

FORCED MARRIAGE

BRISBANE ZONTA CLUB

1 NOVEMBER 2023

I acknowledge the Jagera and Turrbal peoples, on whose lands we meet today, their elders, past, present and emerging.

Ruqia Hidari was aged 21 and living in Victoria, when, according to police, she was sold by her mother to her prospective husband Mohammad Ali Halimi for \$15,000. Ms Hidari was in contact with police prior to the marriage. Nevertheless, despite police efforts, she went through with the marriage and participated in a private religious ceremony in Shepparton. She and her husband, an uber driver and abattoir worker, then moved to Western Australia where two months later, he murdered her.

Her husband has gone to jail for 19 years.

Ms Hidari's mother, Sakina Muhammad Jan and two other family members have been charged with forced marriage offences. Those proceedings have not concluded. Ms Jan has pleaded not guilty to coercing her daughter into the forced marriage.

DIFFERENCE BETWEEN ARRANGE MARRIAGE AND A FORCED MARRIAGE

Arranged marriages are common. However, they involve an element of consent. A forced marriage lacks consent.

RATE OF CHILD MARRIAGE

The *Marriage Act 1961* (Cth) allows children to be married between the ages of 16 and 18 provided that:

1. A judge or magistrate approves the marriage.
2. Both parents or someone with parental responsibility or guardianship, such as the Director-General of the Department of Child Safety, or the Minister for Immigration under the *Immigration Guardianship of Infants Act (1946)* (Cth) gives consent.

Under section 12, the judge in considering the application does so based on a presumption against approval. The applicant must be aged 16 years or older. The only cases to be approved are those where the circumstances of the case are so exceptional and unusual to justify the making of the order.

Forced marriage laws commenced in 2013. Whilst marriages still occur for those under 18, the numbers are certainly going down.

A difficulty is that there is no State by State breakup of the statistics. Another difficulty is that the Australian Bureau of Statistics does not give a breakdown of marriages aged from 16-18, but from 16-19.

Nevertheless, it is clear that the numbers are dropping, as seen in **Table 1**.

Table 1 marriage ages of males and females 2001-2021 aged 16-19

| Gender | 2001 | 2011 | 2017 | 2018 | 2019 | 2020 | 2021 |
|---------|-------|-------|-------|-------|-------|------|------|
| Males | 609 | 471 | 346 | 317 | 282 | 235 | 196 |
| Females | 2,778 | 2,078 | 1,174 | 1,131 | 1,002 | 747 | 599 |

Source: Australian Bureau of Statistics

What is particularly striking is the drop between 2011 and 2017 where, in effect, the marriage rate for girls aged 16-19 halved. This period coincided with the commencement of the criminalization of forced marriage in 2013.

International charity Girls not Brides is critical of Australia for not publishing prevalence rates for child marriage by 18.

I have written to the Attorney-General Mark Dreyfus KC seeking that each of the State and Territory Registrars of Births, Deaths and Marriages collate and publish data as to the number of individuals aged 16-18 who marry. I have also sought that the Australian Bureau of Statistics publish that data for those aged 16-18.

I received a rather form response to the letter, but I hope that isn't the end of the matter.

PREVALENCE OF FORCED MARRIAGE

We should expect that forced marriage is being under-reported. The Australian Federal Police records the number of engagements it has. The data appears fairly stable, as seen in **Table 2**.

Table 2 Forced Marriages in Australia

| Year | Number of Forced Marriages |
|---------|----------------------------|
| 2013-14 | 11 |
| 2014-15 | 33 |
| 2015-16 | 69 |
| 2016-17 | 70 |
| 2017-18 | 90 |
| 2018-19 | 91 |
| 2019-20 | 92 |
| 2020-21 | 79 |
| 2021-22 | 84 |

Source: Australian Federal Police

It is likely that there has been a slight drop in the last couple of reported years due to pandemic restrictions.

HOW DOES THE LAW SEEK TO PREVENT FORCED MARRIAGE?

It is possible to obtain an injunction to protect a child, even on the application of the child, under section 68B of the *Family Law Act 1975* (Cth). That has occurred before. The Federal Circuit and Family Court of Australia can make an injunction that prevents the child travelling overseas or the issue of a passport or other related steps.

Forced marriage is criminalised under the *Commonwealth Criminal Code* and has been so since 2013. Under section 270.7B a person commits the offence of causing a person to enter into a forced marriage if the person causes another person to enter into a forced marriage as the victim of the marriage. The penalty is ordinarily 7 years with penalty for an aggravated offence of 9 years.

The same penalty applies for a party to a forced marriage who is not a victim of the forced marriage. A person who is not a victim of the forced marriage cannot be subjected to a prosecution without the consent of the Attorney-General.

Forced marriage is defined in section 270.7A as:

- “(1) *A marriage is a forced marriage if:*
- (a) *either party to the marriage (the victim) entered into the marriage without freely and fully consenting:*
 - (i) *because of the use of coercion, threat or deception; or*
 - (ii) *because the victim was incapable of understanding the nature and effect of the marriage ceremony; or*
 - (b) *when the marriage was entered into, either party to the marriage (the victim) was under 16.*
- (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 is not freely or fully consented to the marriage (for example, because of natural, induced or age-related incapacity);*
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(ii) *a party to the marriage is married (within the meaning of this subsection) to more than one person...*

(3) *Subparagraph (1)(a)(i) applies whether the coercion, threat or deception is used against the victim or another person.”*

Under section 270.8, slavery-like offences – aggravated offences, a slavery-like offence is committed by an offender against a 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.

It is noted that in a case of a slavery-like offence against section 270.7B involving a marriage that is a forced marriage because the victim was under 16 when the marriage was entered into (see paragraphs 270.7A(1)(b)), the offence is also an aggravated offence because of paragraph (a) of this subsection.

Under section 271.4 of the *Commonwealth Criminal Code* an offence punishable of up to 25 years imprisonment can be committed when there is trafficking in a child: a person (the first person) commits an offence of trafficking in children if:

- (a) *“The first person organises or facilitates the exit or proposed exit from Australia of another person; and*
- (b) *The other person is under the age of 18; and*
- (c) *In organising or facilitating that exit or proposed exit, the first person:*
 - (i) *Intends that the other person will be used to provide sexual services or be otherwise exploited, either by the first person or another, after that exit; or*
 - (ii) *Is reckless as to whether the other person will be used to provide sexual services or will be otherwise exploited, either by the first person or another, after that exit.*

Penalty: imprisonment for 25 years.”

There have been three recent reported cases dealing with forced marriage in the Family Court.

In *Eldaleh* [2016] FamCA 1103, the husband sought a declaration of validity of the marriage between himself and Mrs Eldaleh. The parties had married earlier in 2016 when the husband was aged 30 and the wife was aged 16. Following their marriage in the Middle East, she became pregnant. The wife was not joined as a respondent to the proceedings and there were no documents presenting her perspective before the court.

The court took the view that because the wife was under 18 at the time they married and approval was not obtained in Australia, then the court did not have power to make the orders. The court commented that an application made for a marriage between an underage person and a person over the age of 18 may be made by the underage person for the court to make an order that they marry within the next three months. The husband's application was dismissed.

In *Yves and Imani* [2022] FedCFamC1F 8 the husband and wife married overseas when the wife was 17. There was a consequential issue as to the validity of the marriage. The husband applied for divorce. The husband was six years older than the wife. Both parties were married in the other country. The husband migrated to Australia in 1994 and was granted Australian citizenship in 1997. In 2000, the parties married in the other country. The judge noted that in effect it was a form of proxy marriage in the sense that the husband did not attend the ceremony but the documentation before the court indicates there was nonetheless a valid marriage. Significantly, the wife was only 17. The court noted that the marriageable age in Australia is, and was at the relevant time, 18.

After the wife migrated to Australia based on a prospective marriage visa, the parties conducted a second marriage ceremony in Sydney in 2003.

Later in 2003 the parties separated. The wife returned to country B while the husband continued to reside in Australia. In 2004, the husband obtained a divorce order in the other country in relation to the marriage in that country.

The husband intended to marry again. It seems that is what precipitated the application before the court.

The court considered that the marriage in the other country, because the wife was under 18 was not a valid marriage under Australian law and was therefore void. Because of the second ceremony of marriage in Australia, the judge then made a divorce order.

Fatise & Hasila [2020] FamCA 209 involved an overseas marriage. The country in which they married was not named, but the husband failed to turn up at court, and a Farsi interpreter had been organised for the wife. Presumably, the marriage was in any of Afghanistan, Iran or Tajikistan. The wife sought a decree of nullity, which was granted.

The wife's evidence was that the parties married in the other country in 2005 when she was aged 12. On returning home from school one day, she was told by her family that she would marry the respondent that evening. She was scared and did not want to marry the respondent. She was not asked if she wanted to marry and did not think that she could say no. The wife moved into the husband's home in 2006, the day of the marriage ceremony between them following her end of year school exams. She did not understand that she would have to sleep next to him or to have sex with him.

Her case relied heavily on duress. In the words of Justice Altobelli, the concept of duress takes on different qualities in different legal contexts. Here the understanding of duress emerged from the provisions of the *Marriage Act* where it is directed to the reality of the consent. The implication to be drawn is that the statutory concept of duress is not beholden to either a criminal or equitable understanding, but rather to the notion of its capacity to undermine the reality of a consent to a marriage.

The wife testified that she was without choice in the marriage. She was scared. She lacked understanding. The marriage was not at her initiative but was the product of an arrangement made by her family. The various ceremonies were performed without any notice to her. She

did not want to be married but felt that she was not able to say so. The assertions were given added credibility by the fact that she was only 12 at the time of the marriage. Those facts spoke to the marriage as being a consequence of the pressure or duress placed upon her and added to some lack of understanding of what was happening to her, not being a consequence of her real consent. Accordingly, the court came to the conclusion that the marriage was void.

VICTORIA

Following a Royal Commission into family violence in Victoria, forced marriage is now part of the definition of *family violence* for the purposes of obtaining the equivalent of a protection order in Victoria. Victoria is the only State that has legislated to make forced marriage an element of family violence.

It has been a feature of Queensland domestic violence legislation since inception in 1990 with the commencement of what became the *Domestic and Family Violence Protection Act 1989* that children cannot obtain protection orders against their parents. That remains a feature of the *Domestic and Family Violence Protection Act 2012* (Qld). The Departmental thinking on point is that it is the role of the State, through child protection officers, which should be protecting children from their parents.

SIGNS THAT SOMEONE MAY BE IN, OR AT RISK OF FORCED MARRIAGE

The Commonwealth Attorney-General's Department has said that a combination of the following signs may indicate that a person is in a forced marriage, or at risk of being made to enter into a forced marriage:

- A sudden announcement that the person is engaged.
 - The person's older brothers or sisters stopped going to school or were married early.
 - The person's family have a lot of control over the person's life which doesn't seem normal or necessary (for example, the person is never allowed out or always has to have somebody else from the family with them).
 - The person displayed signs of depression, self-harming, social isolation and substance abuse.
 - The person seems scared or nervous about an upcoming family holiday overseas.
 - The person spends a long time away from school, university or work.
 - The person often does not come to, or suddenly withdraws from school, university or work.
 - The person does not have control over their income.
 - The person is unable to make significant decisions about their future without consultation or agreement from their parents or others.
 - There is evidence of family disputes or conflict, domestic violence, abuse or running away from home.
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It can be difficult to identify the signs of forced marriage. You should seek help and advice as soon as possible. It is important that you always act in the best interests of the person in, or at risk of a forced marriage, including by being mindful of their safety, as well as your own.

COMMUNITY INFORMATION

There is a National call-in line run by mybluesky.org.au which is able to be contacted by phone, SMS or email and has related lines attached to it – 1800 respect, Lifeline and Kids Helpline.

Other organisations have resources as well, the Department of Home Affairs, Australian Red Cross and the New South Wales Government.

The Department of Home Affairs notes that forced marriage can occur anywhere, within Australia or outside, is not limited by ethnicity or by gender. Nevertheless, it appears that as of 2019, 51% of forced marriage reports to the Australian Federal Police were victims under 18, 70% related to offshore marriage and the most vulnerable victims of forced marriage were girls and women aged 15-19.

The Australian Institute of Criminology undertook a research report of 2019: *“When saying no is not an option: forced marriage in Australia and New Zealand”*.

AIC REPORT:

CIRCUMSTANCES OF THE MARRIAGE

Victim survivors are generally engaged or married to a member of their extended family, commonly a cousin. Those that were not paired with a family member were often matched with a suitor that shared their religion, nationality and/or country of birth, though some suitors were of a different background. According to victim survivors, some of the partners had migrated to Australia or New Zealand and were already residents or citizens, while others were located abroad and migrated once married. When asked about their partner’s consent to marry, victims/survivors provided mixed responses. Some victims/survivors believed their husbands were genuinely willing and pleased to be married, while others believed their husband may also have been forced into the union.

Marriages took place in the victim/survivor’s home country, the husband’s home country or the country of migration, to both parties, including New Zealand but not Australia. The majority of engagements and weddings took place in private settings, such as a house. Family members played different roles, including instigating, supporting and/or arranging the marriage, organising and/or conducting the ceremony, and witnessing the marriage. The prospective husband’s family also played a strong role in instigating the union. Marriages were conducted by family members, community members and religious leaders in cultural and religious ceremonies, as well as by civil marriage celebrants. Few marriages were registered according to Australian or New Zealand marriage laws.

Victims/survivors were coerced, threatened or deceived into entering the marriage. Despite making their refusals of yes, some victims/survivors were explicitly coerced into the marriage, including through threats of violence, while others experienced more subtle coercion as a result of psychological and emotional pressure that made the victim/survivor feel guilty, obliged or dishonoured. In these cases, consent was ostensibly given because the victim/survivor felt they could not refuse. Victims/survivors reported feeling like they were not able to defy their families’ wishes, and feeling pressured to go through with the marriage because of the expectations placed on them by parents, relatives and religious leaders, among others.

EXPERIENCES WHILE MARRIED

Victim/survivor case files and interviews revealed a wide range of abuse, violent, controlling and exploitative experiences while married. These included:

- Physical and verbal abuse.
- Sexual abuse.
- Financial abuse.
- Restrictions of movement and social isolation.
- Domestic servitude.
- Denial of education and employment.

These abuses were most commonly perpetrated by the husband and members of his family, mainly parents-in-law.

HELP-SEEKING BEHAVIOURS AND METHODS OF EXITING

All victims/survivors interviewed for the research successfully left their situations, either before or after the marriage took place. However, victims/survivors were unanimous in their views that leaving their situation was difficult. The method by which they exited varied depending on their motivation, their ability to recognise their situation as wrong, their knowledge and access to people in services that can provide assistance, the ability of potential help-givers to recognise, acknowledge and respond to their vulnerability, and other factors that impeded their ability to seek help.

The majority actively sought assistance from formal sources such as law enforcement agencies, medical professionals, schools and social services and, to a lesser extent, from informal sources such as family, friends and colleagues. Few victims/survivors were assisted to leave as a result of formal or informal interventions initiated by persons who suspected that the victim/survivor required assistance. In only one case did a victim/survivor exit without assistance.

Most victims/survivors had positive interactions and outcomes when they sought formal assistance from authorities and service providers. However, others detailed the inability or unwillingness of formal supports to render assistance when requested. Victim survivors were less likely to disclose their situation to informal sources. This may be due to the close connection these sources had with the individual's victimisation, either as a perpetrator or support of the marriage, or because the sources were of the same cultural background.

BARRIERS TO EXITING

Victim/survivors offered a range of reasons why they delayed seeking assistance or did not seek assistance at all, including:

- Feeling pressure by parents, relatives and friends to stay in the relationship.
 - Believing that their experience of abuse, isolation, surveillance and domestic service constituted a normal marital relationship.
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- Being threatened with honour-based violence and death.
- Shame, stigma and ostracism.
- Lack of permanent residency and fear of deportation.
- Financial and other dependencies on husbands.
- Not knowing how or where to seek assistance.

POST-MARRIAGE SUPPORT AND LONGER TERM CONSEQUENCES

Victim survivors received a range of services and assistance, including:

- Crisis, short-term and longer term accommodation.
- Basic necessities like food and clothing.
- Medical services.
- Counselling.
- Visa and immigration support.
- Support in obtaining annulment or divorce.
- Language training.
- Education, including fulltime schooling and short courses.
- Support to develop independent living skills.
- Financial support.

Victim survivors also spoke about the benefits of informal support provided by parties who were not involved in the forced marriage, including family members, friends and school staff.

The report noted about how the current interventions for forced marriage in Australia comprise a mix of awareness-raising and education strategies, combined with criminal, civil and regulatory controls. Some of these were developed specifically to prevent forced marriage, while others are measures that address family and domestic violence or child protection matters that can also be applied to protect persons who are at risk of an attempted or actual forced marriage. The strategies mentioned are consistent with general anti-trafficking (and related anti-exploitation) approaches undertaken internationally. They depend on education and awareness-raising as the primary methods of prevention, and are reinforced by formal mechanisms of response.

At present, awareness-raising and educational activities on forced marriage are targeted at three groups: at risk individuals, at risk communities (including potential perpetrators), and guardians responsible for identifying and protecting persons affected by forced marriage. Awareness-raising activities involve education programs proposed for particular settings (e.g. schools) or comprising group forums in communities where forced marriage is believed to be practiced. Educational activities span recent and proposed education and training initiatives

for school personnel, marriage celebrants and service providers, as well as for personnel in law enforcement and other relevant Government Departments – for example, the Department of Home Affairs, the Department of Foreign Affairs and Trade. The initiatives provided instruction on indicia of forced marriage and recommended referral pathways.

CHALLENGES TO INTERVENTION

The intractable nature of forced marriage has required an intervention approach that can not only serve the distinct circumstance of each case, but also provide the broad spectrum of responses expected by stakeholders. It also creates other challenges. Of particular importance are the challenges of intervening safely, coordinating the different types of intervention and support, and changing the mindsets of families and communities where forced marriage is practiced.

Interaction within the family space inevitably creates resistance. As a consequence, when intervening cases of forced marriage there are safety issues for the person affected, for support of family members and for those stepping into this environment to provide assistance. The issue of children's safety is especially pertinent, although not exclusive to such situations. Threats to personal safety, the availability of appropriate services – in particular short and long-term accommodation options and support for financial independence – and victim concerns about the potential impact on their family or affect how the response should be carried out. When people are taken offshore, the scenario is further complicated. Provisions to safety intervene can be hampered in locations where consular assistance is unavailable or where formal relationships with service providers are not easy to establish or are hindered by local custom.

The criminalisation of forced marriage has created a larger cluster of agency involvement. The early period of establishing intervention and framework was characterised by a lack of specialisation at the side, the small group of agencies who had some previous exposure to forced marriage cases, as well as by the contradictory nature or absence of best practice standards and guidelines. Since then, coordination of effort has been improved through formal partnership mechanisms, as well as through the establishment of a forum such as Forced Marriage Networks (in Victoria and New South Wales) that bring together central and peripheral stakeholders to receive and share information. Nonetheless, when establishing a multi-actor response for an issue like forced marriage, some disconnection is inevitable and some questions remain unclear to the extent to which key agencies are working together effectively.

Finally, there is a challenge of changing the mindsets of families and communities where forced marriage is practiced. While education about forced marriage is proposed for vulnerable communities, it was not possible in the study to establish the context and extent of those educational programs. Nonetheless, it is clear that prevention will be difficult if education cannot counter the rationales used by families and communities to promote the practice of forced marriage. To achieve this, education activities cannot simply advise community members that forced marriage is now a criminal offence in Australia. They must also be able to demonstrate that consent in marriage does not undermine, but, rather, promotes family and/or community values.

It was agreed among victim survivors and stakeholders that legislation was an important safeguard, but the provision of specialised support and alternative means of protection, such as civil penalties, were also essential. Without the latter, some of those affected by forced marriage may not continue to seek assistance.

A flexible approach is required. Parallels with family violence and child protection matters may provide a template for the further development of responses. As preventative measures for forced marriage or a fine, they will need to develop peoples' abilities to better identify situations of risk, and also generate confidence that options for support are available, safe and responsive.

According to stakeholders, the significance of criminalising forced marriage was self-evident. It conveyed the strongest message that the practice was not condoned in Australia, and that sanctions would be applied for persons found responsible for the practice. However, stakeholders also expressed uncertainty about the overall protective effect of criminalisation. These uncertainties largely concern the likelihood of a victim survivor reporting their situation to the police and, in particular, whether they would contribute as a witness to an investigation or prosecution, if at risk their personal safety, ostracism from family and community and/or a potential prosecution of their parents.

It appears that there has only been one prosecution in Victoria before the prosecution of Rukia Hidari's family members. It seems that there has not yet been one conviction for forced marriage in Australia.

COUNTRIES MOST AT RISK

Whilst I accept what the Department of Home Affairs says, in that forced marriage can happen to both males and females, can occur in Australia as well as overseas, what is telling, aside from brochures in English, is where service providers perceive that there is greater risk. I looked at the websites to see where service providers undertook resources. All the relevant brochures were in English. My Blue Sky had the most extensive list. Shorter lists were provided by the Federal Attorney-General's Department and by the Australian Muslim Women's Centre for Human Rights. I set out a list below of languages, aside from English, for resources by My Blue Sky other than brochures in English. I used the code for the Federal Attorney-General's Department as "A-G", and the Australian Muslim Women's Centre for Human Rights as "AMW".

My Blue Sky's Forced Marriage Brochures by Language other than English

| Language | A-G | AMW |
|---------------------------------------|---------------------------------------|---------------------------------------|
| Amharic (Ethiopia) | | |
| Arabic | Arabic | Arabic |
| Bangla/Bengali (India/Bangladesh) | | |
| Dari (Afghanistan) | Dari (Afghanistan) | Dari (Afghanistan) |
| Farsi (Iran, Afghanistan, Tajikistan) | Farsi (Iran, Afghanistan, Tajikistan) | Farsi (Iran, Afghanistan, Tajikistan) |
| Filipino (Tagalog) | | |
| French | | |
| Hindi | | |
| Indonesian | | |
| Japanese | | |
| Korea | | |
| Malay | | |
| Pashto (Afghanistan) | | |
| Punjabi | | |

| Language | A-G | AMW |
|-------------------------|-----------------|-------------------------|
| Russian | | |
| Somali | Somali | Somali |
| Spanish | | |
| Swahili | | |
| Tamil (India/Sri Lanka) | | Tamil (India/Sri Lanka) |
| Thai | | |
| Turkish | | |
| Ukrainian | | |
| Urdu (Pakistan) | Urdu (Pakistan) | Urdu (Pakistan) |
| Vietnamese | | |

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31 October 2023

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