



4 March 2011

Assistant Secretary
Criminal Law and Law Enforcement Branch
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

Dear Assistant Secretary,

Consultation on forced and servile marriage

1. Women's Legal Services NSW (WLS NSW) thanks the Attorney-General's Department for the opportunity to comment on its discussion paper on forced and servile marriage.
2. WLS NSW is a community legal centre that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims compensation, care and protection, human rights and access to justice.
3. The first part of this submission outlines some of our experiences in advising clients who are in marriages that might be considered forced or servile marriages. The second part outlines some recommendations for options for reform.

Part 1: Our experiences

4. We note that there have only been three separate reports to the Australian Federal Police of forced and servile marriages. In our experience, marriages of this type are more common than the number of police reports would reflect. It is not uncommon for WLS NSW solicitors to give advice to women who are or were in marriages that have had a strong element of family pressure or coercion to marry combined with questions around active consent. We have included three case studies in this submission. We expect that forced and servile marriages would be underreported for a number of reasons, including that women do not identify that they are in such a relationship and the stigma from local and wider communities that comes from reporting such relationships.
5. Part of the difficulty in identifying forced or servile marriages lies in the definition of what constitutes such a marriage. Forced or servile marriages sit within the broader context of violence against women. Many clients we see raise some factors that may mean that their



marriage is forced but it can be difficult to determine what the boundaries of forced or servile marriages are and what constitutes other forms of violence against women. This can be particularly difficult to determine when violence exists in the context of arranged or dowry marriages.

6. For example, one issue is the level or form of consent that is required for a marriage to be consensual. Clients have told us that they did not want to get married to their husband but that they knew that there was no real alternative available to them because they would be rejected by their family and community, and be subjected to varying forms of abuse. Consequently, they did not actively object to the marriage.

Case study 1 – Niti

Niti sought advice from our service in relation to an apprehended domestic violence order.

Niti was living in a South Asian country when she married Raj. She is one of several girl children from a poor rural family and her family told her she would have to marry Raj, the older son of another (wealthier) family. Her family had a financial incentive for her to marry because the marriage would increase their social standing and lessen their financial responsibility for her.

Niti was told that if she did not marry Raj she would be disowned by her family. She did not want to marry him, she had met him only once and had a 'bad feeling' about him. She heard rumours that he had a drinking problem and was a 'bad man'. But Niti also knew that if she didn't marry Raj her family would throw her out of the home and her local community would reject her because she had not complied with her parents' wishes.

Niti and Raj were married, despite Niti's unhappiness. On their wedding night Raj kicked her out of the bed and verbally abused her. Thereafter she was subjected to constant psychological/physical/sexual abuse. Raj was also addicted to drugs and an alcoholic.

Soon after the marriage, Niti and Raj moved to Australia. Niti did not complain about the marriage or seek to leave the relationship because she did not feel that either was an option culturally. Eventually police intervened and Raj was charged and an apprehended domestic violence order was made to protect Niti.

7. Another issue is addressing the role that deception plays in obtaining consent to the marriage. Some clients have told us they have agreed to marry on the basis of promises of a certain kind of life only to find that their husband had always intended that their role would be one of servitude. In such cases, questions arise as to whether consent needs to be to the marriage or the nature of the relationship that follows, and as to the role of deception at the time of marriage.

Case study 2 – Aisha

Aisha approached her local community legal centre for legal advice after ending her relationship with John. John, an Australian, met Aisha in her home country in Africa. He had travelled to Africa to find a wife to bring back to Australia to look after him and his adult children. Aisha was desperate to leave Africa and so she agreed to the marriage. Once Aisha arrived in Australia, she was subjected to both domestic violence and inhumane treatment from John. He forced her to sleep outside, including when she was pregnant.

Aisha has now left John and is obtaining immigration assistance to try to stay in Australia.

8. Many clients would not identify their marriage as being 'forced'. As mentioned above, it is not always clear whether a marriage is forced, or a marriage with consent but with significant violence involved. Clients' commitment to their culture, family and communities, and their own expectations, will also shape how they view their marriage and their responses to it.

Case study 3 – Yasmin¹

Yasmin sought legal advice from our service about her marriage. She is a young Australian woman, with a Lebanese background. She is very religious and adhering to her religion is very important to her.

Yasmin was forced to marry Ahmed, her cousin from Lebanon, when she was 18 years old. Her parents and Ahmed's parents had discussed and agreed to the marriage when she was 12 years old. Yasmin was unaware of this arrangement until she was 15.

Yasmin's parents told her there are a number of good reasons why she had to marry her cousin, including that it was better for her to marry and start a family at a young age, rather than be influenced and led 'astray' by the 'selfish and immoral ways of the west'; that it was better for her to marry a man who understood and appreciated the customs and traditions of the Lebanese culture; that it was better to marry a man from a family they knew rather than a man from an unknown family; and that it was her responsibility to assist the family in whatever way possible, including by marrying her cousin so he could have a better life in Australia.

When Yasmin told her parents she was concerned about marrying a man she could not relate to and did not want to marry Ahmed, her parents placed considerable amounts of pressure on her to marry him. They reminded her constantly of her family's obligations and responsibilities, and told her to stop being selfish and to give a good man a chance so he could live free from war-torn stricken country. They told her that there was a lot of poverty and unemployment in Lebanon and that if she didn't marry Ahmed he would turn to drugs or the army, and that in both cases he would end up dead and that it would be her fault. They told her that her family and in turn God, would never forgive her. They also questioned Yasmin about her 'chastity' because they could not understand why she was so hesitant to marry her cousin.

Yasmin succumbed to family pressure, and went to Lebanon to marry Ahmed. Yasmin and Ahmed returned to Australia and had three children. Yasmin remained unhappy in the marriage. Ahmed began to emotionally abuse her and the children. She was told by religious leaders and her family to be patient and that his behaviour was due to the difficult life he experienced in Lebanon. She was told she would be responsible for breaking up the family if she ever divorced her husband, and that she would bring shame to the family.

Part 2: Recommendations for addressing forced and servile marriages

9. Based on our experiences advising clients who are or have been in marriages involving elements of coercion, we make the following recommendations for reform:
 - a. Any response to addressing forced and servile marriages must sit within the broader state and federal violence against women strategies and plans of actions. For example, state domestic must also take into account this kind of behaviour.
 - b. Culturally appropriate community education is essential to addressing this problem. In

¹ Yasmin's story is based on the stories of several clients.

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particular there should be funding for community-based organisations, in partnership with community-based lawyers, to provide education to women in the community.

- c. Funded holistic support must be available for women who choose to leave a forced marriage. Such women face losing all their support structures, including their family and their community.
 - d. While criminal offences may be difficult to prosecute and may not be the preferred response of an individual victim, they could serve an important role in educating communities that this type of conduct is prohibited, and provide confidence and support to victims seeking to leave or avoid forced marriages (as set out in paras 83 and 84 of the discussion paper). The definition of forced marriage should be used to empower women to identify marriages that are not acceptable and assist them in leaving them.
 - e. Further consideration could be given to an injunctive power, such as that set out in paragraph 93.
 - f. Marriage celebrants should be obliged to inquire as to consent in the marriage. This may assist in identifying whether there is consent, and in educating both parties that consent is required in Australia. Education for marriage celebrants would also be useful in changing community attitudes.
 - g. A response to forced marriages should cover relationships that are not considered marriage under Australian law; for example, marriages that have taken place under religious but not Australian law, or de facto relationships. This is particularly important to prevent any community reaction to forced marriage regulation (such as further regulation of marriage celebrants) having the effect of driving forced marriages outside the Australian legal system, rather than preventing them.
10. If you would like to discuss any aspect of this submission, please contact Edwina MacDonald, Law Reform and Policy Coordinator or Carolyn Jones, Acting Supervising Solicitor on 02 8745 6900.

Yours sincerely,

Janet Loughman
Principal Solicitor