluid; and ignores that marriage customs in countries of origin are highly variable.<sup>20</sup> It also presents the risk of distancing the issue from the frameworks that have the biggest potential to effectively assist victims.

A purely cultural lens on forced marriage does not even 'see' the victims, since women and men subject to forced marriage are constructed as abiding by their cultural norms rather than as victims.<sup>21</sup>

The danger of such cultural excuses and assumptions is also demonstrated by the discrimination suffered by Aboriginal women and girls. For example, cases in Australian courts have accepted the argument that the sexual assault of an Aboriginal woman or girl was not as serious a crime as the sexual assault of a non-Aboriginal woman.<sup>22</sup> This was accepted on the basis that 'sexual assault was not considered as seriously in Aboriginal communities as it is in the non-Aboriginal

communities and that the chastity of Aboriginal women is not regarded as importantly as in non-Aboriginal communities'.<sup>23</sup> One commentator noted that anthropological evidence of the customary law practice of promised marriages was seen as justification for Aboriginal men to be able to expect and force sexual intercourse with a child that was promised to them.<sup>24</sup>

This kind of 'cultural justification' thinking favours the perpetrators, and assumes and encourages culture to be static rather than changing with the full participation of its members, and not just those who benefit from propagating harmful practices.

Accepting these blunt 'cultural' arguments means supporting a practice that is not representative of a community as a whole and which undermines the entitlement of women and children to protection from sexual assault and violence and to equality before the law.

The fears surrounding cultural sensitivities reveal a misunderstanding and oversimplification of the nature of minority communities, whether ethnic or indigenous.<sup>25</sup> They rely on the notion that such communities are unchanging and detached from the dominant social structures, while in fact, as with all communities, minority ethnic communities and indigenous communities are 'riven with differences of opinion on matters, are in a process of perpetual social and cultural change, and have constant interaction with the dominant social structures and norms'.<sup>26</sup>

19 Geetanjali Gangoli, Melanie McCarry and Amina Razak, 'Child Marriage or Forced Marriage: South Asian Communities in North East England' (2009) 23 *Children and Society* 6.

20 Ibid.

21 Gill Aisha K. and Anitha Sundari(eds), *Forced marriage: Introducing a social justice and human rights perspective* (Zed Books, 2011). Gill notes the manner in which issues such as child marriage and forced marriage are represented as 'harmful cultural practices' while instances of everyday violence against women, particularly in majority communities, such as domestic violence and marital rape, are not cast as such.

22 For example, *The Queen v GJ* [2005] NT CCA 20. See Heather McRae, Garth Netteheim, Laura Beacroft, *Indigenous Legal Issues, Commentary and Materials* (LBC Information Services, 2nd ed., 1997); discussed by Hannah McGlade in Hannah McGlade, 'Aboriginal Women, Girls, and Sexual Assault: the Long Road to Equality Within the Criminal Justice System,' (2006) *Australian Centre for the Study of Sexual Assault Newsletter* 12.

23 Heather McRae, Garth Netteheim, Laura Beacroft, *Indigenous Legal Issues, Commentary and Materials* (LBC Information Services, 2nd ed., 1997); *R. v Wangkadi Mingkili*, (unreported, Supreme Court of South Australia, Millhouse J, 20 March 1991) 2. 1991, p. 2

24 Wendy Shaw '(Post)Colonial Encounters: Gendered racialisations in Australian Courtrooms,' (2003) 10 *Gender, Place and Culture* 4, 315-332.; Jane Lloyd and Nanette Rogers, 'Crossing the Last Frontier: Problems facing Aboriginal Women Victims of Rape in Central Australia', in Patricia Easta (ed), *Without Consent: Confronting Adult Sexual violence*; (Conference Proceedings, Australian Institute of Criminology, 27-29 October 1992) 149-164.

25 Anne Kazimirski, Peter Keogh, Vijay Kumari, Ruth Smith, Sally Gowland, Susan Purdon with Nazia Khanum, 'Forced Marriage - Prevalence and Service Response,' (Research Report, National Centre for Social Research, Department for Children, Schools and Families, July 2009) [www.education.gov.uk/publications/.../DCSF-RR128.pdf](http://www.education.gov.uk/publications/.../DCSF-RR128.pdf).

26 Anne Kazimirski, Peter Keogh, Vijay Kumari, Ruth Smith, Sally Gowland, Susan Purdon with Nazia Khanum, National Centre for Social Research, "Forced Marriage - Prevalence and Service Response", July 2009, available at [www.education.gov.uk/publications/.../DCSF-RR128.pdf](http://www.education.gov.uk/publications/.../DCSF-RR128.pdf), page 58.

The issue of forced child marriage exists within many different communities, and involves a range of individuals and influences. It is not useful to conceptualise it as an accepted cultural or community practice, rather it is a misuse of a cultural practice in a way that undermines children's rights and wellbeing by subjecting them to significant harm. Indeed then, 'by challenging and intervening in forced marriage, one is not attacking the cultural practice (marriage or arranged marriage) but rather the misuse of the cultural practice. Not to do so is akin to not challenging rape or violence within a marriage for the reason that to do so might undermine the institution of marriage.'<sup>27</sup>

In order to provide appropriate protection for victims and to encourage meaningful engagement with the issue, it is important to recognise forced marriage as a form of violence against women and girls, and child marriage as a child care and protection issue, and so avoid pathologising particular communities, and instead link in with existing frameworks and resources which provide the biggest potential for an effective response to victims' needs.

### 3.3 HARMS AND ABUSES ASSOCIATED WITH FORCED CHILD MARRIAGE

A wide range of tactics has been identified in forced child marriage cases as very commonly used or threatened against victims. These include:

- emotional blackmail, such as a parent threatening self-harm, or asserting that the family's or individual's reputation will be ruined if they resist the marriage;
- isolation, such as the family severely limiting the individual's social contacts or ability to leave the home, or go to school;
- social ostracism, such as threatening that the individual will be an outcast in their community;
- economic threats, such as the family threatening to kick the individual out of the house or withdraw support; and/or

- threats of physical violence, including against the individual facing forced marriage or others they care about.<sup>28</sup>

Behaviours that are commonly associated with forced child marriage constitute numerous distinct offences against the child or other members of their family (such as sisters), including:

- marrying a child and other marriage offences under the Marriage Act;
- child abuse, including sexual, physical, emotional and psychological abuse and neglect, or removal from education;
- people trafficking, slavery, slavery-like offences including servitude or forced labour;
- harassment or blackmail or fraud;
- abduction, kidnap, or false imprisonment;
- threats to kill or sexual assault, common assault, actual/grievous bodily harm; and/or
- immigration offences.

Withdrawal from education is commonly coincident with forced child marriage. Extended absences or holidays, significant changes in attendance or removal from education have been found to be linked to forced child marriage.<sup>29</sup> Nevertheless, schools should not conclude that every time a girl is taken abroad for an extended family visit it is a cover for forcing her into a marriage. However, a consequence of being removed from education can be that children find themselves isolated from their peers and rarely allowed to leave the family home. If a child is taken overseas for the purposes of a forced marriage, then they face many difficulties in accessing help as well as potentially being subjected to abuse.<sup>30</sup>

27 Anne Kazimirski, Peter Keogh, Vijay Kumari, Ruth Smith, Sally Gowland, Susan Purdon with Nazia Khanum, 'Forced Marriage - Prevalence and Service Response,' (Research Report, National Centre for Social Research, Department for Children, Schools and Families, July 2009), pp 58-59 [www.education.gov.uk/publications/.../DCSF-RR128.pdf](http://www.education.gov.uk/publications/.../DCSF-RR128.pdf).

28 Tahirih Justice Centre, '2011 Survey on Forced Marriage in Immigrant Communities in the United States', (Research Paper, Tahirih Justice Centre, 17 September 2011) [www.tahirih.org/advocacy/policy\\_areas/forced\\_marriage\\_initiative](http://www.tahirih.org/advocacy/policy_areas/forced_marriage_initiative); Working Group on Forced Marriage, 'A Choice by Right: the Report of the Working Group on Forced Marriage' (Report, Home Office Communications Directorate, June 2000) [www.nordaf.co.uk/public/Editor/assets/Library/Forced%20Marriage%20A%20Choice%20By%20Right.pdf](http://www.nordaf.co.uk/public/Editor/assets/Library/Forced%20Marriage%20A%20Choice%20By%20Right.pdf).

29 The Office for Standards in Education, Children's Services and Skills, *Children Who Go Missing From Education* (Briefing Paper, The Department for Education, March 2008).

30 The Forced Marriage Unit, 'The Right to Choose: Multi-Agency Statutory Guidance for Dealing with Forced Marriage,' (Report, Foreign and Commonwealth Office, Home Office Unit, June 2009).

When a child is married she is likely to be forced into sexual activity with her husband. This has severe health consequences where the child is not physically and sexually mature.<sup>31</sup> Child brides are likely to become pregnant at an early age and there is a strong correlation between the age of a mother and maternal mortality.<sup>32</sup> Girls aged 10-14 are five times more likely to die in pregnancy or childbirth than women aged 20-24 and girls aged 15-19 are twice as likely to die.<sup>33</sup> Young mothers face higher risks during pregnancies including complications such as heavy bleeding, obstetric fistula, infection and anaemia, which contribute to higher mortality rates of both mother and child. The age disparity between a child bride and her husband undermines the ability of girls to make and negotiate sexual decisions, including whether or not to engage in sexual activity, and issues relating to the use of contraception.<sup>34</sup>

### 3.4 THE AUSTRALIAN CONTEXT

Forced marriage happens in all communities and across many different cultures. Research has identified cases of forced child marriage in each State and Territory in Australia. The findings of the research are discussed in the *Findings* sections below. The encounters are significant in number and outcome, and demonstrate the need for a coordinated response.

There have also been a number of cases in Australia that raise concerns about children being removed from Australia for forced marriage.<sup>35</sup> *Madley v Madley and Anor [2011] FMCAfam 1007* involved an ex parte application made by a 16 year old child for orders placing herself on the Airport Watch list to prevent an arranged marriage taking place in a non-Hague

Convention country<sup>36</sup> that was organised by her parents, but that she did not want to occur. An order was granted preventing the child's removal from Australia by her parents and requiring the surrender of the child's passport. The Court also put the child's name on the Airport Watch list and ordered that the Australian Federal Police give effect to the orders and take all necessary steps to restrain the parents from removing or attempting to remove the child from Australia.

Similarly, *Department of Human Services v Brouker and Anor [2010] FamCA 742* was an application by the Child Protection Section of the Department of Human Services of the State of Victoria ('the Department') to extend an interim injunction obtained ex parte which restrained a 14 year old female child's parents from taking her out of the Commonwealth for the purpose of marriage.

It was submitted on behalf of the Department that permitting the child to be taken overseas for the purpose of marriage would be contrary to her welfare. Mushin J accepted this submission and stated that in his view 'a 14 year old child would not have the understanding of the significance of marriage which would be attributable to an adult'. Mushin J further noted that neither party to the child's potential overseas marriage was of marriageable age and that marriage therefore could not be celebrated in Australia.' He went on to say that the fact that the marriage could not be celebrated in Australia is, in itself, a reason for not permitting a child who is resident in Australia and subject to the Australian court's jurisdiction, to be taken out of the country for the purpose of marriage. Any decision to the contrary would be contrary to the child's welfare.

Mushin J concluded that it was in the child's best interests to extend the interim injunction and to make other ancillary orders as sought by the Department.

31 United Nations Children's Fund, Joint United Nations Programme on HIV/AIDS and the World Health Organisation, *Young people and HIV/AIDS: Opportunity in Crisis* (United Nations Children's Fund, 2002).

32 United Nations Children's Fund, *Early Marriage: A Harmful Traditional Practice: A Statistical Exploration* (United Nations Children's Fund, 2005).

33 United Nations Population Fund, *Child Marriage Factsheet*, End Child Marriage, [unfpa.org/endchildmarriage#ref\\_endchildmarriage](http://unfpa.org/endchildmarriage#ref_endchildmarriage).

34 Attorney-General's Department, Parliament of Australia, *Discussion Paper: Forced and Servile Marriage*, Discussion Paper, Criminal Justice Division, 22 November 2010.

35 For example, see *Madley v Madley and Anor [2011] FMCAfam 1007*; *Department of Human Services v Brouker and Anor [2010] FamCA 742*; *Kandal and Khyatt and Ors [2010] FMCAfam 508*.

36 The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction might apply if one parent did not consent to the child being sent overseas, the child is under 16 years of age and that parent The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction might apply if one parent did not consent to the child being sent overseas, the child is under 16 years of age and that parent wants the child returned to Australia. If the child has been sent to a country which is not a signatory to the Convention then there is no basis to approach a Court in that country for orders for the child's return.



## SECTION 4

# LEGAL FRAMEWORK

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## 4.1 DOMESTIC LAW

### 4.1.1 COMMONWEALTH CRIMINAL CODE

Following passage of the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012 on 27 February 2013, forced marriage is comprehensively criminalised under the Commonwealth Criminal Code. The primary provisions in the Criminal Code for forced marriage are:

- 270.7A Definition of forced marriage,
- 270.7B Forced marriage offences,
- 270.8 Slavery-like offences—aggravated offences, and
- 270.9 Slavery-like offences—jurisdictional requirement.

The legislation specifies that a marriage is a forced marriage if, because of the use of coercion, threat or deception, one party to the marriage entered into the marriage without freely and fully consenting. A forced marriage of a person under 18 years of age is an aggravated form of the offence for which there is a penalty of seven years of imprisonment.

The offence provisions relating to forced marriage have extended geographic jurisdiction, and can cover circumstances in which the crime has taken place in Australia and overseas, or in which the crime has been committed outside Australia by an Australian company, citizen or resident.<sup>37</sup>

Where a person has been transferred, sold or inherited into a marriage with no right to refuse, this may also amount to an offence of slavery.

The legislation is extracted in Appendix C.

### 4.1.2 MARRIAGE LEGISLATION

In the Marriage Act, marriage means the union of a man and woman to the exclusion of all others, voluntarily entered into for life.<sup>38</sup> Minors are deemed incapable of giving the informed consent that is inherent in this definition. Under the law, 'minor' means a person who has not attained the age of 18 years.<sup>39</sup> It is an offence with a penalty of 5 years imprisonment to marry a person who is not of marriageable age,<sup>40</sup> which is specified in the legislation to be 18 years.<sup>41</sup>

There is a very limited exception for children who are 16 or 17 and want to get married to someone who is over 18.<sup>42</sup> In this case the person needs permission from a judge or magistrate and permission from both parents or guardians. Parental consent to the marriage of an underage person is generally required but is not sufficient on its own. There must be a court order authorising the marriage in all cases.

The judge or magistrate in exercising his or her discretion in these instances closely examines the reasons for the application and whether the person who is applying to be married is doing so freely without coercion or force. The instances in which such applications are granted are very limited. The judge or magistrate reviewing the application must be satisfied that the circumstances of the case are so 'exceptional and unusual' as to justify the making of the order.

A person under the age of 16 cannot marry under any circumstances and two people under the age of 18 cannot marry under any circumstances. Should a marriage involving an underage person take place without the required court order and consents the marriage celebrant will have committed an offence and so will the party who is not underage.<sup>43</sup>

38 *Marriage Act 1961* (Cth), s 5(1).

39 *Marriage Act 1961* (Cth), s 5(1).

40 *Marriage Act 1961* (Cth), s 95.

41 *Marriage Act 1961* (Cth), s 11.

42 *Marriage Act 1961* (Cth), s 12.

43 *Marriage Act 1961* (Cth), ss 95 and 99.

37 *Criminal Code Act 1995* (Cth), s 15.2.

The legislation also specifies that a marriage is void if either of the parties was not of marriageable age or if the consent of either of the parties was not real consent. Consent is not real if it was obtained by duress or fraud; if one party was mistaken about the identity of the other party or about the nature of the ceremony performed; or if a party was mentally incapable of understanding the nature and effect of the marriage ceremony.<sup>44</sup>

Prior to the passage of the *Sex Discrimination Amendment Act 1991*, the minimum age of marriage for females was 16 and for males 18.<sup>45</sup> This inconsistency was rectified by raising the marriage age for both sexes to 18, in line with the sex discrimination legislation and the *Convention on the Rights of the Child* (CRC).

### 4.1.3 OTHER CRIMINAL OFFENCES

In addition to the Commonwealth criminal offence of forced marriage and the offences under the Marriage Act, there is a range of other State and Territory and Commonwealth offences that may arise out of a situation of a forced child marriage. The offences of kidnapping, child abduction, false imprisonment/forcible confinement, removal from education, sexual assault, kidnap, harassment, child abuse, physical assault, battery, threats to kill, harassment, blackmail and other sexual offences may be relevant in cases of forced marriage of children. A situation of child marriage may lead to one or more of these offences.

### 4.1.4 CHILD PROTECTION

The statutory responsibility for investigating and responding to child abuse and neglect is a State and Territory matter. There is, however, increasing recognition at both federal and state levels that child protection requires a comprehensive national approach that focuses on prevention.

Australia's national response to child abuse and neglect includes the development of the National Framework for Protecting Australia's Children

(2009–2020),<sup>46</sup> endorsed by the Council of Australian Governments in April 2009, and the National Plan to Reduce Violence against Women and their Children. The National Framework focuses on providing timely and universal support to all families (not just those deemed 'at risk') to prevent abuse and neglect and reduce the over-representation of Aboriginal children in the protection system, in line with Articles 2 and 19 of the CRC. One of the key programs under the framework, the Common Approach to Assessment, Referral and Support (CAARS) is a secondary prevention measure which aims to better equip those who work with children (including teachers, doctors and school counsellors) to untangle complex issues and sensitively respond to the needs of children. Its effective implementation will rely on close collaboration across government, practitioners and the community sector, as did its development.

The aim of such a tool is to identify potential problems before they arise, and before intervention is necessary. In terms of forced child marriage, this would allow for engagement with families where issues can be raised and discussed through open dialogue about the laws, children's inability to consent, associated harms and the importance of maintaining education. Such a strategy is vital to effective long-term prevention and will be covered in the recommendations section of this report.

The position of child protection authorities is summarised below. This establishes the grounds for intervention and demonstrates how forced child marriage fits within those grounds. It also outlines the statements of child protection authorities made to the authors about their role with regard to forced child marriage matters.

In doing so, it justifies the *Multi-Agency Early Response Guidelines* in their promotion of voluntary and mandatory reports to child protection authorities of direct or indirect encounters with actual or proposed victims of forced child marriage below the age of 18. The explanation makes clear the need for coordination of information and response among responsible agencies.

<sup>44</sup> *Marriage Act 1961* (Cth), s 23.

<sup>45</sup> Discussed in Patrick Parkinson, 'Taking Multiculturalism Seriously: Marriage Law and the Rights of Minorities,' (1994) 16 *Sydney Law Review* 4,473.

<sup>46</sup> The Council of Australian Government, *Protecting Children is Everyone's Business: National Framework for Protecting Australia's Children 2009-2020* (Report No 2, The Council of Australian Government 2009) 5.

#### 4.1.5 LEGISLATIVE GROUNDS FOR INTERVENTION

The legislative grounds for intervention define a child 'in need of protection' in each jurisdiction.

In each state and territory, any person who has concerns about a child that fall under the grounds for intervention may make a report to the statutory child protection authority. Some legislation also prescribes conditions under which specified people and/or professions are legally required to make a report to the statutory child protection authority. These mandatory reporting requirements in each state and territory are summarised in Appendix D.

The behaviours associated with child marriage, outlined above, constitute significant harm to a child, and children subject to child marriage are children in need of protection. The forced marriage of a child is also a mandatory reporting issue for those who are mandated to report, and also an issue that warrants a voluntary report where the legislation does not specify that reporting is mandatory.

#### 4.1.6 THE POSITION OF CHILD PROTECTION AUTHORITIES

##### NORTHERN TERRITORY

In the Northern Territory, section 20 of the *Care and Protection of Children Act 2007* (NT) provides that a child is in need of care and protection if the child has suffered or is likely to suffer harm or exploitation because of an act or omission of a parent of the child. The Act provides that a child is in need of care and protection if the child has suffered or is likely to suffer harm or exploitation because of an act or omission of a parent of the child. Section 15 specifies that harm to a child is any significant detrimental effect caused by any act, omission or circumstance on the physical, psychological or emotional wellbeing of the child or the physical, psychological or emotional development of the child.

Harm can be caused by the following:

- physical, psychological or emotional abuse or neglect of the child;
- sexual abuse or other exploitation of the child;
- exposure of the child to physical violence.

Section 26 of the Act states that any person who has a belief on reasonable grounds that a child has been or is likely to be a victim of a sexual offence, or otherwise has suffered or is likely to suffer harm or exploitation, is mandated to make a report.

##### COMMENT BY THE OFFICE OF CHILDREN AND FAMILIES<sup>47</sup>

The Northern Territory Office of Children and Families (OCF) has stated that child marriage is unlawful in Australia. The Northern Territory has the most extensive reporting requirements in Australia. Domestic and family violence and child protection are universally reportable and together cover the child abuse and exploitation issues that arise in relation to forced child marriage. OCF has indicated that intervention in a forced child marriage may be initiated by a report to the police in relation to a person who has a relationship with a child under 16 years of age (age of consent). A report may also be made under the *Domestic and Family Violence Act 2007* where it is alleged that there is harm such as sexual assault, or intimidation or economic abuse occurring.

Alternatively, a child protection report may be received under section 26 of the child protection legislation (outlined above), which is a universal mandatory requirement to report any type of maltreatment of a person under 18 years of age. This includes a requirement to report any child under 14 years of age who is subject to any sexual offence (sexual contact or exploitation), and a requirement for all health practitioners to report any sexual relationship of a 14 or 15 year old child where the age difference in the relationship is more than 2 years.

<sup>47</sup> Letter from Clare Gardiner-Barnes, Chief Executive, Office of Children and Families, to National Children's and Youth Law Centre, 17 December 2012.



## VICTORIA

In Victoria, the *Children, Youth and Families Act 2005* (VIC) provides that a child is in need of protection if he or she has suffered or is likely to suffer significant harm due to physical injury or sexual abuse, or emotional or psychological harm. A child is also in need of protection if he or she has been or is likely to be significantly harmed as a result of not being provided basic care or effective medical, surgical or other remedial care. Therefore, statutory intervention is triggered due to the consequences of abusive and neglectful behaviours.

Sections 182(1) a-e, 184 and 162 c-d of the Act provide that mandatory reporters must notify authorities if they have a belief on reasonable grounds that a child is in need of protection on a ground referred to in Section 162(c) or 162(d).

### COMMENT BY THE DEPARTMENT OF HUMAN SERVICES<sup>48</sup>

The Victorian Department of Human Services (DHS) has agreed that there would be grounds under section 162(1) of its child protection legislation for statutory intervention to protect a child who is the victim of forced marriage. DHS has stated that such matters can be complex and may require a number of statutory bodies to work together to protect the child victim. Educational resources for reporters and practitioners about the harms associated with the issue would assist with appropriate reporting of the issue. DHS has indicated that such resources could be referenced, where appropriate, in the Child Protection Practice Manual and in state-wide protocols between the child protection program and other agencies, such as with police and education authorities.

## QUEENSLAND

In Queensland, section 10 of the *Child Protection Act 1999* (QLD) provides that a child is in need of protection if the child has suffered harm, is suffering harm, or is at unacceptable risk of suffering harm and does not have a parent able and willing to protect the child from the harm.

Harm is any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing and includes physical abuse, sexual abuse or exploitation and emotional/psychological abuse and neglect.

Section 148 of the Act, sections 191-192 and 158 of the *Public Health Act 2005* (QLD) and Section 20 of the *Commission for Children Young People and Child Guardian Act 2000* provide that the specified mandatory reporters must notify the authorities if they have awareness or reasonable suspicion that a child is at risk of harm.

### COMMENT BY THE DEPARTMENT OF COMMUNITIES, CHILD SAFETY AND DISABILITY SERVICES<sup>49</sup>

The Queensland Department of Communities, Child Safety and Disability Services (DCCDS) has stated that, while there was little information regarding the extent of forced marriage in Australia, there is an acknowledgment of the seriousness of the behaviours associated with the forced marriage of children. All Australians, irrespective of their culture, ethnicity, race, religion or language are expected and required to adhere to Australian laws, including the marriage legislation which specifies the marriageable age to be 18, with a very limited exception where an order of the court is required. Departmental officers responding to incidents of the forced marriage of children would do so in a context supported by legislation and policy requirements, including the CRC, the *Child Protection Act 1999* (QLD) and the Queensland Multicultural Policy – A Multicultural Future for Us All. They would be guided by the Child Safety Practice Manual and the requirement in the child protection legislation to report alleged harm to a child that may involve a criminal offence to the Queensland Police.

<sup>48</sup> Letter from Gill Callister, Secretary, Department of Human Services, to National Children's and Youth Law Centre, 11 December 2012; letter from Katy Haire, Deputy Secretary – Community and Executive Services, to National Children's and Youth Law Centre, 27 February 2013.

<sup>49</sup> Letter from Margaret Allison, Director General, Department of Communities, Child safety and Disability Services, to National Children's and Youth Law Centre, 5 December 2012 and 22 February 2013.

The DCCDS has stated that while the issue of forced marriage is not specifically addressed, any physical, emotional, or psychological impacts on the child would be considered within the current guidelines in the Child Safety Practice Manual.

## NEW SOUTH WALES

In NSW, section 23 of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) states that a child is in need of protection if they are at risk of significant harm. Significant harm includes, but is not limited to, the following:

- the child's or young person's basic physical or psychological needs are not being met or are at risk of not being met;
- 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 towards the child or young person that the child or young person has suffered or is at risk of suffering serious psychological harm.

Reporters are mandated to notify authorities when there are reasonable grounds to suspect that a child under 16 is at risk of significant harm and those grounds arise during the course of or from the person's work (sections 23 and 27 the Act). Section 24 of the Act allows any person who has reasonable grounds to suspect a child or young person is at risk of significant harm to make a report to Community Services.

## COMMENT BY THE DEPARTMENT OF FAMILY AND COMMUNITY SERVICES<sup>50</sup>

The New South Wales Department of Family and Community Services (Community Services) has stated that the forced marriage of children is a serious human rights issue and a matter that would warrant a response from Community Services, given its role in providing child protection services in New South Wales. Community Services recognises the range of behaviours associated with the forced marriage of children, including sexual assault, psychological abuse, threatening behaviour, removal from education,

abduction and imprisonment. It also recognises the potential medical consequences of forced marriage such as early pregnancy, sexually transmitted diseases, complications during pregnancy and birth and the development of psychological problems. The behaviours associated with forced child marriage and the consequences of these behaviours do give rise to child protection concerns and would be capable of being reported to Community Services under the existing child protection legislation. Many of these behaviours also involve breaches of the criminal law in NSW, and as such, are matters for police investigation.

In response to the authors' letter which advised that community service providers frequently indicated that they were unsure of the legal status of forced child marriage as a child protection matter, Community Services stated that it is of the view that the forced marriage of children, or more particularly, the behaviours associated with the forced marriage of children, give rise to serious child protection concerns and could be reported to Community Services or, where relevant, a Child Wellbeing Unit.<sup>51</sup>

Community Services acknowledged that section 23 of the Act does not specifically refer to forced child marriage, and that this may be the cause of confusion among service providers. However, the circumstances are not an exhaustive list, but are meant to cover a range of scenarios that would indicate a child or young person is at risk of significant harm.

Community Services is of the view that the current provisions of the Act are sufficiently flexible to allow for a risk of significant harm report to be made in respect of forced child marriage. Any of the behaviours associated with forced child marriage discussed above could be reported to Community Services, as they would fall within one or more of the circumstances listed in section 23 of the Act.

Upon receipt of a risk of significant harm report indicating that a child or young person has been or is at risk of being forcibly married, Community Services would take appropriate action to investigate the

<sup>50</sup> Letter from Anne Campbell, Acting Chief Executive, Community Services, Department of Family and Community Services, to National Children's and Youth Law Centre, 17 December 2012 and 12 March 2013.

<sup>51</sup> Child Wellbeing Units provide staff members from relevant agencies who are mandatory reporters with assistance in applying the reporting threshold of 'risk of significant harm'.

allegation and determine what level of intervention is required to ensure that the child or young person who is the subject of the report is kept safe.

Even though the Act does not require mandatory reporting of risk of significant harm concerns for young people (over the age of 16), the Act does not prevent anyone, mandatory reporter or otherwise, from making a report should they become aware that a young person has been or is to be forced into marriage.

Community Services indicated that the cases of forced child marriage it had dealt with were complex and forced marriage was only one of the child protection concerns in each of the families. The forced child marriage situations usually only became evident after intervention was taken in response to other child protection concerns, such as physical abuse. Community Services indicated that feedback from its staff indicated that there is a lack of appropriate support services for children who have been or are forcibly married. While there may be generalist counselling and health services available, Community Services was unable to find a suitable support group for these children and young people, or targeted counselling and health services specialising in the issue of forced child marriage.

Community Services is of the view that the Keep Them Safe Guidelines, which state that child wellbeing and child protection is a collective or shared responsibility, are directly relevant in terms of the approach and response to ensure that children who are to be or have been forcibly married are kept safe.

The response guidelines will be an important tool to educate those working with these children and young people and their families. Community Services would also welcome the development of educational resources if they could be published widely and highlight the child protection concerns that forced child marriage raises.

## AUSTRALIAN CAPITAL TERRITORY

In the Australian Capital Territory, section 345 of the *Children and Young People Act 2008* (ACT) provides that a child or young person is in need of protection if the child or young person has been abused or neglected, is being abused or neglected, or is at risk of being abused or neglected. A child or young person is also in need of protection if the people with parental responsibility for the child or young person are sexually or financially exploiting the child or young person or not willing and able to keep him or her from being sexually or financially exploited.

Abuse includes physical abuse, sexual abuse, emotional (including psychological abuse) and neglect.

According to section 345, mandated reporters are obligated to notify authorities if they believe on reasonable grounds that a child or young person has experienced, or is experiencing sexual abuse or non-accidental physical injury.

## SOUTH AUSTRALIA

In South Australia, the *Children's Protection Act 1993* (SA) provides that a child is at risk when there is significant risk that he or she will suffer serious harm whether physical, psychological or emotional, or where he or she has been or is being abused or neglected.

Statutory intervention is triggered when there is a reasonable belief that a child is at risk and the matters causing the child to be at risk are not being adequately addressed (section 19(1)).

## COMMENT BY THE DEPARTMENT FOR EDUCATION AND CHILD DEVELOPMENT<sup>52</sup>

The Department for Education and Child Development recognized that the harms inherent in forced child marriage are ones that mandatory reporters would have to report. Although they had not encountered many cases, they indicated that the harms inherent in forced child marriage would probably be classified as tier one (requiring the highest level of intervention), with a combination of tier two and tier three responses as

<sup>52</sup> Letter from Tony Kemp, Director, Families Australia, to National Children's and Youth Law Centre, 27 February 2013; consultation meeting between Anne-Marie Staniford and National Children's and Youth Law Centre, 8 November 2012.

well, which include community responses and referral to NGOs. This assessment would of course need to be made on a case by case basis.

## TASMANIA

In Tasmania, a child is deemed to be at risk by the *Children, Young Persons and Their Families Act 1997* (TAS) if he or she has been, is being, or is likely to be abused or neglected. Abuse includes but is not limited to, the following:

- the child's or young person's basic physical or psychological needs are not being met or are at risk of not being met,
- 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 towards the child or young person that the child or young person has suffered or is at risk of suffering serious psychological harm

Sections 13 and 14 of the *Children, Young Persons and Their Families Act 1997* (TAS) provide that mandatory reporters must notify authorities if they have a belief, suspicion, reasonable grounds or knowledge that a child has been or is being abused or neglected or is an affected child within the meaning of the *Family Violence Act 2004* (TAS); or there is a reasonable likelihood of a child being killed or abused or neglected by a person with whom the child resides.

## COMMENT BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES<sup>53</sup>

The Tasmanian Department of Health and Human Services (DHHS) has recognised that, given the risk factors associated with child marriage, such cases are likely to be included under the definition of abuse or neglect, if reported to child protection services. DHHS has also stated that jurisdictions should ensure that assistance and support are provided to affected children before, during and after any relevant proceedings, including services such as accommodation, medical treatment and counselling,

as well as information and interpretation and translation services if appropriate. DHHS has stated that children are particularly vulnerable victims and should be provided with access to additional supports, such as physical and psycho-social assistance, access to education, and, where appropriate, the option to appoint a representative to act on their behalf. Further trauma to an affected child should be avoided, including by sparing her from any contact with the actual/proposed spouse, or where necessary, with family members. As part of an investigation, children should be interviewed without delay, by professionals trained for that purpose. As victims, children need to be given access to appropriate legal support during any proceedings, including legal representation.

Among its recommendations to reduce the prevalence of child marriage, DHHS has suggested for consideration the establishment of a lead position within each State and Territory and the Australian Government to provide specialised advice to front-line staff, and take responsibility within the jurisdiction for coordination and policy development on the issue.

## WESTERN AUSTRALIA

In Western Australia, section 28 of the *Children and Community Services Act 2004* (WA) provides that a child is in need of protection where he or she has suffered, or is likely to suffer, harm as a result of physical, sexual, emotional, or psychological abuse or neglect.

Harm means any detrimental effect of a significant nature on the child's wellbeing, and neglect includes failure by a child's parents to provide, arrange, or allow the provision of adequate care for the child or effective medical, therapeutic or remedial treatment for the child.

Section 160 of the *Western Australia Family Court Act 1997* (WA) provides the specified mandatory reporters must make a report if they have reasonable grounds for suspecting that a child has been abused, or is at risk of being abused; or has been ill-treated, or is at risk of being ill-treated; or exposed or subjected to behaviour that psychologically harms the child.

<sup>53</sup> Letter from Matthew Daly, Secretary, Department of Health and Human Services to National Children's and Youth Law Centre, 6 December 2012; Letter from Associate Professor Des Graham, Deputy Secretary - Children, Department of Health and Human Services, to National Children's and Youth Law Centre, 25 February 2013.

### COMMENT BY THE DEPARTMENT OF CHILD PROTECTION<sup>54</sup>

The Western Australian Department of Child Protection (DCP) has indicated that it responds to reports of the forced marriage of children in the same manner as to any report of concern for the wellbeing of a child. DCP's online casework practice manual requires child protection workers to undertake a safety and wellbeing assessment (SWA) for all forced marriage notifications. A joint meeting with the Western Australia Police Service is held to facilitate the planning and commencement of a SWA and, where necessary, an investigation. This meeting determines:

- who needs to be interviewed (for example, the child, parents, siblings and other children, or other persons who may have knowledge relating to the investigation);
- when and who will interview the person alleged to have caused the marriage;
- in what order the interviews will be conducted, where and by whom; and
- a plan to ensure the child's safety during the assessment/investigation, which may require an alternative placement.

DCP also has a factsheet on early/forced marriage. The factsheet states that children subjected to early and forced marriage face risky early childbearing, deprivation of education and little ability to plan their families. It also states that being forced into marriage can lead to significant developmental, psychological, and social consequences for children.

A child that does not consent to marriage and subsequently faces retribution for not giving consent can be provided protection through a Protection Application in the Children's Court if CDP forms the views that the child is in need of protection in accordance with section 28 of the child protection legislation (outlined above). If CDP believes that an offence has been committed it will refer the matter to ChildFirst. In determining whether there are grounds for referral to the police, CDP will refer to section 95 of the Marriage Act, which makes it an offence to marry a person not of marriageable age, as well as relevant

sections of that Criminal Code that make it a crime for a person to procure, incite or encourage a child under 16 years of age to engage in sexual conduct.

The factsheet further states that the assessment and investigation of reports of early and forced marriage require skilful engagement with the family in order to ensure the safety of the child or any other siblings in the family. Notifications may be assessed in accordance with the procedures when responding to concerns of sexual harm. Moreover, where an underage young person has married with parental consent, evidence of the judge or magistrate's court order providing permission must be sighted by the child protection worker before the case is closed.

## 4.2 INTERNATIONAL LAW

Forced child marriage is a violation of children's rights under the United Nations CRC and, more widely, a form of violence against women and girls.

The CRC sets out the human rights of children, including the right to survive; the right to develop to their fullest; the right to protection from harmful practices, abuse and exploitation, and the right to participate fully in family, cultural and social life. In signing the Convention, governments also committed to take 'all effective and appropriate measures with a view to abolish traditional practices prejudicial to the health of the children'<sup>55</sup> which includes, among other practices, female genital mutilation and child marriage.

The CRC requires that States Parties protect children against sexual abuse and from activities that can harm their development.<sup>56</sup> The Committee on the Rights of the Child strongly recommends that States Parties review and, where necessary, reform legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years.<sup>57</sup>

<sup>55</sup> CRC, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 24.

<sup>56</sup> CRC, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 6, 34 and 36.

<sup>57</sup> Committee on the Rights of the Child, *General Comment No 4: Adolescent Health and Development in the Context of the CRC*, 33rd sess, UN Doc CRC/GC/2003/4 (1 July 2003); see for a similar recommendation Committee for the Elimination of Discrimination Against Women, *General Comment No 21: Equality in Marriage and Family Relations*, 13th sess, UN Doc A/49/38 (1993).

<sup>54</sup> Letter from Terry Murphy, Director General, Department of Child Protection, to National Children's and Youth Law Centre, 4 December 2012.



## FORCED CHILD MARRIAGE AND THE CONVENTION ON THE RIGHTS OF THE CHILD (CRC)

Nearly every provision in the CRC is relevant to the issue of forced child marriage. Among the most pertinent are the following:

**Age of majority:**<sup>i</sup> The Convention defines a ‘child’ as a person below the age of 18. The Committee on the Rights of the Child, the monitoring body for the Convention, has encouraged States to review the age of majority if it is set below 18 and to increase the level of protection for all children under 18.

**Non-discrimination:**<sup>ii</sup> The Convention applies to all children, whatever their race, religion or abilities; whatever they think or say, whatever type of family they come from. No child should be denied protection or treated unfairly on any basis.

**Best interests of the child:**<sup>iii</sup> The best interests of children must be a primary concern in making decisions that may affect them.

**Right to life, survival and development:**<sup>ix</sup> Children have the right to live. Governments should ensure that children survive and develop healthily. Children should be protected from sexual abuse and any activities that could harm their development.

**Protection from abuse, neglect and abduction, sale and trafficking:**<sup>x</sup> This includes any physical, mental or sexual abuse whilst the child is in the care of their parents, legal guardians or any other person responsible for the care of the child.

**Participation:**<sup>xi</sup> When adults are making decisions that affect children, children have the right to say what they think should happen and have their opinions taken into account. The Convention encourages adults to listen to the opinions of children and involve them in decision-making. As a child develops their own views on matters affecting them, they should be allowed to express those views freely and their opinions should be taken into consideration.

The Committee on the Rights of the Child has recognised forced child marriage as a violation of children’s rights, including the right to survival and development as encapsulated in Article 6 of the CRC. This is because forced child marriage exposes children to risks to their reproductive and sexual health, and interrupts their education.<sup>58</sup>

The CRC has been ratified by all countries with the exception of the United States and Somalia.

The fundamental right to freely consent to marriage is enshrined in numerous international human rights instruments. For example, article 16(2) of the *Universal Declaration of Human Rights* states that ‘Marriage shall be entered into only with the free and full consent of the intending spouses’. The *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights* have similar reiterations of this right. Article 16(1)(b) of the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) is also explicit in its prohibition of forced marriage on the basis of a right to freely and fully consent to marriage.

Article 16(2) of CEDAW states that:

*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.*

i CRC, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 1.

ii CRC, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 2.

iii CRC, opened for signature 20 November 1989, 1577 UNTS 3, (entered into force 2 September 1990) art 3.

ix CRC, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 6, 34, 36.

x CRC, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 19, 35.

xi CRC, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 12.

58 United Nations Children’s Fund Innocenti Research Centre, ‘Early Marriage: Child Spouses,’ [2001] 7 *Innocenti Digest*.

## SECTION 5

# EXPERIENCES OF CASEWORKERS AND PRACTITIONERS

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## 5.1 METHODOLOGY

The project methodology had three components: a literature review, a data sourcing and analysis exercise, and a qualitative case study element.

The main purpose of the literature review was to inform the subsequent elements of the research and collate the information available on the issue of the prevalence of forced child marriage, the types and availability of support from different agencies, the barriers to identification of forced child marriage, the impediments to seeking help and the harms associated with forced child marriage. The literature review was conducted using a variety of information sources which included government papers and materials such as consultation papers, and international and domestic resources by government and non-government organisations. The results of the literature review in relation to each of these issues are referenced and discussed throughout this report. A link to the literature review is also available on the NCYLC's website.

The extent and nature of community service worker engagement with victims was examined using quantitative data collected through a web-based survey distributed to organisations across all States and Territories. The survey was distributed electronically to hundreds of organizations and agencies around Australia that have encountered or may yet encounter forced marriage cases, including legal and social services providers, advocates, community and religious leaders, educators, health practitioners, law enforcement officers, and other professionals. Recipients were identified through a combination of existing national networks, consultations, internet research to identify respondents with relevant experiences, and by asking contacts to forward the survey to their colleagues and through their networks. In total, data from 91 organisations was collected.

For the qualitative case study element, over 50 organisations were consulted in the government and non-government sectors. The aim was to examine how services responded to forced child

marriage. Individual in-depth interviews with these key stakeholders provided the bulk of data to inform the investigation (supplemented by some paired and group interviews and telephone conferences). Fieldwork took place between September 2012 and December 2012. Each interview was exploratory and interactive in form, based on a topic guide that listed the key topics to be addressed, but which was used flexibly to allow issues of relevance for individual respondents to be covered through detailed follow-up questioning. The qualitative investigation aimed to identify and critically describe front-line responses to forced child marriage, prevention options, models of good or poor practice, and good practice impediments and facilitators.

It is important to recognise the limitations of the reach of the research. Time and budget constraints meant that travel to the Northern Territory and Tasmania was not possible, and so directly reaching respondents from those States was more difficult. This should be taken into account when examining the data that relates to the nature of forced child marriage cases encountered by workers. For example, anecdotal evidence suggests that forced child marriage occurs in the Northern Territory in Indigenous communities, amongst others. If travel had been possible, further information and evidence may have been gathered regarding cases with no international element.

The creation of the *Multi-Agency Early Response Guidelines* included an extensive feedback and review process. The *Multi-Agency Early Response Guidelines* were open for feedback over a two month period during which the authors held face to face workshops and received detailed written feedback from relevant stakeholders, including a wide range of community service providers and non-government organisations, State and Territory child protection authorities as well as the relevant Commonwealth government departments. A list of organisations who submitted feedback is in the appendices.

## 5.2 RESEARCH RESULTS

### 5.2.1 OVERVIEW

During two periods, one from November-December 2012, and the other from February-March 2013, the NCYLC collected 91 web-based survey responses from government and non-government organisations. Of a total of 91 survey respondents, 50 had encountered child clients in or at risk of a forced marriage in the preceding 24 months and these experiences were estimated to have involved in excess of 250 cases.

Given that the Project aimed to analyse current service responses to victims, some potential for duplicate responses remains (for example, where two agencies may have worked on the same case as part of a multi-agency team, and both separately reported on that case in the survey). However, while there is a modest possibility that some cases were noted by more than one respondent, the largest clusters of cases noted were in geographically disparate regions, which suggest that duplication in case counting is unlikely.

In addition, survey respondents did not always provide an exact number of cases encountered, but instead provided a range (e.g. 8-10). The number 250 thus represents the cumulative lower limit of the ranges.

Many respondents indicated that forced child marriage cases are difficult to identify. This indicates that it is likely that the actual number of responses to forced child marriage victims, and indeed the number of victims, is far greater.

Despite the limitations to the research identified above, the combination of the quantitative and qualitative consultation research meaningfully contextualises the issue and addresses the current and future state of response, in line with the aims of the Project.

Notably, for all of the relevant period of consultation there was no specific legislation regarding forced marriage in Australia.

**Of a total of 91 survey respondents, 50 had encountered child clients in or at risk of a forced marriage in the preceding 24 months and these experiences were estimated to have involved in excess of 250 cases.**

### 5.2.2 FINDINGS

#### NATURE OF FORCED CHILD MARRIAGE

The NCYLC's survey confirms that forced child marriage is a problem in Australia today, with over 250 cases identified by survey respondents in the preceding 24 months and with cases confirmed in each State and Territory in Australia. Service providers working on the frontlines are struggling with how to recognise and respond to forced child marriage cases, particularly how to offer assistance to an individual who may have only one chance to seek help in an environment where there is no coordinated national policy on how to assist victims.

Forced marriage is being seen across a variety of communities, across and within a range of cultures and ethnicities. At one community worker consultation forum held by the authors, workers from a wide variety of communities all stated that forced child marriage was 'a bigger issue than they ever anticipated'.

Respondents who provided details on the gender of victims they encountered identified the majority as female. A small minority were identified as male. Of more than 250 cases noted in relation to the preceding 24 months, 15 involved a boy in or at risk of forced marriage.

In terms of indicators, the only universally agreed indicator that applied to forced child marriage cases is where a child (or another) says that they face the risk



or reality of a forced marriage. Where such a disclosure is made, evidence suggests that the child's view is well founded and should be taken seriously.

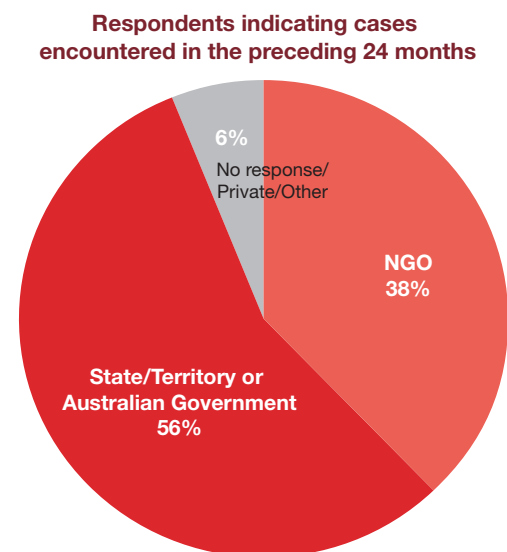
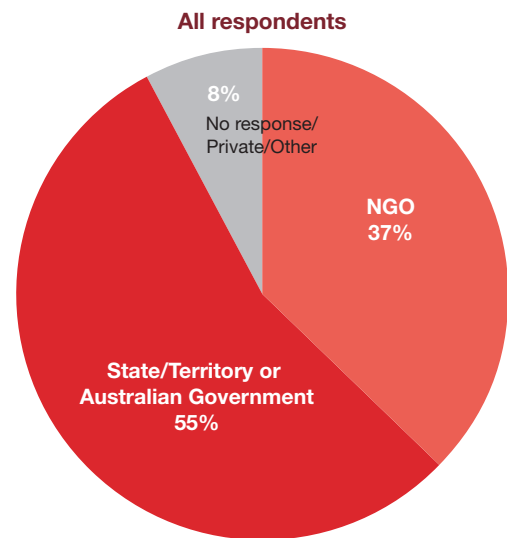
Without direct reporting, situations involving the risk or reality of forced child marriage may be particularly difficult to discern because many of the behaviours by either the child or those around them are similar to those found in situations of much more broadly defined family/domestic violence. Moreover, the behavioural symptoms shown by the child and caused by the risk or reality of forced child marriage are not necessarily distinguishable from behaviour arising from other causes and potential abuses, such as disengagement from school, depressive behaviour and/or self-harm, each of which has a diverse range of causes.

While no one indicator applies to all forms of forced child marriage, certainly highly controlled patterns of social behaviour (for example always being accompanied to school and medical appointments) or extensive restrictions on socialising have been found to often be co-incident with the risk or reality of forced child marriage.

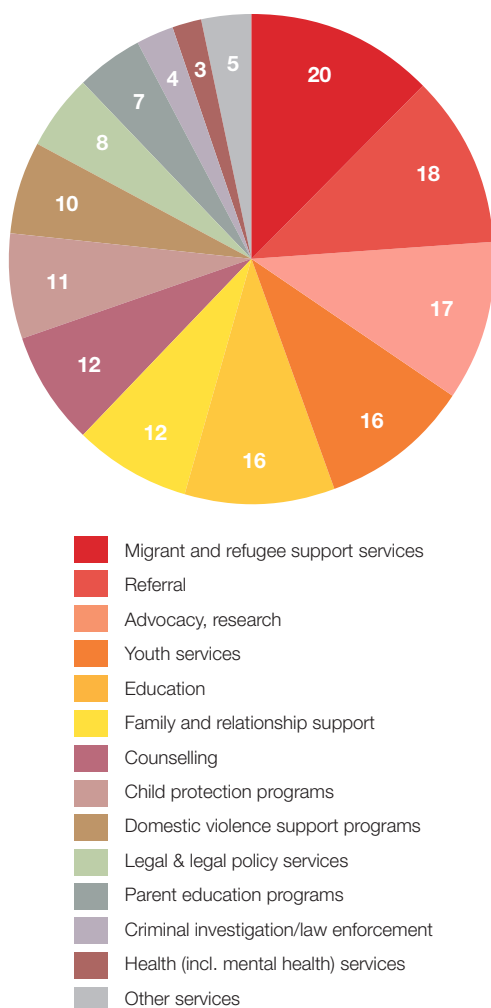
Elder siblings appearing to have been subject to forced child marriage is identified as a strong indicator, especially when co-incident with family violence or behavioural symptoms. However, the circumstances of elder siblings are often not known to case workers unless this specific issue is raised in interviewing a child thought to be at risk.

Extended absences from school for overseas trips were also identified by respondents as a strong indicator. However, this indicator cannot stand on its own. For example, extended absence from school for an overseas trip may be an indicator if it involved a child whose family has connections or heritage outside of Australia. However, in the form of forced child marriage seen as domestic religiously-framed child betrothals/marriages without an international element, or practices relating to 'promised brides' in Indigenous communities, this would not be relevant.

Therefore, while the indicators that were identified by respondents may be a useful guide, it should not be assumed that there is forced child marriage simply on the basis that someone presents with one or more of the above indicators. These indicators may point to other types of abuse that will also require a multi-agency response.



**Services provided by the parent organisation of respondents encountering cases in the preceding 24 months**



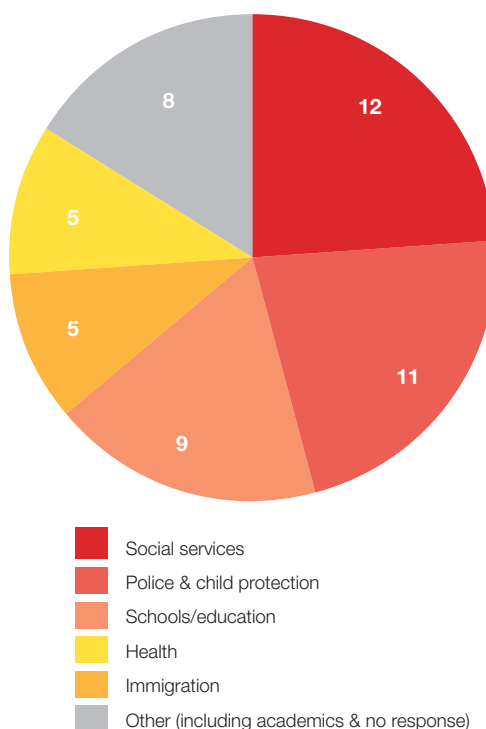
## RESPONDENTS

There was a relatively even spread of respondents from government and non-government organisations, with a small majority of respondents from government organisations.

Despite receiving more overall responses from the government sector, the non-government respondents had encountered more cases of forced child marriage than those from the government sector. This is an interesting finding in many ways, given that the government sector includes child protection and police, amongst others. It is also interesting to read this finding in conjunction with respondents' answers to the question of which services should be included on a list of initial referrals; the main services identified as necessary being child protection and police.

Respondents from social services were most likely to encounter situations of forced child marriage. There is quite an even spread across the types of services to which victims present. Many of the services focus on immigrant (including refugee and asylum seeker) populations, education and youth work.

**50 respondents encountered cases in the preceding 24 months**



The services listed by respondents as necessary are demonstrated by the cloud graphic below:

Accommodation services  
 Child Protection Counselling  
 DOCS Legal Advice  
 Legal Services Police  
 Safe Specific Services  
 Support Unsure Worker

### METHOD OF CONTACT

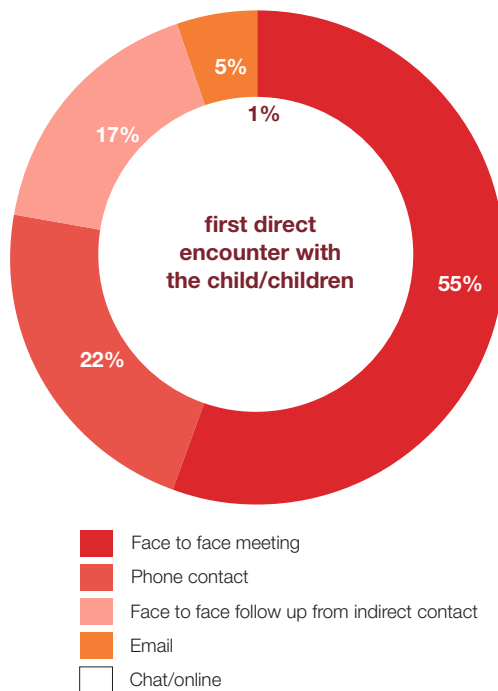
Many respondents who encountered cases of forced child marriage reported learning of the situation directly from the individual affected. Face to face contact was significantly more likely to lead to disclosure of the risk or reality of forced child marriage.

Many respondents, including child protection authorities, identified forced child marriage as hidden behind other more obvious presenting issues such as physical abuse or self-harm, pointing to an indirect revelation of forced child marriage cases.

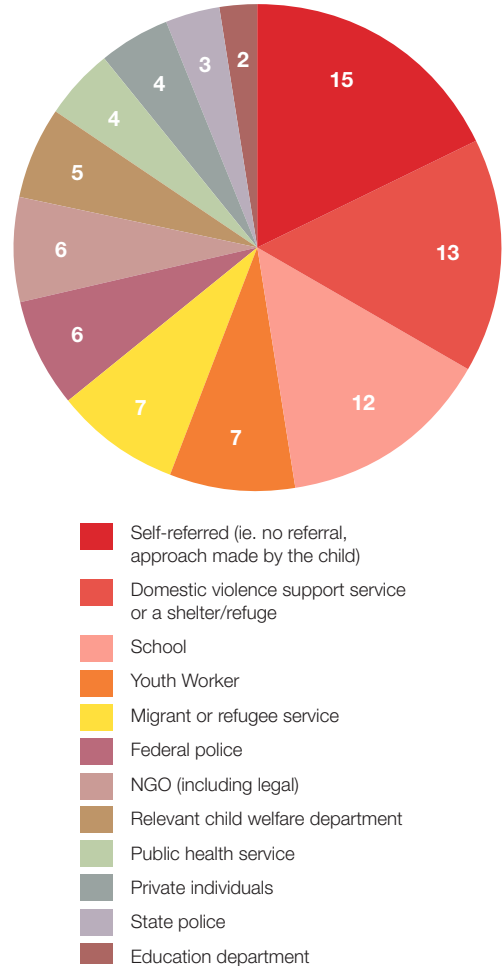
In addition to this, in two out of three cases (not limited to a 24 month period), workers stated that they encountered a child who presented for other reasons but who they suspected was at risk of or in a forced child marriage.

Consistent with research in the United Kingdom, survey respondents identified some impediments to seeking help including that child victims are often dealing with feelings of fear, shame and isolation; may be facing fear or threats of violence or retribution for seeking help; and are unsure where to go for assistance. Many respondents noted that children were reluctant to get their parents into trouble, and are afraid of what will happen to their siblings if they seek help.

#### For respondents encountering cases in preceding 24 months:



#### Of cases referred in preceding 24 months what type of agency referred the case?



## SITUATION OF VICTIM

Keeping in mind the limitations of the research, as discussed in *Methodology* above, the most common situation that respondents encountered was that of an Australian child in Australia at risk of being sent overseas to be married. This finding is important as it emphasises the need for early intervention to prevent the overseas trip and the subsequent forced child marriage. Some respondents indicated that there was an immigration element involved, where the child victim was going to be forced to sponsor her spouse's immigration to Australia. Others indicated that the matter was purely domestic.

The other issues involved in cases encountered over the preceding 24 months, such as sexual assault and mental illness, were quite varied. The only common theme was in relation to domestic/family violence, which was observed by respondents to be present in two out of three cases.

## RESPONSES TO VICTIMS

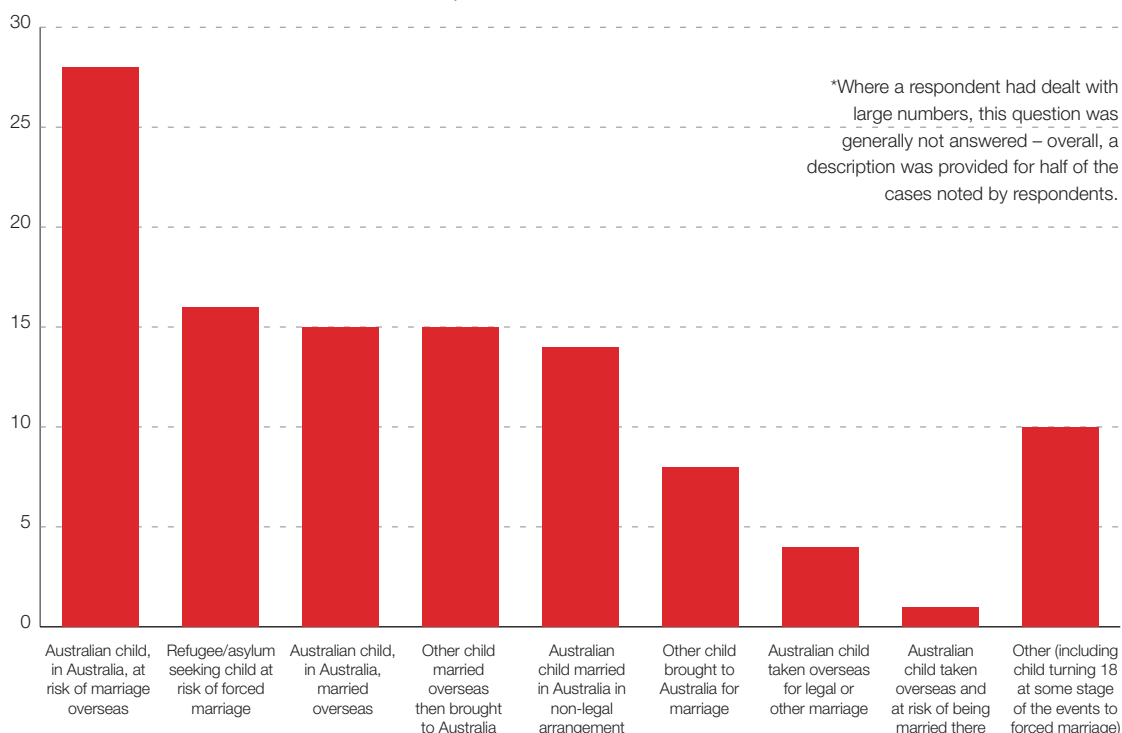
Almost all respondents who encountered child victims of forced marriage indicated that they took multiple steps to try to help individuals at risk. Many respondents directly provided or referred the victim to counselling, legal, and/or accommodation services.

A large number of respondents said that once they referred the victim to another service, they were not able to follow up with the victims and lost contact with them, which meant they did not know what happened to the victim.

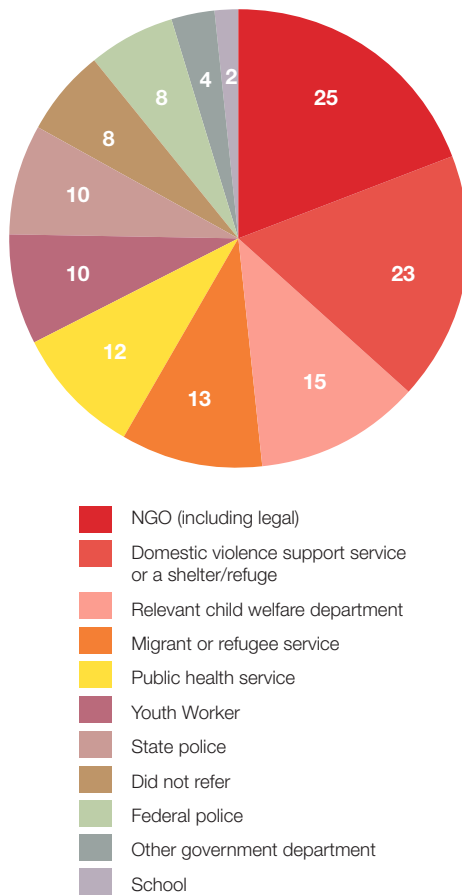
Of those who encountered forced child marriage cases in the last 24 months, three out of four considered forced child marriage to be child abuse or neglect.

In terms of mandatory reporting, 2 out of 3 respondents who encountered child victims considered themselves a mandatory reporter of child abuse with regard to the forced child marriage matter.

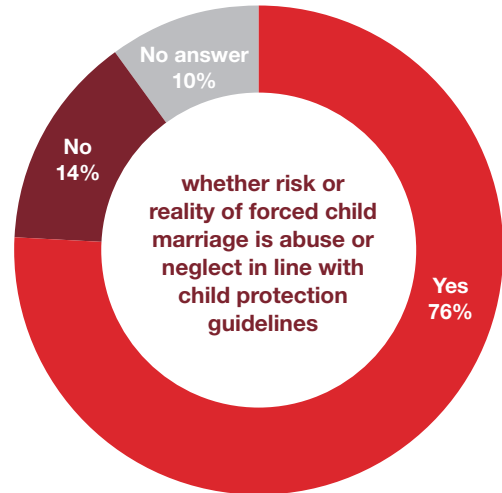
Of cases described, what was the situation of the child client?\*



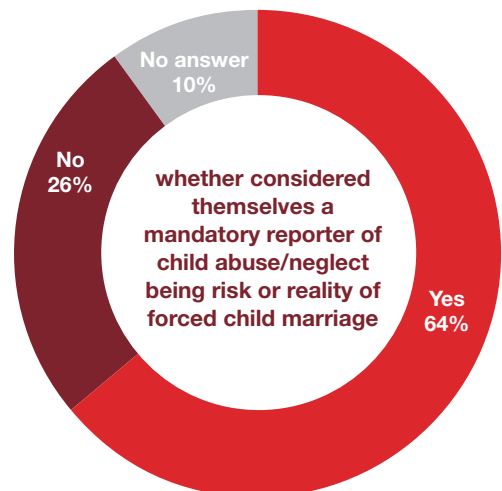
**Of cases referred in preceding 24 months, to what type of agency did you refer the case?**



**Of those encountering child marriage case/s in the preceding 24 months:**



**Of those encountering child marriage case/s in the preceding 24 months:**



But before either route is taken, it is the responsibility of child protection authorities to undertake that specialised, well-informed and accurate risk assessment on which the success of either outcome depends. Respondents recognised the current limitations to this, including lack of understanding and training within child protection on the issue, resulting in some reported inaction on forced child marriage cases.

Almost all respondents stated that case co-ordination was vital for an appropriate and timely multi-agency response to child victims. However, they also noted that co-ordination was not occurring, there were no joint referral procedures or information-sharing agreements in place, and organisations followed their own policy, if they had one (more than eight out of ten respondents indicated their organisation did not have a policy on forced child marriage).

## OUTCOMES

Respondents were asked how satisfied they were with the response that they were able to provide to the child victim they encountered. The responses differed widely, as did outcomes for the child victims. While on average respondents were satisfied, this masks the deep fissures that appeared in some cases, the consequences of which were dire for the individual child. Many times, respondents were not satisfied because they were not able to follow up on the matter once they referred it on, and did not know what would happen to the child. Many respondents said that their organisations did not have policies and procedures in place to assist victims, and that staff often lacked knowledge, resources and training on the issue.

The most pervasive factor was the multi-faceted nature of the very complex cases which made case coordination and management of referrals a significant issue.

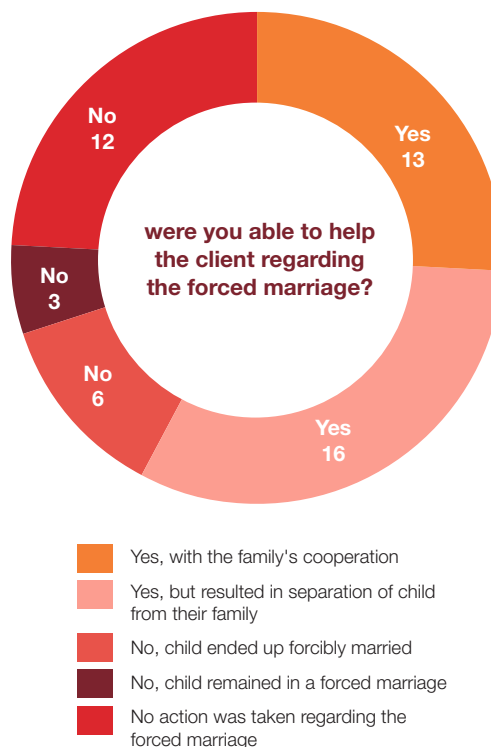
Service-providers trying to assist children also indicated that they faced particular challenges with child victims, including finding appropriate accommodation services who take in children; and child protection services not investigating or intervening and/or not understating the real threat to the child; and situations when a child is afraid and under pressure and subsequently rescinds her request for help or is reluctant to have statutory agencies involved.

Respondents to both the survey and the consultations also often stated that child protection authorities were unresponsive to forced child marriage matters and especially unwilling to get involved in cases involving 16 or 17 year old victims. Many respondents expressed concerns about the gap in services and protection for teenage victims. They also noted that matters where there was a threat of forced marriage with no associated physical abuse seemed to be given lower priority than other family violence matters.

The impediments that respondents identified to detection and prevention of the issue include:

- a lack of understanding of forced child marriage and the constituent harms,
- victims' mistrust of statutory agencies,
- a lack of clear responsibilities for forced child marriage matters, and
- an undue sensitivity to cultural practices where this took primacy over the protection of the child.

Of those encountering child marriage case/s in the preceding 24 months:



Many service providers stated that a significant obstacle to an effective response was that all service providers, including government agencies, worked in silos, with very little information-sharing or collaboration, resulting in lack of follow up and follow through on forced child marriage matters which necessitate the involvement of many different services.

The above graph illustrates whether and in what way respondents were able to assist with the forced child marriage. The most common scenario was that the child was separated from the family.

In many cases, the matter was resolved with the family's cooperation, although this was most often achieved with the child's temporary removal from the family while investigation, assessment and mediation was undertaken (this meant that respondents often answered yes to family cooperation as well as yes to separation, above). In many other cases, respondents were not able to directly assist with the forced child marriage matter.

### WORKERS' GOOD PRACTICE SUGGESTIONS

- Respondents strongly suggested that a national network and/or yearly conference be developed and held on the issue to provide a platform for dialogue and collaboration.
- Many respondents indicated that empowering parents with information about the law and the harms was just as important as empowering the children. They stated that many parents and communities do not have enough information about the law. Only if the parents and children are engaged in tandem will there be effective long term prevention.
- Almost all respondents stated that good practice guidelines would be useful in assisting them in responding to victims. Among other tools cited as most useful were protocols for identifying forced child marriage, a coordinated referral network, educational materials, and training for staff to enable them to better understand and assist forced child marriage victims.
- Asking questions such as who decided on the marriage and what marriage means in their family was a useful way to engage with children effectively, with the aim of doing no harm.
- There is a need for holistic care and empowerment, which can only come from open dialogue and increased knowledge of the issue and of services available.
- The system is currently reactive. The key to effective prevention is community education and engagement. For newly arrived refugees and migrants, the settlement period is taken to be only 5 years, during which service providers state that there is an 'information overload'. They state that settlement is a long-term process and government agencies should not be assuming that all of the information has been received and absorbed within the first five years, which are in fact the most unsettling and difficult years in terms of adjusting to a new country and its language. People are simply given the information by government agencies. The context is not explained. The solution proposed by service providers is a holistic approach to engagement and follow-through, through a community development approach.
- Peer mentoring has been found to be another useful tool for engagement within the community development model.

## Understand that an 18 year old is still vulnerable and [can be] coerced into marriage ...

### Respondent's policy suggestion

- Respondents recognised that in order to conduct a proper risk assessment, more knowledge is needed on the issues and the inherent and associated harms. Sometimes returning home is life-threatening and other times girls benefit from information and empowerment and are able to negotiate the situation with their parents, having received the relevant information and support.
- The community development approach recognises that particular communities benefit from indirect engagement, where the community leaders deliver the information, and thus individual families can be reached and can avoid the shame that is considered to be associated with direct intervention at the family level.
- The child protection guidelines should be updated to encourage consistency between harm types and services responses, and specific reference should be made to forced child marriage in the national frameworks.
- Immigration officers indicated they would benefit from guidelines about forced child marriage to guide their assessment of spouse visa applications.
- Respondents also noted that reassurance for the victim that refusing a forced marriage is not going against their religion or culture was important.
- One of the main points raised by respondents as key to awareness-raising among parents is to explain that coercing someone to marry against their will is wrong and in doing so emphasising that forced marriage is not condoned in any religion. Another important message is to explain the harms of forced child marriage and its impact on children. Another key point to explain was that emotional, as well as physical, pressure constitutes force or coercion.

- Service providers stated that it was vital that both women and men were empowered with knowledge of the issue to make a stand against the practice, if community engagement is to be effective.
- Many respondents stated that if they report the matter to child protection services, no action will be taken. Some teachers have been trying to deal with the issue by emphasising the requirements and benefits of finishing school, and so avoiding confronting the issue directly with parents, and in the meantime empowering their students with as much information as possible. Teachers have indicated that they have tried to keep dialogue open between them and their students and trying to use the value of education as leverage to keep the students in school and try to stop the parents from sending them overseas on that basis.
- Many newly arrived migrants do not understand the school system here, nor is there much engagement with parents. Teachers feel unable to bridge this disconnect between the students and parents.
- Teachers have indicated that their CALD training is minimal and very general, if existing at all.
- Teachers have also identified that many students are not allowed to do anything outside the home except school, and so for many this is the only avenue where they can seek information and help. It follows that schools are one of the main locations for prevention activities, since they were potentially one of the only locations for accessing help.
- The teachers also encountered students who indicated their willingness to be married. The teachers in these instances tried to outline the laws, and then emphasise the benefits of finishing education.
- Service providers recognised the benefits of mainstreaming forced marriage matters within existing family violence frameworks and strategies which would draw upon existing networks. However, service providers also emphasised that it would be vital to recognise the key differences in approach necessitated by forced marriage cases, such as not contacting the family or extended family too early in the child protection process.
- Respondents noted that victims often were not comfortable with implicating their family as perpetrators and wanted to maintain the family structure. This was only possible in a few cases, where the girls were able to negotiate with their own parents to continue with their education and to stress that they do not want to be forced into marriage. In other cases, there was no opportunity for negotiation and the risk to the child's physical, emotional, psychological and sexual health and wellbeing were severe if she refused the marriage.
- Service providers identified a need to have a full understanding of the risks associated with children staying home and of retribution violence. Without this full understanding, it was not possible to safely determine whether leaving home was necessary and/or the best solution for them.



## SECTION 6

## RECOMMENDATIONS

- Commission further research to develop knowledge about the nature and prevalence of forced child marriage in Australia and what would be effective to prevent its occurrence and to respond to individual cases.
- Commission an audit of current activities directed to prevention of and responding to forced child marriage in Australia with a view to identifying spaces for collaboration and information-sharing.
- Design and deliver education programs that target all affected communities, including people from ethnically, culturally and linguistically diverse backgrounds, where necessary using languages other than English. The program should explain the intention and substance of the new legislation and the harms posed by forced child marriage.
- Develop and deliver awareness-raising campaigns through channels accessible to affected youth and communities, employing multilingual workers and particularly targeting children and parents.
- Train child protection, police, family violence, health services, teaching, immigration, consular and other staff likely to come into contact with actual or potential victims about the harms associated with forced child marriage and good practice responses. Training should be accompanied by resources and cover issues such as service provider reticence and cultural oversensitivity and the importance of taking an end-to-end approach to a matter.
- Develop and deploy general awareness-raising and training among service providers.
- Establish a lead position within each State and Territory and the Australian Government to provide specialised advice to front-line staff, and to take responsibility within the jurisdiction for coordination and policy development on the issue.
- Reference the NCYLC's Multi-Agency Early Response Guidelines in the child protection practice manuals and in state-wide protocols between the child protection program and other agencies, such as with police and education authorities.
- Amend child protection guidelines on risk assessment to include the particular risks associated with forced child marriage.
- Establish a national network focused on the issue of forced child marriage aimed at encouraging dialogue, facilitating cooperation, coordinating public education and outreach on the issue and developing a national forced child marriage framework regarding collaboration and information-sharing.
- Empower children by providing them with information on their rights through schools and other direct means of communication, including web-based resources, posters and information pamphlets
- Incorporate the issue into the curriculum through broader topic areas such as healthy and respectful relationships and deliver the information in a variety of forms, including seminars, peer to peer discussions, film study, and interactive activities such as making information brochures or presentations on the topic.
- Develop information resources on warning signs and reporting for schools, colleges and other youth settings on the issue of forced child marriage.
- Communicate to parents through schools about the importance of education and the school's disapproval of students missing classes or going on extended holidays abroad.
- Integrate forced child marriage within the broader violence against women and children and child protection frameworks, including through reference in the Australian Government's National Framework for Protecting Australia's Children and the National Plan to Reduce Violence against Women and their Children.
- Develop data collection protocols for service providers, which could include the addition of a forced child marriage flag on case records and regular collection of these data by a forced child marriage co-ordinator.
- Recognise the need for resources to be dedicated to both the immediate response to victims and to long-term prevention which can in time reduce the volume of cases. Existing service providers are well placed to deliver prevention activities within communities, and should be engaged and funded to do so.
- Establish protocols for collaboration to address gaps in service provision, such as the response to 16 or 17 year olds, and clarify roles and responsibilities of all service providers.

# APPENDICES

## APPENDIX A: SURVEY

### CHILD&nbsp;FORCED MARRIAGE SURVEY

#### THE 'NOT YOURS TO PROMISE' CHILD FORCED MARRIAGE PROJECT

**The National Children's and Youth Law Centre (NCYLC) is undertaking Australia's first national research into child forced marriage.** The aim of the research is to establish how community service providers and other relevant organisations currently respond to incidents of child forced marriage. We will then evaluate the current responses against the relevant child care and protection frameworks, write a report about our findings and create best practice guidelines for community service providers that will assist them in responding to victims of child forced marriage. We will also develop a range of educational resources on the issue.

#### DEFINITIONS

For the purposes of this project, **forced marriage** is defined as marriage entered into without the free and full consent of both parties. It is distinct from an arranged marriage, where the families of the spouses play a dominant role in arranging the marriage, but the spouses have the right to accept or refuse the arrangement.

A **forced marriage of a child** is a marriage of a person under 18 years of age.

An **Australian child citizen** is a person under 18 years of age who is entitled to reside permanently in Australia.

#### ABOUT THIS SURVEY

The purpose of this survey is to ask you about your experiences with child forced marriage and your views on best practice. We will use your answers to inform our research and to develop our best practice guidelines.

The survey will take about 15-20 minutes to complete.

If you have any questions or comments about the survey or the project, please contact the Project Officer, Ms Tina Jelenic, by phone on 02 9385 9588 or email at [Email Me](#)

Thank you very much for taking part - your contributions are invaluable and will inform Australia's first national research and best practice guidelines on child forced marriage!

### INCIDENCE OF FORCED MARRIAGE OF CHILDREN UNDER 18

#### 1. What is your occupation?

#### 2. What is the name of your organisation? (optional)

## CHILD & FORCED MARRIAGE SURVEY

**3. If you're willing to discuss your answers further with us, please provide the contact details of your organisation.**

**4. What type of organisation is it?**

- ☐ Government
- ☐ Non-government
- ☐ Private
- ☐ Other (please specify)

**5. What services does your organisation provide? (please select a maximum of three service types)**

- ☐ Domestic violence support programs
- ☐ Migrant and refugee support services
- ☐ Family and relationship support
- ☐ Youth services
- ☐ Health services
- ☐ Drug and alcohol services
- ☐ Criminal investigation/law enforcement
- ☐ Disability services
- ☐ Counselling
- ☐ Education
- ☐ Advocacy
- ☐ Referral
- ☐ Legal services
- ☐ Parent education programs
- ☐ Child protection programs
- ☐ Tertiary intervention programs for child victims
- ☐ Other (please specify)

## CHILD & FORCED MARRIAGE SURVEY

### 6. What is the postcode of your workplace?

### 7. In your work, have you directly or indirectly encountered child clients in or at risk of forced marriage?

- ☐ Yes
- ☐ No (please skip to the 'Best Practice' section at question 33)

### 8. If yes, what was the situation of the child client? (tick all that apply)

- ☐ An Australian child citizen who was then in Australia but was married overseas
- ☐ An Australian child citizen who was then in Australia but was at risk of being sent overseas to be married
- ☐ An Australian child citizen married under 18 in Australia under a customary or religious (non-legal) arrangement
- ☐ An overseas citizen under 18 who was brought to Australia for the purpose of marriage
- ☐ An overseas citizen under 18 who was married overseas and was then in Australia
- ☐ A refugee/asylum seeking child who was at risk of forced marriage in their home country or Australia
- ☐ Other (please specify)

### 9. How many times have you directly or indirectly encountered child forced marriage in the last 24 months? (please estimate if exact number is not immediately known)

### 10. How many were girls and how many were boys?

Girls	<input type="text"/>
Boys	<input type="text"/>

### 11. Were any of the below present in the cases of child forced marriage that you have encountered?

- ☐ Domestic/family violence
- ☐ Mental illness
- ☐ Sexual abuse
- ☐ Substance abuse
- ☐ Disability
- ☐ None of the above were present
- ☐ Unknown

## CHILD & FORCED MARRIAGE SURVEY

### 12. What was the nature of your first direct encounter with the child or children? (if any)

- ☐ N/A
- ☐ Face to face meeting
- ☐ Phone contact
- ☐ Email
- ☐ Chat/online
- ☐ Other (please specify)

### 13. Have you ever encountered a child who came to you for help unrelated to a forced marriage but who you thought was in a forced marriage or at risk of one?

- ☐ Yes
- ☐ No

### 14. If yes, what indicators made you suspect that they were at risk of or in a forced marriage?

- ☐ N/A
- ☐ A history of older siblings leaving education early and marrying early
- ☐ Depressive behaviour including self-harm
- ☐ Unreasonable restrictions such as being kept at home by their parents or being unable to keep their education
- ☐ Unexpected/extended absence during school time for a holiday or to visit sick relatives; removed from education during school time and/or not returned after the holiday period
- ☐ The child always being accompanied, including to school and doctor's appointments
- ☐ Other (please specify)

## CHILD&nbsp;FORCED MARRIAGE SURVEY

### 15. Were the child clients referred to you by another agency? If so, what type of agency was it?

- ☐ State/Territory government department dealing with child welfare (e.g. DOCS)
- ☐ Education department
- ☐ School
- ☐ Youth worker
- ☐ A shelter for women and children who have been abused
- ☐ Migrant and refugee service
- ☐ Domestic violence support service
- ☐ State police/law enforcement
- ☐ Federal police/law enforcement
- ☐ Public health service/hospital (including counselling service)
- ☐ Private health service/hospital (including counselling service)
- ☐ Community legal centre/Legal Aid
- ☐ They came to you first
- ☐ Other (please specify)

## COMMUNITY SERVICE PROVIDER RESPONSE

### 16. What steps did you take to assist the child who was *in* a forced marriage?

- ☐ N/A
- ☐ None
- ☐ Referred the client to another organisation
- ☐ Multiple Steps (outline each step briefly)

### 17. What steps did you take to assist the child who was *at risk of* a forced marriage?

- ☐ N/A
- ☐ None
- ☐ Referred the client to another organisation
- ☐ Multiple Steps (outline each step briefly)

## CHILD & FORCED MARRIAGE SURVEY

**18. Did you know what services or options were available to a child in a forced marriage or at risk of forced marriage?**

☐ Yes

☐ No

**19. Did you tell the client what their options were regarding the forced marriage?**

☐ No

☐ Yes (please outline briefly)

**20. Are you aware of the laws that may be relevant to the forced marriage of a child?**

☐ No

☐ Yes (please outline what laws you consider to be relevant)

**21. Did you consider the forced marriage/risk of forced marriage of a child a child abuse or neglect issue in line with the child protection laws and guidelines?**

☐ Yes

☐ No

If no, why not?

**22. Did you consider yourself a mandatory reporter of child abuse or neglect in the situation of forced marriage/risk of forced marriage of a child?**

☐ Yes

☐ No

If no, why not?

## CHILD&nbsp;FORCED MARRIAGE SURVEY

### 23. Did you refer the client to someone else?

- ☐ State/Territory government department dealing with child welfare (e.g. DOCS)
- ☐ A shelter for women and children who have been abused
- ☐ Migrant and refugee service
- ☐ Domestic violence support service
- ☐ Youth worker
- ☐ State police/law enforcement
- ☐ Federal police/law enforcement
- ☐ Public health service/hospital (including counselling service)
- ☐ Private health service/hospital (including counselling service)
- ☐ Community legal centre/Legal Aid
- ☐ Did not refer the client to another organisation
- ☐ Other (please specify)

### 24. How satisfied were you with the response you were able to provide to the child at risk of or in a forced marriage? (including how satisfied you were with the response of organisations to which you may have referred the child)

Very satisfied	Satisfied	Not very satisfied	Unsatisfied
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Why/why not?

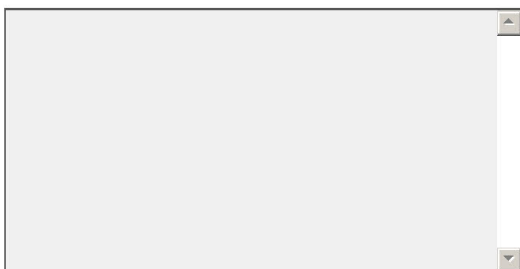
### 25. In how many instances did you assess the client as at risk of imminent harm and in need of an urgent response?



## CHILD & FORCED MARRIAGE SURVEY

### 26. What was the outcome for the client?

- ☐ The client was removed from the family
- ☐ The client was forced into the marriage
- ☐ The client stayed in the forced marriage
- ☐ The outcome is unknown
- ☐ Other (please specify)



### 27. Were you able to help the client regarding the forced marriage?

- ☐ Yes, with the family's cooperation
- ☐ Yes, but it resulted in the separation of the child from their family
- ☐ No, the child ended up being forcibly married
- ☐ No, the child remained in a forced marriage
- ☐ No action was taken regarding the forced marriage

### 28. Do you feel that there are enough resources for service providers to assist child clients who are in a forced marriage or at risk of a forced marriage?

- ☐ Yes
- ☐ No

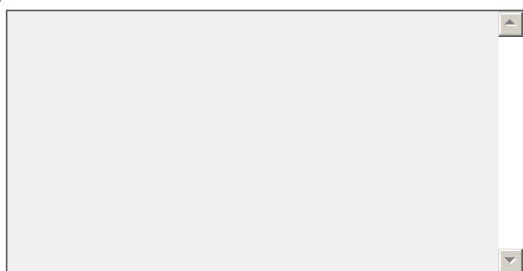
### 29. Do you think you have sufficient knowledge and capacity to deal with child victims of forced marriage?

- ☐ Yes
- ☐ No

## CHILD&nbsp;FORCED MARRIAGE SURVEY

### 30. On what information or resources do you base your response to a child at risk of or in a forced marriage?

- ☐ State/Territory child care and protection statutes
- ☐ Commonwealth child care and protection statutes
- ☐ State/Territory child protection guidelines
- ☐ Commonwealth child care and protection guidelines
- ☐ The organisation's own policies/guidelines
- ☐ Other (please specify)



### 31. Does your organisation have a policy or guidelines for dealing specifically with forced marriage?

- ☐ Yes
- ☐ No

### 32. Does your organisation have a specialist for dealing with forced marriage?

- ☐ Yes
- ☐ No

## BEST PRACTICE

## CHILD & FORCED MARRIAGE SURVEY

### \*33. What would help you to work with victims of forced marriage?

- ☐ General information and factsheets for those at risk or experiencing forced marriage
- ☐ A hotline or a one-step referral system for clients to access
- ☐ More resources/funding for the service you provide
- ☐ More services to deal with forced marriage
- ☐ Training on the issue of forced marriage
- ☐ A specialist community service
- ☐ A specialist government agency
- ☐ A specialist service run by youth workers
- ☐ A specialist law enforcement agency
- ☐ A specialist service aligned to a particular cultural background
- ☐ A specialist interpreting service
- ☐ Counselling services and similar support for staff so they don't get overwhelmed
- ☐ Other (please specify)

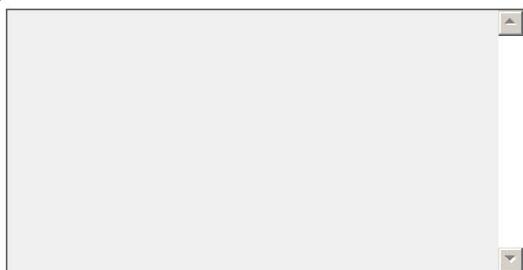
### \*34. Do you think a set of recommended guidelines outlining how to assist a child victim of forced marriage or a child at risk of forced marriage would help you and your organisation?

- ☐ Yes
- ☐ No

## CHILD&nbsp;FORCED MARRIAGE SURVEY

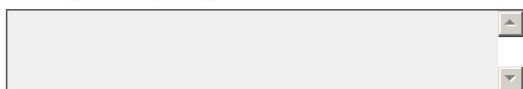
### **\*35. If yes, what do you think the guidelines should include?**

- ☐ The indicators of risk of forced marriage/ forced marriage
- ☐ Information about the incidence and issues around forced marriage
- ☐ First contacts and referrals
- ☐ List of relevant service providers
- ☐ Legal position and obligations
- ☐ Action steps to be taken in all cases
- ☐ Profession-specific actions
- ☐ Risk assessment steps
- ☐ Actions to avoid when dealing with incidents of forced marriage
- ☐ Other (please specify)



### **\*36. How many pages should the guidelines be in order to be an effective tool for front-line practitioners?**

- ☐ 1-5
- ☐ 5-10
- ☐ 10-20
- ☐ 20-60
- ☐ Other (please specify)



## CHILD&nbsp;FORCED MARRIAGE SURVEY

### **\*37. If you become aware that a child is at risk of forced marriage which of the following actions should you take?**

- ☐ See them confidentiality even if they present with another person or wish to have another person present
- ☐ Contact the child's parents
- ☐ Contact a member of the young person's community
- ☐ Contact a teacher or person at the child's school
- ☐ Perform a risk assessment
- ☐ Recognise and respect their wishes
- ☐ As soon as possible contact a trained specialist
- ☐ Obtain full details to pass onto a trained specialist
- ☐ Contact the relevant department of child protection
- ☐ Reassure them about confidentiality (practitioners will not contact the family etc)
- ☐ Establish a way to contact them discretely
- ☐ Consider the need for immediate protection and placement away from the family
- ☐ Attempt to mediate between the child and the family
- ☐ Send the child away
- ☐ Approach members of the family or community
- ☐ Provide, where possible, options of ethnicity and gender for the case manager dealing with them
- ☐ Identify any criminal offences and contact the police if appropriate
- ☐ Inform the child of their right to seek legal advice and representation
- ☐ Record injuries and arrange a medical exam
- ☐ Give personal safety advice
- ☐ Develop a safety plan
- ☐ Establish if there is a family history of forced marriage
- ☐ Advise them not to travel overseas
- ☐ Maintain a full record of what has been said and what decisions were made
- ☐ Explain to the client what services are available and what they can expect will happen next
- ☐ Ensure they have contact details for the trained specialist
- ☐ Keep all information confidential
- ☐ Refer with consent to appropriate support groups and domestic violence services
- ☐ What else should you do? Please outline briefly.

## CHILD&nbsp;FORCED MARRIAGE SURVEY

### SERVICE AND REFERRALS FOR FORCED MARRIAGE

**\*38. If you become aware that a child client is at risk of forced marriage, what type of services do you think should be included on a list of initial referrals?**

**\*39. Do you think the accommodation services available currently are appropriate and promote safety for victims of child forced marriage?**

- ☐ Not sure
- ☐ Yes
- ☐ No

Why/why not?

**\*40. Do you think the current health and social services available are appropriate for dealing with child forced marriage victims?**

- ☐ Not sure
- ☐ Yes
- ☐ No

Why/why not?

**\*41. Do you think there needs to be a specialist legal service for forced marriage or do you believe that the current system of community legal centres or Legal Aid is suitable for dealing with forced marriage issues?**

- ☐ Not sure
- ☐ Yes, there needs to be a specialist service
- ☐ No, the current system is suitable

Why/why not?

## CHILD & FORCED MARRIAGE SURVEY

**\*42. Do you think that schools and education providers are prepared for dealing with a child who is at risk of forced marriage?**

- ☐ Not sure  
☐ Yes  
☐ No

Why/why not?

**\*43. Do you believe that law enforcement officers should undergo special training for working with child forced marriage victims?**

- ☐ Not sure  
☐ Yes  
☐ No

Why/why not?

**\*44. Do you believe there should be something similar to a witness protection program for victims of forced marriage to protect against retribution from their family, their spouse or in-laws?**

- ☐ Not sure  
☐ Yes  
☐ No

Why/why not?

**45. Do you have any other suggestions about how to improve the responses of community service providers to the risk or incidence of child forced marriage?**

**Thank you for participating in our survey!**

If you have any questions or comments please do not hesitate to contact Tina Jelenic by phone on (02) 9385 9588 or by email at [tina.jelenic@ncylc.org.au](mailto:tina.jelenic@ncylc.org.au).



## APPENDIX B: LIST OF SELECTED ORGANISATIONS CONSULTED

Anti-Slavery Australia	Fairfield Migrant Resource Centre
Australian Catholic Religious Against Trafficking of Humans	Family and Community Services, Community Services, NSW
Australian Institute of Criminology	Federation of Ethnic Communities' Council of Australia
Australian Federal Police	Immigrant Women's Health Service
Australian Human Rights Commission	International Social Services Australia
Australian Red Cross	InTouch Multicultural Centre Against Family Violence
Australian Refugee Association	JK Diversity Consultants
Australian Women Against Violence Alliance	Josephite Counter-Trafficking Project
Centre For Multicultural Youth	Law Council of Australia
Commonwealth Attorney-General's Department	Legal Aid NSW
Department of Child Protection, WA	Metro Migrant Resource Centre
Department of Communities, Child Safety and Disability Services, QLD	Migrant Women's Support Service, SA
Department for Communities and Social Inclusion, SA	Multicultural SA
Department of Education and Child Development, SA	NSW TAFE
Department of Education and Communities, NSW	Office of Children and Families, NT
Department of Education and Early Childhood Development, VIC	Office of Multicultural Interests, WA
Department of Families Housing Community Services and Indigenous Affairs	Office for Women, SA
Department of Foreign Affairs and Trade	PEACE Multicultural Services, Relationships Australia SA
Department of Health and Human Services, Children and Youth Services, TAS	Plan International
Department of Health and Human Services, Population Health, TAS	Relationships Australia
Department of Human Services, VIC	Rosemount Good Shepherd Youth and Family Service
Department of Immigration and Citizenship	Shakti Migrant and Refugee Women's Support Group Melbourne
	The Salvation Army
	Victorian Immigrant and Refugee Women's Coalition
	Victoria Police
	Welfare Rights Centre
	Western Australia Police
	Women's Legal Services NSW

## APPENDIX C: EXTRACTED LEGISLATION

### CRIMINAL CODE OFFENCES: FORCED MARRIAGE

#### 270.7A DEFINITION OF FORCED MARRIAGE

(1) For the purposes of this Division, a marriage is 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.

(2) For the purposes of subsection (1), **marriage** includes the following:

(a) a registered relationship within the meaning of section 2E of the *Acts Interpretation Act 1901*;

(b) a marriage recognised under a law of a foreign country;

(c) a relationship registered (however that process is described) under a law of a foreign country, if the relationship is of the same, or a similar, type as any registered relationship within the meaning of section 2E of the *Acts Interpretation Act 1901*;

(d) a marriage (including a relationship or marriage mentioned in paragraph (a), (b) or (c)) that is void, invalid, or not recognised by law, for any reason, including the following:

(i) a party to the marriage has not freely or fully consented to the marriage (for example, because of natural, induced or age-related incapacity);

- (ii) a party to the marriage is married (within the meaning of this subsection) to more than one person.

Note: Section 2E of the *Acts Interpretation Act 1901* covers relationships registered under a law of a State or Territory that are prescribed by regulations under that Act.

(3) Subsection (1) applies whether the coercion, threat or deception is used against the victim or another person.

### 270.7B FORCED MARRIAGE OFFENCES

#### Causing a person to enter into a forced marriage

(1) A person (the **first person**) commits an offence if:

- (a) the first person engages in conduct; and
- (b) the conduct causes another person to enter into a forced marriage as the victim of the marriage.

Penalty:

- (a) in the case of an aggravated offence (see section 270.8)—imprisonment for 7 years; or
- (b) in any other case—imprisonment for 4 years.

#### Being a party to a forced marriage

(2) A person commits an offence if:

- (a) the person is a party to a marriage (within the meaning of section 270.7A); and
- (b) the marriage is a forced marriage; and
- (c) the person is not a victim of the forced marriage.

Penalty:

- (a) in the case of an aggravated offence (see section 270.8)—imprisonment for 7 years; or
- (b) in any other case—imprisonment for 4 years.

(3) Strict liability applies to paragraph (2)(c).

Note: For strict liability, see section 6.1.

(4) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3)).

### 270.8 SLAVERYLIKE OFFENCES—AGGRAVATED OFFENCES

(1) For the purposes of this Division, a slaverylike offence committed by a person (the **offender**) against another person (the **victim**) is an **aggravated offence** if any of the following applies:

- (a) the victim is under 18;
- (b) the offender, in committing the offence, subjects the victim to cruel, inhuman or degrading treatment;
- (c) the offender, in committing the offence:
  - (i) engages in conduct that gives rise to a danger of death or serious harm to the victim or another person; and
  - (ii) is reckless as to that danger.

(2) If the prosecution intends to prove an aggravated offence, the charge must allege the relevant aggravated offence.

(3) If, on a trial for an aggravated offence, the trier of fact is not satisfied that the defendant is guilty of the aggravated offence, but is otherwise satisfied that the defendant is guilty of the corresponding slaverylike offence, it may find the defendant not guilty of the aggravated offence, but guilty of the corresponding slaverylike offence.

(4) Subsection (3) only applies if the defendant has been afforded procedural fairness in relation to the finding of guilt for the corresponding slaverylike offence.

### 270.9 SLAVERYLIKE OFFENCES—JURISDICTIONAL REQUIREMENT

Section 15.2 (extended geographical jurisdiction—category B) applies to a slaverylike offence.

### 271.1A DEFINITION OF EXPLOITATION

For the purposes of this Division, **exploitation**, of one person (the **victim**) by another person, occurs if the other person's conduct causes the victim to enter into any of the following conditions:

- (a) slavery, or a condition similar to slavery;
- (b) servitude;
- (c) forced labour;
- (d) forced marriage;
- (e) debt bondage.

Note: Division 270 (slavery and slaverylike offences) deals with slavery, servitude, forced labour and forced marriage. Subdivision C of this Division deals with debt bondage.

## APPENDIX D: MANDATORY REPORTING REQUIREMENTS ACROSS AUSTRALIA

Who is mandated to notify?	What is to be notified?	Maltreatment types for which it is mandatory to report	Relevant sections of the Act/Regulations
<b>ACT</b>			
A person who is: a doctor; a dentist; a nurse; an enrolled nurse; a midwife; a teacher at a school; a person providing education to a child or young person who is registered, or provisionally registered, for home education under the <i>Education Act 2004</i> ; a police officer; a person employed to counsel children or young people at a school; a person caring for a child at a child care centre; a person coordinating or monitoring home-based care for a family day care scheme proprietor; a public servant who, in the course of employment as a public servant, works with, or provides services personally to, children and young people or families; the public advocate; an official visitor; a person who, in the course of the person's employment, has contact with or provides services to children, young people and their families and is prescribed by regulation	<p>A belief, on reasonable grounds, that a child or young person has experienced or is experiencing sexual abuse or non-accidental physical injury;</p> <p>and the belief arises from information obtained by the person during the course of, or because of, the person's work (whether paid or unpaid)</p>	<ul style="list-style-type: none"> <li>Physical abuse</li> <li>Sexual abuse</li> </ul>	Section 356 of the <i>Children and Young People Act 2008</i> (ACT)
<b>NSW</b>			
<p>A person who, in the course of his or her professional work or other paid employment delivers health care, welfare, education, children's services, residential services or law enforcement, wholly or partly, to children;</p> <p>and a person who holds a management position in an organisation, the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children's services, residential services or law enforcement, wholly or partly, to children</p>	<p>Reasonable grounds to suspect that a child is at risk of significant harm;</p> <p>and those grounds arise during the course of or from the person's work</p>	<ul style="list-style-type: none"> <li>Physical abuse</li> <li>Sexual abuse</li> <li>Emotional / psychological abuse</li> <li>Neglect</li> <li>Exposure to family violence</li> </ul>	Sections 23 and 27 of the <i>Children and Young Persons (Care and Protection) Act 1998</i> (NSW)

Who is mandated to notify?	What is to be notified?	Maltreatment types for which it is mandatory to report	Relevant sections of the Act/Regulations
<b>NT</b>			
<b>Any person with reasonable grounds</b>	<p>A belief on reasonable grounds that a child has been or is likely to be a victim of a sexual offence;</p> <p>or otherwise has suffered or is likely to suffer harm or exploitation</p>	<ul style="list-style-type: none"> <li>• Physical abuse</li> <li>• Sexual abuse</li> <li>• Emotional / psychological abuse</li> <li>• Neglect</li> <li>• Exposure to physical violence (e.g., a child witnessing violence between parents at home)</li> </ul>	Sections 15 and 26 of the <i>Care and Protection of Children Act 2007</i> (NT)
<b>Registered health professionals</b>	Reasonable grounds to believe a child aged 14 or 15 years has been or is likely to be a victim of a sexual offence and the age difference between the child and offender is greater than 2 years.	<ul style="list-style-type: none"> <li>• Sexual abuse</li> </ul>	Section 26 of the <i>Care and Protection of Children Act 2007</i> (NT)

Who is mandated to notify?	What is to be notified?	Maltreatment types for which it is mandatory to report	Relevant sections of the Act/Regulations
<b>QLD</b>			
<b>An authorised officer, employee of the Department of Child Safety, a person employed in a departmental care service or licensed care service</b>	Awareness or reasonable suspicion of harm caused to a child placed in the care of an entity conducting a departmental care service or a licensee	<ul style="list-style-type: none"> <li>• Physical abuse</li> <li>• Sexual abuse or exploitation</li> <li>• Emotional / psychological abuse</li> <li>• Neglect</li> </ul>	Section 148 of the <i>Child Protection Act 1999</i> (Qld)
<b>A doctor or registered nurse</b>	Awareness or reasonable suspicion during the practice of his or her profession of harm or risk of harm	<ul style="list-style-type: none"> <li>• Physical abuse</li> <li>• Sexual abuse or exploitation</li> <li>• Emotional / psychological abuse</li> <li>• Neglect</li> </ul>	Sections 191-192 and 158 of the <i>Public Health Act 2005</i> (Qld)
<b>The staff of the Commission for Children and Young People and Child Guardian</b>	A child who is in need of protection under s10 of the <i>Child Protection Act</i> (i.e., has suffered or is at unacceptable risk of suffering harm and does not have a parent able and willing to protect them)	<ul style="list-style-type: none"> <li>• Physical abuse</li> <li>• Sexual abuse or exploitation</li> <li>• Emotional / psychological abuse</li> <li>• Neglect</li> </ul>	Section 20 of the <i>Commission for Children and Young People and Child Guardian Act 2000</i> (Qld)

Who is mandated to notify?	What is to be notified?	Maltreatment types for which it is mandatory to report	Relevant sections of the Act/Regulations
<b>SA</b>			
Doctors; pharmacists; registered or enrolled nurses; dentists; psychologists; police officers; community corrections officers; social workers; teachers; family day care providers; employees/volunteers in a government department, agency or instrumentality, or a local government or non-government agency that provides health, welfare, education, sporting or recreational, child care or residential services wholly or partly for children; ministers of religion (with the exception of disclosures made in the confessional); employees or volunteers in a religious or spiritual organisations	Reasonable grounds that a child has been or is being abused or neglected;  and the suspicion is formed in the course of the person's work (whether paid or voluntary) or carrying out official duties	<ul style="list-style-type: none"> <li>• Physical abuse</li> <li>• Sexual abuse</li> <li>• Emotional / psychological abuse</li> <li>• Neglect</li> </ul>	Section 11 of the <i>Children's Protection Act 1993</i> (SA)
<b>TAS</b>			
Registered medical practitioners; nurses; dentists, dental therapists or dental hygienists; registered psychologists; police officers; probation officers; principals and teachers in any educational institution; persons who provide child care or a child care service for fee or reward; persons concerned in the management of a child care service licensed under the <i>Child Care Act 2001</i> ; any other person who is employed or engaged as an employee for, of, or in, or who is a volunteer in, a government agency that provides health, welfare, education, child care or residential services wholly or partly for children, and an organisation that receives any funding from the Crown for the provision of such services; and any other person of a class determined by the Minister by notice in the Gazette to be prescribed persons	A belief, suspicion, reasonable grounds or knowledge that: a child has been or is being abused or neglected or is an affected child within the meaning of the <i>Family Violence Act 2004</i> ; or  there is a reasonable likelihood of a child being killed or abused or neglected by a person with whom the child resides	<ul style="list-style-type: none"> <li>• Physical abuse</li> <li>• Sexual abuse</li> <li>• Emotional / psychological abuse</li> <li>• Neglect</li> <li>• Exposure to family violence</li> </ul>	Sections 13 and 14 of the <i>Children, Young Persons and Their Families Act 1997</i> (Tas.)
<b>VIC</b>			
Registered medical practitioners, registered nurses, a person registered as a teacher under the <i>Education, Training and Reform Act 2006</i> or teachers granted permission to teach under that Act, principals of government or non-government schools, and members of the police force	Belief on reasonable grounds that a child is in need of protection on a ground referred to in Section 162(c) or 162(d), formed in the course of practising his or her office, position or employment	<ul style="list-style-type: none"> <li>• Physical abuse</li> <li>• Sexual abuse</li> </ul>	Sections 182(1) a-e, 184 and 162 c-d of the <i>Children, Youth and Families Act 2005</i> (Vic.)

Who is mandated to notify?	What is to be notified?	Maltreatment types for which it is mandatory to report	Relevant sections of the Act/Regulations
<b>WA</b>			
<b>Court personnel; family counsellors; family dispute resolution practitioners, arbitrators or legal practitioners representing the child's interests</b>	Reasonable grounds for suspecting that a child has been: abused, or is at risk of being abused; ill-treated, or is at risk of being ill-treated; or exposed or subjected to behaviour that psychologically harms the child.	<ul style="list-style-type: none"> <li>Physical abuse</li> <li>Sexual abuse</li> <li>Emotional / psychological abuse</li> <li>Neglect</li> </ul>	Section 160 of the <i>Western Australia Family Court Act 1997</i> (WA)
<b>Licensed providers of child care or outside-school-hours care services</b>	Allegations of abuse, neglect or assault, including sexual assault, of an enrolled child during a care session	<ul style="list-style-type: none"> <li>Physical abuse</li> <li>Sexual abuse</li> <li>Neglect</li> </ul>	<p>Regulation 20 of the Child Care Services Regulations 2006</p> <p>Regulation 19 of the Child Care Services (Family Day Care) Regulations 2006</p> <p>Regulation 20 of the Child Care Services (Outside School Hours Family Day Care) Regulations 2006</p> <p>Regulation 21 of the Child Care Services (Outside School Hours Care) Regulations 2006</p>
<b>Doctors; nurses and midwives; teachers; and police officers</b>	Belief on reasonable grounds that child sexual abuse has occurred or is occurring	<ul style="list-style-type: none"> <li>Sexual abuse</li> </ul>	Section 124B of the <i>Children and Community Services Act 2004</i>

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