

Office of the
Anti-slavery
Commissioner

Submission to the Review of NSW legal protections for victim-survivors of forced marriage

Dr James Cockayne

NSW Anti-slavery Commissioner

December 2023



Acknowledgement of Country

As New South Wales Anti-slavery Commissioner, I acknowledge that Aboriginal and Torres Strait Islander peoples are the first peoples and traditional custodians of Australia and the oldest continuing culture in human history.

I acknowledge that First Nations communities in New South Wales have survived practices that today we call modern slavery. The legacies of that treatment continue to affect Aboriginal and Torres Strait Islander people today, and through them affect the New South Wales community and economy.

My Office and I pay our respects to elders past and present and commit to respecting the lands we walk on, and the communities we walk with.

We celebrate the deep and enduring connection of Aboriginal and Torres Strait Islander peoples to country and acknowledge their continuing custodianship of the land, seas and sky. We acknowledge their ongoing stewardship and the important contribution they make to our communities and economies.

We reflect on the continuing impact of government policies and practices and recognise our responsibility to work together with and for Aboriginal and Torres Strait Islander peoples, families and communities, towards improved economic, social and cultural outcomes, self-determination and for real freedom.

Submission to the Review of NSW legal protections for victim-survivors of forced marriage: Dr James Cockayne

Published by Office of the NSW Anti-slavery Commissioner

<https://dcj.nsw.gov.au/justice/anti-slavery-commissioner.html>

First published: December 2023

Not legal advice

Nothing in this submission constitutes legal advice.

Copyright and disclaimer

© NSW Anti-slavery Commissioner. Information contained in this publication is based on knowledge and understanding at the time of writing, December 2023, and is subject to change. For more information, please visit <https://dcj.nsw.gov.au/justice/anti-slavery-commissioner.html>.

Contents

Executive Summary.....	iv
Recommendations.....	vii
1: Make the best interests of the child a primary consideration	vii
2: Independent victim’s lawyer (IVL)	vii
3: Applying for interim and final AVOs	vii
4: Mandatory notification to the NSW Anti-slavery Commissioner.....	vii
5: Develop the mandated system of support.....	vii
6: Restrict the movement of people at risk	vii
7: Mandatory training and inter-agency guidance	vii
8: Hearing directly from people with lived experience.....	vii
About this submission	1
About forced marriage.....	1
Human rights considerations	2
Ensuring legal protections connect with specialist modern slavery, child protection and domestic and family violence responses.....	3
How I prepared this submission.....	4
Should AVOs sometimes be mandatory?	5
Who should be able to apply for AVOs?	7
Are the right grounds for making an AVO covered?.....	8
Do AVOs prohibit and restrict the right things?.....	9
Can we improve the practice and procedure for AVOs?	11
Forced Marriage offences.....	13

Executive Summary

In the last year, there were 90 cases of forced marriage reported to the Australian Federal Police. Around 700 cases of forced marriage have been reported in Australia since it was criminalised in federal law a decade ago. Forced marriage offences under the *Commonwealth Criminal Code* are consistently the most reported modern slavery offences in Australia, often around a quarter to a third of all reported modern slavery offences.

Ensuring that we have the right tools to prevent forced marriage is critical to effective prevention and remedy of modern slavery. Forced marriage typically involves young people and children, disproportionately girls. The instigators of forced marriage are often parents, other family members, and people with significant standing in the community. Those at risk may be unlikely to recognise what is happening to them as an attempted crime. They may be unlikely, absent external support, to report their experience to law enforcement actors and courts, not least because they may fear retaliation, shame, social stigma and permanent damage to their family life.

Absent access to administrative support arrangements and close coordination between police, social service providers and family violence and/or child protection services, it may be very difficult for those at risk of forced marriage to apply for an Apprehended Violence Order (AVO) and establish a safe exit pathway from the household, family or community unit in which they are being subjected to attempted forced marriage. Indeed, given the impact they are likely to have on family and community life, AVOs will typically be an instrument of last resort both for those at risk of forced marriage and the service providers seeking to protect them from forced marriage.

Prevention and disruption of forced marriage touch directly on numerous human rights enjoyed by the people of New South Wales. Particularly notable is that where forced marriage involves a child, Australia's international commitments require that the best interests of the child be a primary consideration for decision-makers. Identifying those interests may require promoting opportunities for the child's right to be heard in a safe, culturally sensitive and trauma informed way. And it may require specialist expertise. More routine and prescribed access to specialist expertise by decision makers during AVO processes could help ensure that the legal protections afforded in NSW translate to effective protection and care for those at risk and victim-survivors of forced marriage.

Notably, systematic evidence suggests that where police have discretion in AVO applications, they may be more likely to exercise that discretion in cases involving physical violence, and less likely where coercion is achieved through psychological and financial means. Non-physical coercion is a common feature of forced marriage cases.

Forced marriage, like other forms of modern slavery, strips individuals of their autonomy and decision-making power. Measures to address forced marriage should therefore aim to restore victim-survivors' agency. This may be difficult to achieve where interventions do not provide adequately for the victim's right to be heard, given that those at risk of forced marriage are likely to be under pressure not to speak up or to voice concerns or dissent about their treatment.

This suggests a need to ensure that AVO arrangements – whether at the provisional, interim or final AVO stage – provide for the involvement of specialist services, as a source of expertise to guide decision-making. These services are likely to be particularly useful in identifying the potential impacts on victim-survivors of AVO arrangements, and ensuring that any use of AVO is in the service of a trauma-informed approach – and not at odds with it.

Legislated mechanisms to ensure decision-makers make reference to such expertise may be necessary. One way to achieve this could be to provide for the involvement of an Independent Victim's Lawyer, modelled on the Independent Children's Lawyer (ICL) that can be appointed in proceedings under section 68L of the *Family Law Act 1975* (Cth). The Independent Victim's Lawyer would be an *amicus curiae* ('friend of the court') appointed by a NSW court hearing an AVO application, on the application of an unrepresented victim, or on the application of the Anti-slavery Commissioner under sections 9 and 17 of the *Modern Slavery Act 2018* (NSW), or at the discretion of the court.

This form of legal protection may be possible to achieve even without legislation, given the inherent jurisdiction of the court: see Kirby P in *Breen v Williams* (1994) 35 NSW LR 522, 532-533; and see NSW Judicial Commission, *Civil Trials Bench Book – Preliminary*, CTBB54, DEC 23, [1-0860]. But placing the role on a statutory footing would likely lead to more efficient and effective outcomes and ensure more routine recourse to this option.

The role of the Independent Victim’s Lawyer would be to assist the court in identifying the best interests of the person that the AVO would protect (i.e. the person at risk of forced marriage). They would achieve this through use of specialist forced marriage domain knowledge in engagement with the person, family members, relevant community members and witnesses, and through engagement with statutory support services with specialist family violence, child protection or other domain knowledge.

Another potentially beneficial reform to NSW law, practice and procedure relating to AVOs could be to broaden the right to apply for an interim or final AVO, in the case of forced marriage. This right of application is currently constrained to persons needing protection, their guardians, the NSW Department of Communities and Justice (DCJ), and police officers (in varying circumstances). In England and Wales applications for a Forced Marriage Protection Order can be made by any person with leave of the court including organisations seeking to help victims. Similarly, NSW laws could be amended to permit any person to apply for an interim or final AVO. The risks of abuse or weaponisation of the AVO process arising from broadening the right in this way seem likely to be able to be managed by a court, especially with support from an Independent Victim’s Lawyer, and are likely to be significantly outweighed by the systemic benefits arising from making it easier for third parties to apply for AVOs to protect those at risk.

There is also a need to create a tighter connection between an application for an AVO and the triggering of relevant support mechanisms. Section 19(3) of the *Modern Slavery Act 2018* (NSW) contains an obligation for DCJ to take action “to develop a system of support (including provision of accommodation) for victims of forced under-age marriage, irrespective of whether any offence against the victim has been prosecuted”. This could, as a first step, involve the automatic triggering, by an application for an AVO in the context of forced marriage, of the involvement of the Joint Child Protection Response Program, which should have its mandate enlarged to encompass forced marriage if it does not already. In all cases (i.e. for both children and adults), an application for an AVO in the context of forced marriage should be mandatorily reported to the NSW Anti-slavery Commissioner, who should provide support and assistance under section 9 of the *Modern Slavery Act 2018* (NSW). This should include consideration of assisting the person to seek a referral to the Australian Government funded Support for Trafficked People Program, notably the new Forced Marriage Specialist Support Program.

Some victims of forced marriage are moved outside New South Wales, even overseas, in order to participate in the forced marriage ceremony. An intervention that prevents such movement may help prevent and disrupt attempts at forced marriage. Yet typically AVOs restrict the behaviours and actions of perpetrators of harm, not those at risk of harm. There may be options available to amend NSW laws to allow courts or other relevant officials to take suitable measures to disrupt the intended movement of a person at risk of forced marriage. This could potentially involve empowering a NSW court to prevent a person’s departure from NSW (though the extent of the State’s constitutional power in this regard is uncertain); or work with the Australian Government to ensure that NSW competent authorities can apply for the cancellation of a person’s passport by the Minister of Foreign Affairs.

There is a need for attention to training of, and guidance for, frontline workers that are likely to come into contact with people at risk of forced marriage. While there have been training efforts made by NSW Police Force, NSW Health, DCJ and the Department of Education, it is not clear whether or when such training is formally mandated (i.e. obligatory). There seems to be limited integration of forced marriage into the broader child protection system in NSW, including the Child Safe scheme.

Indeed, the provision of mandatory training by the NSW Government to frontline workers is in fact *already* contemplated by law (see section 19(3)(a) of the *Modern Slavery Act 2018* (NSW)) – but this

legal protection appears not yet to have been effectively implemented. I would welcome the opportunity to work with NSW Government entities to develop and roll out such training, and related inter-agency guidance. This could draw on an important recent UK guidance precedent, and on the notable forced marriage expertise of civil society organisations such as Anti-Slavery Australia, Taldumande Youth Services and Australian Muslim Women's Centre for Human Rights.

It should also draw on the expertise of people with lived experience. People with lived experience should play a central role in the development of legal reforms, and changes to practices and procedures, including in the process of finalising this Review. This will strengthen outcomes, help empower victim-survivors and help ensure the fulfilment of their human right to be heard.

I stand ready to assist the Department of Communities and Justice in these efforts.

Recommendations

1: Make the best interests of the child a primary consideration

In line with the UN Convention on the Rights of the Child, amend NSW laws to ensure that where a person to be protected by an AVO relating to forced marriage is a child, the best interests of the child are a primary consideration for the person making the AVO determination.

2: Independent victim's lawyer (IVL)

Amend NSW laws to allow a NSW court to appoint an independent victim's lawyer in forced marriage related proceedings (including AVO applications) to serve as an *amicus curiae* (friend of the court). The IVL could be appointed by a NSW court on its own initiative, on the application of a person at risk of forced marriage, or on the application of the NSW Anti-slavery Commissioner acting under sections 9 and 17 of the *Modern Slavery Act 2018* (NSW). Mandate the involvement of an IVL in the obligatory review of a provisional AVO involving forced marriage.

3: Applying for interim and final AVOs

Amend NSW laws to permit any person to apply for an interim or final AVO in a forced marriage case (but not a provisional AVO).

4: Mandatory notification to the NSW Anti-slavery Commissioner

Amend NSW laws to ensure that where any person applies for or makes an AVO in a forced marriage context, there is an automatic notification to the NSW Anti-slavery Commissioner. This should provide relevant contact details of the applicant and, where possible, the person to be protected by the AVO, to allow the NSW Anti-slavery Commissioner to exercise their statutory function of identifying and providing assistance and support for victims of modern slavery. This should include consideration of assisting the person to seek a referral to the Australian Government funded Support for Trafficked People Program, notably the new Forced Marriage Specialist Support Program, or other relevant modern slavery, sexual, domestic and family violence or child abuse specialist support services.

5: Develop the mandated system of support

Collaborate with the NSW Anti-slavery Commissioner, to take the action to develop the system of support to victims, including provision of accommodation, that is required by section 19(3) of the *Modern Slavery Act 2018* (2023). This could include involving the Joint Child Protection Response Program.

6: Restrict the movement of people at risk

Consider amending NSW laws and practices, and working with the Australian government to amend laws and practices, to ensure that competent NSW child protection, law enforcement and judicial authorities have the ability to take necessary and proportionate measures to restrict the movement of people to protect them from forced marriage.

7: Mandatory training and inter-agency guidance

Work with the NSW Anti-slavery Commissioner, sector experts and people with lived experience to develop the "mandatory training ... to front-line government agencies" that NSW Government is expected to provide, and on which the Anti-slavery Commissioner must report annually, under section 19(3)(a) of the *Modern Slavery Act 2018* (NSW). Drawing on the recent UK precedent, develop accompanying inter-agency guidance for dealing with forced marriage in New South Wales.

8: Hearing directly from people with lived experience

Give people with lived experience safe-guarded, trauma-informed and culturally sensitive opportunities to be heard in legal, policy and practice reform processes, including this Review and any subsequent reforms.

About this submission

1. In the last year, there were 90 cases of forced marriage reported to the Australian Federal Police.¹ Around 700 cases of forced marriage have been reported in Australia since it was criminalised in federal law a decade ago.² Forced marriage offences under the *Commonwealth Criminal Code* are consistently the most reported modern slavery offences in Australia, often around a quarter to a third of all reported modern slavery offences. Ensuring that we have the right tools to prevent forced marriage is therefore critical to effective prevention and remedy of modern slavery in this country, including New South Wales.
2. The NSW Department of Community and Justice's (DCJ) *Review of NSW legal protections for victim-survivors of forced marriage* ('Review') represents an important opportunity to strengthen these arrangements. I welcome the opportunity to contribute to the Review in my function as NSW Anti-slavery Commissioner, specifically under sections 9(1)(a), (c), (f) and 9(2)(a) of the *Modern Slavery Act 2018* (NSW) ('the Act').

About forced marriage

3. Forced marriage typically involves young people. Often the victims are children, disproportionately girls. Forced marriage is a product of gender-unequal norms and practices,³ in some cases connected to harmful customary practices such as the paying of bride price and bride kidnapping.⁴ People are at greater risk of forced marriage if they suffer socioeconomic or educational disadvantage, are separated from society by language and social barriers, or experience racism or discrimination.⁵
4. Tragically, those instigating forced marriage are often parents, other family members, and people with significant standing or social capital at the community level. Seventy-three per cent of people in a forced marriage globally are forced to marry by their parents.⁶ In some cases, however community figures may attempt to coerce an individual into marriage for reasons connected to religious beliefs, concerns about moral safety and reputation, the retention of culture, or settling financial debts.⁷ Forced marriage can also be linked to human trafficking, involving other actors such as marriage brokers and traffickers.⁸
5. There is frequently an offshore and cross-border movement aspect to the process, with children and young people moved overseas to marry there, not least as this can open up pathways for new spouses and in-laws to immigrate to Australia.⁹ This raises difficult questions about whether children or young people should, in some cases, be prevented from overseas travel – for example through confiscation or suspension of passports – in order to prevent forced marriage.
6. Forced marriage is however often hard to detect and identify, especially before a marriage ceremony takes place. The coercion, control, close monitoring, and threats that cause a non-consenting party to enter into a marriage can involve pressure over an extended period.¹⁰

¹ Australian Federal Police, *Human Trafficking Reports continue to increase in Australia* (December 2023).

² See *Commonwealth Criminal Code* section 270.7A. See also *Crimes Act 1900* (NSW) section 93AC, which criminalizes child forced marriage.

³ United Nations Human Rights Council, *Strengthening efforts to prevent and eliminate child, early and forced marriage: challenges, achievements, best practices and implementation gaps*, Resolution A/HRC/RES/24/23, (October 2013).

⁴ United Nations Office on Drugs and Crime (UNODC), *Interlinkages between Trafficking in Persons and Marriage* (Vienna, 2020).

⁵ Askola, H, '*Responding to vulnerability? Forced Marriage and the Law*', University of NSW Law Journal (2018).

⁶ International Labour Organization, Walk Free & International Organization for Migration, *Global Estimates of Modern Slavery* (September 2022), p. 69.

⁷ Pratts, G, El Matrah, J, *Marrying young: An exploratory study of young Muslim's women's decision-making around early marriage*, Australian Muslim Women's Centre for Human Rights (2017).

⁸ United Nations Office on Drugs and Crime, *Interlinkages between Trafficking in Persons and Marriage* (2020), p. viii.

⁹ Compare United Nations Office on Drugs and Crime (UNODC), *Interlinkages between Trafficking in Persons and Marriage* (Vienna, 2020).

¹⁰ Ibid.

Victim-survivors may endure a wide range of physical, sexual, emotional, financial and psychological violence leading up to and throughout marriage from multiple family and community members. Forced marriage is thus a process of abuse with a close relationship to coercive control, rather than an event happening at one point in time or a single incident.¹¹

7. Nonetheless, those at risk may be unlikely to perceive or recognise what is happening to them as an attempted crime. They may be unlikely, absent external support, to report their experience to law enforcement actors and courts, not least because they may fear retaliation, shame, social stigma and permanent damage to their family life.¹²
8. Prevention of forced marriage necessarily involves disruption of family and community. Those at risk, or victims, may be reluctant to see their family and community members subjected to legal action, whether civil or criminal, and may fear not only what will happen to them, but what will happen to their parents or other relatives or community members.¹³ AVOs will almost always be an instrument of last resort.
9. In some cases, frontline actors other than law enforcement actors, that have regular engagement with children and young people, including as teachers, healthcare workers, youth workers, child protection specialists, religious groups and community workers, may be in important positions to identify those at risk. They are also often in a position to undertake initial interventions in safe and trusted spaces away from those seeking to force a marriage, such as healthcare locations, schools, and community group settings.¹⁴

Human rights considerations

10. Prevention and disruption of forced marriage touch directly on numerous human rights enjoyed by the people of New South Wales.
11. Article 10(1) of the International Covenant on Economic and Social Rights (ICESCR) specifically requires that “Marriage must be entered into with the free consent of the intending spouses.” (See also Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Article 16.) Forced marriage and its prevention and disruption also engage other human rights, including the right to freedom from slavery (International Covenant on Civil and Political Rights (ICCPR) Article 8), the right to equality between men and women (ICCPR Article 3; ICESCR Article 3, CEDAW Article 2), the right to a fair trial (ICCPR Article 14), the right to marry and to a family life (ICCPR Articles 17 and 23), the freedom of religion (ICCPR Article 18) and the rights of children (ICCPR Article 24; ICESCR Article 10(3)).
12. Where forced marriage involves a child, Australia’s international commitments require that the best interests of the child be a primary consideration. This is laid out in Article 3 of the UN Convention on the Rights of the Child (‘CRC’). It is worth setting this out in full:

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or

¹¹ Chantler, K, McCarry, M, *Forced Marriage, Coercive Control and Conducive Contexts: The Experiences of Women in Scotland* (2020), p.93.

¹² Simmons, F, Wong, G, *Learning from lived experience: Australia’s legal response to forced marriage* (2021), UNSW Law Journal, vol 44(4), p.36.

¹³ Lyneham S & Bricknell S, *When saying no is not an option: Forced marriage in Australia and New Zealand* (2018), p.82., Research Report no. 11. Canberra: Australian Institute of Criminology.

¹⁴ Taylor, A., Ibrahim, N., Lovatt, H., Wakefield, S., Cheyne, N., & Finn, K., *Domestic and family violence protection orders in Australia: An investigation of information-sharing and enforcement with a focus on interstate orders: Final report* (ANROWS Horizons 07/2017), Sydney, p. 54.

her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

13. Article 3 of the CRC makes clear both that “the best interests of the child shall be a primary consideration” in governmental and other welfare actions concerning children, and that States Parties “shall take all appropriate legislative **and** administrative measures” (emphasis added).¹⁵ This language points to the importance of understanding how legislated and administrative measures interact to afford protection and care for children.
14. The Discussion Paper¹⁶ produced by DCJ to underpin this Review acknowledges that “responding to incidents of forced marriage is complex and requires not only a legal response but also the co-ordinated delivery of social supports at both Commonwealth and NSW levels”. Nonetheless, the Discussion Paper goes on to state that “this review is limited to a consideration of the protections for victim-survivors under key NSW laws and any need for reform to those laws”. It explicitly rules consideration of support services to be out of scope: “while this review acknowledges the importance of non-legal supports and services in protecting victim-survivors, it is outside its scope to consider any proposals in respect of the operation of those services.”
15. My submission respects the intent of the Review to focus on legal protections available to victim-survivors of NSW law, notably the Apprehended Violence Order (AVO) regime in the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (‘CDPV Act’). It does not seek to provide a detailed analysis of supports available in NSW to those at risk of forced marriage, or to victim-survivors. Nonetheless, I consider that Australia’s human rights commitments require that any appreciation of the effectiveness of legal protections considers how they safeguard people’s civil, political, economic, social and cultural rights *within* the context of related administrative measures.

Ensuring legal protections connect with specialist modern slavery, child protection and domestic and family violence responses

16. Accordingly, this submission seeks to respond to the questions laid out in the Discussion Paper by placing AVOs and other legal protections in NSW in the context of available expertise and specialist responses and supports. This includes statutory modern slavery, child protection and domestic and family violence responses.
17. One key theme running through this submission is the potential to optimise decision-making around AVOs in the forced marriage context by allowing decision-makers greater recourse to specialist thematic and practice expertise. New South Wales has a rich body of specialist expertise relating to modern slavery, child protection, family support, domestic and family violence, and forced marriage, some of it located within the NSW DCJ. In many cases this expertise incorporates advanced knowledge and techniques for ensuring culturally appropriate protection and care. By allowing and encouraging decision-makers in the AVO process to engage this expertise, we will be in a better position to ensure that legal protections afforded in NSW translate to effective protection and care for those at risk and victim-survivors of forced marriage.

¹⁵ While the relevant State Party in this case is the Commonwealth, not New South Wales, “The federal government has a duty under international law to implement the Convention and to ensure that the States and Territories also implement it.” Roth, L, “*Children’s Rights in NSW*” (2005), NSW Parliamentary Library Research Service, Background Paper No 2/05.

¹⁶ NSW Department of Communities and Justice, *Review of the NSW legal protections for victim-survivors of forced marriage. Discussion Paper* (2023).

18. A second key theme is that legal protections, potentially including AVOs, can be used to foster improved administrative response, for example by activating inter-agency coordination and collaboration between law enforcement and specialist statutory services. A seminal study of forced marriage responses in England and Wales recently concluded that such multi-agency collaboration was critical to creating recovery pathways for victim-survivors that restored their sense of agency.¹⁷ Where the studied agencies provided a co-ordinated safeguarding response through conducting regular welfare checks, sharing information to monitor and manage risks and deliberate efforts to retain the confidence of victim-survivors, they provided effective protection.¹⁸
19. Indeed, absent close coordination between police, social service providers and family violence and/or child protection services, it is almost unfeasible for those at risk of forced marriage to establish a safe exit pathway from the household, family or community unit in which they are being subjected to attempted forced marriage. The ability to apply for an AVO stands for little in isolation: it will be more meaningful if it triggers access to administrative support arrangements that help the applicant exit the situation in which they are mired.
20. Together, these themes reflect a broader trend in responses to forced marriage in Australia. At the federal level, the Australian Government has recently announced the creation of a new Forced Marriage Specialist Support Program. This will provide individualised needs-based prevention and early intervention support for those experiencing, or at risk of experiencing forced marriage. It will also provide access to counselling and emergency accommodation where required.¹⁹
21. The Program is doubly notable. First, because it moves away from a victim-survivor support model (where the offence has already occurred) to a model based on prevention and early intervention with those *at risk*. Second, because, access to the program will not require a referral from law enforcement. Instead, access will be via a new 'Additional Referral Pathway' that the Australian Government is establishing, where referral decisions will be made by a commissioned civil society organisation, not by police. These aspects of the program point to the growing recognition that effective prevention and disruption of forced marriage requires not only legal protections but also effective administrative and support arrangements.
22. A similar trend is also evident in Victoria, where forced marriage is recognised as a statutory example of family violence under section 5 of the *Family Violence Protection Act (2008)* (Vic). This was a direct outcome of the Victorian Royal Commission into Family Violence.
23. It is also worth noting that NSW law already seems to contemplate the need for DCJ to strengthen support to victims of forced marriage. Section 19 of the *Modern Slavery Act 2018* (NSW) requires the Anti-slavery Commissioner to prepare an annual report. Section 19(3)(c) states that this Report is to include a review of "action by the Department of Communities and Justice during the year to develop a system of support (including provision of accommodation) for victims of forced under-age marriage, irrespective of whether any offence against the victim has been prosecuted."

How I prepared this submission

24. I prepared this submission in close collaboration with several members of my Office. We conducted desk research and also met with representatives of organisations that provide support services to victim-survivors of forced marriage, community-based organisations, researchers, and people with lived experience to understand their perspectives. I am grateful to all those people and organisations that generously shared their time and insights.

¹⁷ Anitha, S, Gill, A & Noack-Lundberg, K, Understanding Protection and Prevention Responses to Forced Marriage in England and Wales (2023), University of Lincoln and University of Bristol, pp.7-8.

¹⁸ Ibid.

¹⁹ Ministers for the Department of Social Services, *Media release: New supports for victim-survivors of modern-day slavery in Australia*.(December 2023).

Should AVOs sometimes be mandatory?

25. The first two Consultation Questions posed by the Discussion Paper are these:

Q1. Is the obligation to apply for a provisional AVO in the context of forced marriage appropriate, sufficiently clear and consistently complied with?

Q2. Are there any other circumstances in which the making of an AVO should be mandated in matters involving forced marriage?

26. As the Discussion Paper clearly explains, there are several circumstances in which NSW law currently mandates (i.e. requires) applications for and issuance of an AVO, including (but not limited to):

- Application for a provisional AVO where an investigating police officer
 - believes a forced marriage offence has been committed, is likely to be committed, or is imminent, proceedings for such an offence have been commenced. This extends to coercion or deception of, or a threat to, a person to enter into a forced marriage, *and*
 - has good reason to believe that an order needs to be made immediately to ensure the safety and protection of the person who would be protected by the order or to prevent substantial damage to any property of that person. (*Children and Young Persons (Care and Protection) Act 1998 (NSW)* ('Care Act') section 227)
- Application for a provisional AVO where a report of child forced marriage is raised with the NSW Police Force (NSWPF), regardless of child protection outcomes (CDPV Act section 27(1)(a)(ii)).
- Making of an interim AVO by a court, where a person is charged with a forced marriage offence (CDPV Act section 40(5)).
- Making of a final AVO by a court, where a person is convicted of a forced marriage offences (CDPV Act section 39).

27. Forced marriage, like other forms of modern slavery, strips individuals of their autonomy and decision-making power. Measures to address forced marriage should therefore aim to restore victim-survivors' agency. This may be difficult to achieve where interventions are not based on informed consent, or where such informed consent is difficult to obtain (for example due to continuing pressure on the person at risk), and where interventions do not take a trauma-informed approach.

28. Mandatory application for and making of an AVO may be difficult to square with informed consent, since it may require action notwithstanding the unwillingness of the victim-survivor to see action brought against their family members. Nonetheless, there may be narrow circumstances in which this is warranted, in the best interests of the person at risk, for example where the situation prevents them giving informed consent and the investigating police officer has good reason to believe that an order needs to be made immediately to ensure the safety and protection of the victim-survivor (see Care Act section 227).

29. The difficulty with the NSW legal provisions, however, is not only their lack of reference to the informed consent of the victim-survivor, but also the way in which they exclude relevant expertise from the decision-making process. For example, under section 27(1)(a)(ii) of the CDPV Act, a provisional AVO may be mandated even where specialist child protection services are pursuing a less interventionist approach to managing risks of harm. This means that, for example, the expert views of child protection or family violence specialists on the potential for an AVO to *increase* trauma risks for the child may not be factored appropriately into decision-making. Where the victim is a child, this raises questions about the consonance of the process with Article 3 of the CRC.

30. Moreover, the mandating of an application for a provisional AVO in such a circumstance may put investigating police officers in an unenviable position. And the approach makes the exercise of police discretion critical in determining outcomes for victim-survivors. Yet systematic evidence suggests that where police have discretion over AVO applications, they may be more likely to exercise that discretion in cases involving physical violence, and less likely where coercion is achieved through psychological and financial means.²⁰ Non-physical coercion is a common feature of forced marriage cases.
31. This suggests a need to consider amendments to NSW laws to ensure that mandatory AVO arrangements – whether at the provisional, interim or final AVO stage – provide for the involvement of specialist (especially statutory) services, as a source of expertise to guide decision-making. These services are likely to be particularly useful in identifying the potential impacts on victim-survivors of AVO arrangements, and ensuring that any use of AVO is in the service of a trauma-informed approach – and not at odds with it.
32. This is obviously easier to achieve at the interim and final AVO stage, where provision could be made for courts to seek the input of sanctioned child protection, family violence or other support services. The obvious model for achieving this result is the Independent Children’s Lawyer (ICL) that can be appointed in proceedings under section 68L of the *Family Law Act 1975* (Cth). The ICL can be appointed by the Family Court, or on the application of a child, an organisation concerned with the welfare of children, or any other person, to represent and promote the best interests of a child in family law proceedings.
33. ICLs are obliged to consider the views of the child, but ultimately provide their own, independent, perspective about what arrangements or decisions are in the child’s best interests. Their main roles include:
- arranging evidence, including expert evidence, to be obtained and put before the Court
 - facilitating the participation of the child in the proceedings in a manner which reflects the age and maturity of the child and the nature of the case
 - acting as an honest broker between the child and the parents and facilitating settlement negotiations where appropriate.
34. National Legal Aid has published a set of *Guidelines for Independent Children’s Lawyers* about what an ICL should do to fulfil their role and responsibilities and how they should represent and promote the best interests of a child in family law proceedings. The ICL has numerous options when determining what is in a child’s best interests. They may:
- meet with the child, unless the child is under school age, or there are exceptional circumstances
 - speak to the child’s counsellors, school teachers and principals
 - examine documents from organisations such as schools, child welfare authorities, or the Police
 - examine medical, psychiatric and psychological records of the child and their parents
 - question witnesses, including parents and experts, at the final hearing, and/or
 - make arrangements to obtain independent expert evidence, including from the Court Children’s Service.
35. The ICL is a figure in Australian family law. It is not provided for in the NSW court settings in which AVOs are considered. This model is nonetheless obviously adaptable to the NSW forced marriage and AVO context, both for cases involving at-risk children, and, arguably, for those involving at-risk adults. One way to achieve this could be to provide for the involvement of an Independent Victim’s Lawyer, an *amicus curiae* (‘friend of the court’) appointed by a

²⁰ Dowling C et al., *Protection orders for domestic violence: A systematic review* (2018), Australian Institute of Criminology.

NSW court hearing an AVO application, on the application of an unrepresented victim, or on the application of the Anti-slavery Commissioner under sections 9 and 17 of the *Modern Slavery Act 2018* (NSW), or at the discretion of the court.

36. This form of *amicus curiae* legal protection may be possible to achieve even without legislation, given the inherent jurisdiction of the court.²¹ But placing the role on a statutory footing would likely lead to more efficient and effective outcomes and ensure more routine recourse to this option.
37. The role of the Independent Victim's Lawyer would be to assist the court in identifying the best interests of the person that the AVO would protect (i.e. the person at risk of forced marriage). They would achieve this through use of specialist forced marriage domain knowledge in engagement with the person, family members, relevant community members and witnesses, schools, counsellors, and medical professionals, and through engagement with statutory and non-government support services with specialist family violence, child protection, forced marriage or other domain knowledge.
38. The mechanism for involving such expertise in the time-critical process of a provisional AVO is less obvious. One way to achieve this could be to amend NSW law to mandate involvement of an IVL in the mandated court review of any provisional AVO in a forced marriage.

Who should be able to apply for AVOs?

39. The discussion paper asks two questions relating to applications for AVOs and standing:

Q3: Should section 48 of the CDPV Act be amended to give additional people or entities standing to apply for AVOs in situations of forced marriage? If so, who else should have standing?

Q4: Are there any risks if additional people or entities have standing to apply for AVOs in situations of forced marriage? If so, what are these risks? Are there ways to mitigate against these risks?
40. As the Discussion Paper explains, the right to apply for an AVO in a forced marriage case is relatively narrowly constrained, essentially to persons needing protection, their guardians, DCJ and police officers (though the right differs in different circumstances). Notably, neither the AFP nor third parties (such as specialist forced marriage, family violence or domestic violence organisations) have the right to bring such applications.
41. In England and Wales, the *Family Law Act 1996* (UK) takes quite a different approach, allowing applications for a Forced Marriage Protection Order to be made by victims or persons at risk of a forced marriage, by organisations seeking to help victims, and any other person with leave of the court. There has been a high volume of these orders issued each year (200-250 per year) since this system came into effect.²² This suggests that enlarging the group of people able to bring such applications may lead to greater use of this tool.
42. This does not, however, necessarily mean that it leads to better outcomes for those requiring protection from forced marriage. Where third parties are able to bring such applications, questions of informed consent and the best interests of the child return to the fore (as discussed above). There may be a concern about potential risks of abuse or weaponisation of the AVO process arising from broadening the right in this way. Those risks seem likely to be able to be managed by a court, especially with support from an Independent Victim's Lawyer, and are likely to be significantly outweighed by the systemic benefits arising from making it easier for third parties to apply for AVOs to protect those at risk.

²¹ See Kirby P in *Breen v Williams* (1994) 35 NSW LR 522, 532-533; and see NSW Judicial Commission, *Civil Trials Bench Book – Preliminary*, CTBB54, DEC 23, [1-0860].

²² Anitha et al, 2023 at 6.

Are the right grounds for making an AVO covered?

43. The discussion paper asks two questions relating to the grounds for making an AVO:

Q5. Do the grounds for making an ADVO effectively recognise and respond to circumstances of forced marriage? Could these grounds be further strengthened for this purpose and, if so, how?

Q6. Under what circumstances will individuals involved in facilitating a forced marriage not be in a domestic relationship with the victim-survivor? Do the grounds for making an APVO effectively protect victim-survivors in these cases? If not, how could these grounds better respond to the needs and circumstances of victim-survivors of forced marriage?

44. There may be some circumstances in which non-family members seek to coerce individuals into forced marriage through exertion of psychological or financial pressure that are not currently captured by the APVO provisions. The larger question, however, is how the ADVO and APVO provisions operate in practice. Their effect may be to place a significant burden of proof on women and girls living in highly coercive households and social networks.²³

Discharging this burden of proof is unlikely to be feasible if there is not a tight connection between bringing an AVO application and having access to relevant social, housing, legal, financial and counselling supports. Women and girls are unlikely to make use of these grounds if they do not see a safe way to exit their situation until after the AVO is granted.

45. Currently supports for victim-survivors of modern slavery are provided through the Commonwealth funded Support for Trafficked People Program (STPP). There is no automatic pathway for victim-survivors of forced marriage who want to seek civil protections under NSW law to obtain the support services they may need.

46. There is currently no NSW Government-funded specialist support to victims of modern slavery beyond the assistance available through the *Victims Rights and Support Act 2013*, which were not designed primarily with forced marriage in mind and are unlikely to cover all of the complex, needs-based interventions that forced marriage victim-survivors are likely to require, or indeed support for family counselling and support services.

47. However, it is worth noting that section 19(3) of the *Modern Slavery Act 2018* (NSW) seems to contemplate or even require action by DCJ to “develop a system of support (including provision of accommodation) for victims of forced under-age marriage, irrespective of whether any offence against the victim has been prosecuted.” Section 19(3) requires the Anti-slavery Commissioner to report annually to Parliament on what action DCJ has taken. I would be delighted to work collaboratively with the Department to help it develop such a system.

48. A first element in such a system could involve the amendment of NSW laws, practices and procedures to ensure that the mandate of the Joint Child Protection Response Program (JCPRP) includes child forced marriage, and the *prevention* of child forced marriage, if it does not already. The JCPRP is a tri-agency program delivered by DCJ, the NSWPF and NSW Health. It operates state-wide and provides a comprehensive and coordinated safety, criminal justice and health response to children and young people alleged to have experienced sexual abuse, serious physical abuse and serious neglect. Entry to the JCPRP occurs via tri-agency assessment of Risk of Significant Harm (ROSH) reports containing allegations that may constitute a criminal offence, consideration of information held by each agency and agreement the threshold has been met. The question here is whether an *attempt* to perpetrate child forced marriage (as defined in section 93AC of the *Crimes Act 1900* (NSW)) would meet this threshold. I recommend amendments of laws, practices and procedures to

²³ United Nations High Commissioner for Human Rights, A/HRC/35/5, *‘Expert Workshop on the impact of existing strategies and initiatives to address child, early and forced marriage – Report of the High Commissioner for Human Rights’* (2017), pp. 2-3.

ensure that it clearly would, and that the JCPRP is available as a mandated response mechanism responding to a ROSH report arising out of an AVO application.

49. A second step in tightening the connection between AVOs and access to support would be to ensure that the application for or making of an AVO was automatically notified to the NSW Anti-slavery Commissioner (even where the person at risk is an adult). The notification should provide relevant contact details of the applicant and, where possible, the person to be protected by the AVO.
50. This notification would allow the NSW Anti-slavery Commissioner to exercise their function of identifying and providing assistance and support for victims of modern slavery under section 9(1)(b) of the *Modern Slavery Act 2018* (NSW). This should include consideration of assisting the person to seek a referral to the Australian Government funded Support for Trafficked People Program, notably the new Forced Marriage Specialist Support Program, or other relevant modern slavery, sexual, domestic and family violence or child abuse specialist support services. This will tighten the connection between the formal legal protection and access to relevant support services, improving the likelihood of uptake and successful use of the AVO instrument.

Do AVOs prohibit and restrict the right things?

51. The discussion paper asks the following questions relating to prohibitions or restrictions under AVOs:

Q7. Are the existing prohibitions and restrictions that may be imposed under an AVO adequate and effective to safeguard against forced marriage? Are any changes needed to the prescribed form?

Q8. Should provisional AVOs be able to prohibit behaviour of the defendant that might coerce, threaten or deceive the protected person to enter into a forced marriage, as court-ordered AVOs have the power to do?

52. AVOs are relatively flexible instruments. They are able to restrict and prohibit a wide array of behaviours. The existing AVO provisions will allow courts to restrain many of the coercive and controlling behaviours that underlie forced marriage. However there are two areas in particular where AVO provisions, as they stand, may face limits.
53. The first relates to the narrow personal scope of AVOs. They are directed at named individuals, and seek to restrain their behaviours in actions. Yet just as marriage is a social institution, so is forced marriage. It is rarely the product of one individual's actions or pressures alone. There are frequently multiple family and/or community members involved in pressuring the person at risk to involuntarily marry. And even if there is a primary instigator, frequently a senior authority figure, sometimes a parent, that person may pressure and coerce others to reinforce the coercion directed at the victim-survivor.²⁴
54. Restrictions on such behaviours may be open to NSW courts in issuing AVOs, via sections 35 and 35A of the CDPV Act. Nonetheless, it may be useful to ensure that such restrictions are specifically applied for or made. The appointment of an IVL (see Recommendation 2), sensitised to such dynamics and with access to expert knowledge, may help achieve this.
55. The second area that bears consideration relates to the ability of NSW courts to restrict the movement of people at risk – i.e. the person to be protected by an AVO. Some victims of forced marriage are moved outside New South Wales, even overseas, in order to participate in the forced marriage ceremony. An intervention that prevents such movement may help prevent and disrupt attempts at forced marriage. Yet typically AVOs restrict the behaviours

²⁴ Anti-Slavery Australia, *Submission to the NSW Legislative Council Standing Committee on Social Issues, Inquiry into the Modern Slavery Act 2018 (NSW) and associated matters 2019*, submission no.80, p. 14.

and actions of perpetrators of harm, not those at risk of harm. And there are important human rights considerations in play when an individual's freedom of movement is restricted.

56. The issue takes on added complexity because passports and movement across national borders are in the power of the Commonwealth, not the States, under the Australian Constitution. The *Family Law Act 1975* (Cth) creates mechanisms for controlling exit of children from Australia, and control over passports. These protections are matters for the Federal Circuit and Family Court of Australia, not the NSW courts hearing the AVO applications. And the powers do not extend to adults at risk of forced marriage.
57. It may be difficult for NSW to legislate on this matter given control of passports and immigration are federal matters. Nonetheless, there may be options available to amend NSW laws, practices or procedures to allow courts or other relevant officials to take suitable measures to disrupt the intended movement of a person at risk for the purpose of forced marriage.
58. One option could be to amend the relevant child protection legislation to empower child protection officers to seize and retain any passport issued in the name of a child or young person that the child protection officer reasonably believes is at risk of removal from the State for the purpose of forced marriage, and where seizure and retention of the passport is necessary and proportionate to protect the person at risk of forced marriage. (The later part of this test may be necessary under human rights law²⁵). Should DCJ explore this option, prioritising specialised mandatory training for these officers (discussed later in this submission) would become a critical concern.
59. While passports are Commonwealth property, and section 32(4) of the *Australian Passports Act 2005* (Cth) creates an offence of possession or control of a passport that is not issued to the person, section 32(5) creates a "reasonable excuse" defence. Still, the existence of a statutory defence to a Commonwealth criminal offence may be a thin reed on which to expect NSW officials to hang action to confiscate passports, so it might be necessary to explore legal or practice reforms at the Commonwealth level to provide greater certainty to underpin intervention by State officials.
60. A related option could be to explore amendments to NSW law and/or Commonwealth law or practice to clarify whether there is power under the *Australian Passports Act 2005* (Cth) for the Minister of Foreign Affairs to cancel the passport of a person at risk of being removed from Australia for the purpose of forced marriage. Section 18 of that Act permits competent authorities to make refusal/cancellation requests for a range of prescribed reasons, including Australian and international law enforcement matters, and in relation to potential for harmful conduct. However, these are defined to relate to the involvement of the person whose passport is to be cancelled in a law enforcement matter, or where their conduct will harm another person. It is not clear that this permits competent authorities, such as NSW Police, to seek cancellation of a passport for the protection of a person at risk of forced marriage. And it is not clear that such a power or action would always be reasonable, necessary and proportionate to the risk, as required by human rights law.
61. A third possibility could be to consider the right of the NSW Government to prevent a person from crossing NSW borders. Section 92 of the Commonwealth Constitution has traditionally been interpreted to mean that there is to be free movement across borders within Australia. However, jurisprudence and legal practice emerging during the COVID pandemic clarified that the States do retain the power to control movement across their borders, through adoption of legitimate and proportionate legal measures. Laws aimed at protecting their citizens from public health or national security risks appear likely to be proportionate.²⁶ However it is untested whether a State could enact a law that permitting restriction of freedom of an individual resident of the State to protect that individual from forced marriage.

²⁵ See ICCPR Articles 12 and 13. See Australian Government, *Right to freedom of movement: Public sector guidance sheet*.

²⁶ *Palmer & Anor v Western Australia & Anor* [2021] HCA 5.

Can we improve the practice and procedure for AVOs?

62. The Discussion paper at Questions 9-11 asks:

Q9. Are there any practice changes that could be made to better support victim-survivors of forced marriage to have access to the protections under AVOs? If so, what are they?

Q10. Is additional guidance necessary or helpful to assist victim-survivors and support services to make use of AVOs in cases of forced marriage? If so, what should this guidance consist of?

Q11. Are there additional barriers for specific cohorts of the community in obtaining protections against forced marriage under the AVO system?

63. In the absence of published information about the usage of AVOs in forced marriage contexts in NSW, it is difficult to make detailed recommendations for improvement of practice. However, a central theme that has emerged from our research and consultations, and from my own dealings with forced marriage cases in my role as Anti-slavery Commissioner, is the need for actors that are entitled to apply for or make AVOs to engage more routinely with specialist statutory agencies and service-providers, and relevant non-governmental service providers, with expertise on child protection, family and domestic violence, and forced marriage. Changes to NSW law such as those contemplated in my Recommendations might help to make this interaction more likely, but there are also changes in administrative arrangements, practice and procedure that could contribute to this goal, notably through more routine case conferencing amongst relevant agencies.

64. There is in particular a need for attention to training of and guidance for frontline workers that are likely to come into contact with people at risk of forced marriage. As leading scholar on forced marriage in Australia, Dr Laura Vidal, notes:

Those working within systems responsible for implementation must receive adequate training about the practice of forced marriage including the tools available within and outside of legislative responses. As with other forms of gender-based violence, legislative changes on their own are not enough to ensure adequate prevention, intervention and response. Any legislative and policy change in relation to forced marriage needs to be underpinned by investment in specialised service responses, including dedicated services and capability building within existing family violence services to ensure that victim survivors are held at the centre of our response.²⁷

65. NSWPF is rolling out the AFP's *Look A Little Deeper* training to some of its personnel. NSW Health has also included a modern slavery component in the NSW Health policy training delivered in 2022.²⁸ DCJ provides information and resources on its intranet site for caseworkers regarding what to do if issues of forced marriage or domestic and family violence are reported.²⁹ This includes internal procedures and reporting to the Australian Federal Police in cases of forced marriage. Additionally, multicultural caseworkers are available to provide cultural consultation to caseworkers working on issues relating to underage forced marriage. The NSW Department of Education website provides information about 'General indicators a child or young person could be at risk of forced marriage'.³⁰

66. These developments show commitment to training frontline workers. What is less clear, however, is whether or when such training is mandated, and to what extent forced marriage

²⁷ Vidal, L, *Opportunities to respond to forced marriage within Australia's domestic and family violence framework* (2019), Women's Research, Advocacy and Policy (WRAP) Centre - Good Shepherd Australia New Zealand, p.14.

²⁸ Office of the NSW Anti-slavery Commissioner, *Foundations for Growth – NSW Anti-slavery Commissioner's Annual Report Financial Year 2022-2023* (2023), p. 40.

²⁹ Ibid.

³⁰ NSW Department of Education, *Child Protection Policy Guidelines: Responding to and reporting students at risk of harm*, April 2023, available at <https://education.nsw.gov.au/schooling/school-community/child-protection/child-protection-policy-guidelines/resources>.

has been integrated into broader child protection arrangements in NSW.³¹ For example, training on forced marriage does not appear to be a mandatory requirement for frontline police officers, teachers or health care workers. And conviction for a forced marriage offence (under either Commonwealth or state law) does not appear to be a disqualifying offence (preventing issuance of a Working With Children Check) under Schedule 2 of the *Child Protection (Working with Children) Act 2012* (NSW).

67. Training frontline workers has however been an important focus for civil society organisations such as Australian Muslim Women’s Centre for Human Rights,³² Anti-Slavery Australia’s My Blue Sky,³³ and Taldumande Youth Services.³⁴ Anti-Slavery Australia’s ‘Speak Now’, a national program that aims to prevent forced marriage and other forms of modern slavery in the home, through education, awareness-raising and collaboration with service providers, frontline communities and young people from across Australia, is especially notable, having received renewed funding recently from the Australian Government.³⁵ These organisations clearly constitute an important source of expertise for the State, if it were to choose to mandate training for frontline workers.
68. Such mandatory training for frontline workers appears in fact already to be contemplated, perhaps even obligated, by law. Section 19(3)(a) of the *Modern Slavery Act 2018* (NSW) requires the Anti-slavery Commissioner to report annually to NSW Parliament on “the extent to which the government of NSW has provided mandatory training on modern slavery to front-line government agencies and the public generally during the year”. I would welcome the opportunity to work with the government of NSW to develop appropriate training, drawing on the expertise of relevant non-government organisations and experts, including people with lived experience. I would welcome the opportunity to help NSW Government roll such training out on a mandatory basis to “front-line government agencies”.
69. Likewise, I would welcome the opportunity to work with NSW Government entities to address the apparent lacuna in inter-agency guidance. We could draw on a UK precedent to develop such guidance. In April 2023, the UK government published *Multi-agency statutory guidance for dealing with forced marriage and Multi-agency practice guidelines: Handling cases of forced marriage* to set out duties and responsibilities of agencies working with victim-survivors of forced marriage and to provide advice and support to frontline practitioners who have responsibilities to safeguard children and protect adults from the abuses associated with forced marriage.³⁶ I would be delighted to work with relevant NSW Government agencies to help them develop analogous inter-agency guidance in NSW.
70. People with lived experience should play a meaningful role in the development of such practices and procedures, and any such Guidance that might be developed in New South Wales. Lived experience is invaluable in ensuring the effectiveness of such reforms.³⁷ And their participation in such policy and law reform consultations and processes can make an important contribution to the restoration of victim-survivors’ agency and the realisation of their human rights, notably, in the case of children, under Article 12 of the CRC.³⁸
71. Empowering victim-survivors of forced marriage, including child forced marriage, requires their active, full, effective and meaningful participation as agents of change in their own lives

³¹ See Good Shepherd Australia New Zealand, Monash University Trafficking and Slavery Research Group, [Submission to the NSW Legislative Council Standing Committee on Social Issues, Inquiry into the Modern Slavery Act 2018 \(NSW\) and associated matters](#) (2019), submission no. 48, p. 21.

³² Australian Muslim Women’s Centre for Human Rights, [Child, early or forced marriage in the Australian Muslim Community - A guide for young women](#) and [Child and Forced Marriage - A guide for professionals working with the Muslim community](#) (2019).

³³ My Blue Sky, [Frontline Worker Guide Identifying and Responding to Forced Marriage in Australia](#) (2023).

³⁴ Taldumande Youth Services, [Freedom and Equity Programs](#).

³⁵ Anti-Slavery Australia, [‘Speak Now’: A Forced Marriage Education and Prevention Project](#) (2021).

³⁶ UK Government, [Multi-agency statutory guidance for dealing with forced marriage and Multi-agency practice guidelines: Handling cases of forced marriage](#) (April 2023).

³⁷ Compare Simmons, F, Wong, G, [Learning from lived experience: Australia’s legal response to forced marriage](#) (2021), UNSW Law Journal, vol 44(4)

³⁸ UN Convention on the Rights of the Child, [General Comment No. 12 \(2009\) The right of the child to be heard](#), p. 23.

and communities. Strengthening their voice, agency, leadership and participation in all decisions that affect them will help contribute to efforts to break patterns of gender inequality, discrimination and violence.³⁹ Again, I would be delighted to work with DCJ to support its efforts to foster such participation, including prior to the finalisation of this Review.

Forced Marriage offences

72. The Discussion paper Question 12 asks:

Q12: Are the existing criminal offences under NSW legislation adequate and appropriate as criminal justice responses to forced marriage (also noting the Commonwealth forced marriage offences)?

73. I have no submissions to make in response to this question.

Dr James Cockayne
NSW Anti-slavery Commissioner

³⁹ United Nations General Assembly, Human Rights Council, [Resolution A/HRC/RES/41/8 Consequences of child, early and forced marriage](#), (July 2019), pp.2-3.

Office of the
Anti-slavery
Commissioner

E: antislavery@dcj.nsw.gov.au
W: dcj.nsw.info/antislaverycommissioner
