



23 January 2012

The Assistant Secretary
Border Management and Crime Prevention Branch
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

By email: peopletrafficking@ag.gov.au

Dear Assistant Secretary,

Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012 - Forced Marriages

1. Women's Legal Services NSW (WLS NSW) thanks the Attorney-General's Department for the opportunity to comment on the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012 (**the Bill**).
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. We note that we are only providing limited comment on specific sections of the Bill and that our response is confined to consideration of the introduction of the new offence of forced marriage. We will also rely on the comments and recommendations made by WLS NSW on 4 March 2011 in response to the Attorney-General's Department consultation on forced and servile marriage (copy attached).

Prevention and education

4. We reinforce our comments made in March 2011 that a criminal response must form part of a broader strategy to address forced marriage. While criminal sanctions may play an important role in outlining the types of behaviour prohibited in the community it is insufficient to make legislative amendments in isolation. We submit that the focus should primarily be on the prevention of forced marriage rather than prosecution.



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Recommendation 1: The Australian government commit to funding a range of initiatives aimed at the prevention of forced marriage.

5. We anticipate that one of the biggest barriers to successful and appropriate prosecution of forced marriage in a culturally diverse society like Australia will be the private and varied nature of relationships and marriage. It may be almost impossible for someone external to a particular community to distinguish a consensual arranged marriage from a forced marriage. It may be even more difficult for a victim to identify that they are in a relationship considered coercive, threatening or deceptive under Australian law.
6. Additionally the offence of forced marriage may be hard to distinguish from the offence of domestic violence and in most cases the victims will be experiencing both.
7. Therefore to increase the opportunity for prosecution, victims and their advocates must be aware of the nature of the offence and the relevant investigators and prosecutors clear on the scope of the offence.

Recommendation 2: Extensive research and consultation with representatives of culturally and linguistically diverse communities to obtain detailed information about marriage and relationship practices in a range of communities.

Recommendation 3: Recruitment of culturally appropriate staff and community representatives to provide education and training to key players in the investigation and prosecution of forced marriage, including police, public prosecutors, court staff and judicial officers.

Recommendation 4: Appointment of a panel of community members, which must include women, to provide expert opinion about marriage and relationship practices in a range of CALD communities when required in individual prosecutions.

Recommendation 5: Provision of information sessions on an ongoing basis to a wide range of service providers in the community, including domestic violence court support workers, refuge workers, settlement workers, doctors and Department of Immigration and Citizenship (DIAC) staff.

Recommendation 6: Production of materials in community languages explaining the nature of the offences of forced marriage and domestic violence in Australia and providing details of support services. A critical issue will be the dissemination of this information and we recommend community forums and distribution of publications via DIAC upon arrival in Australia and through a wide range of services including settlement services, Centrelink and charitable organisations working with migrants and refugees.

Relationships captured by the definition of *marriage* in subsection 270.7A(2)

8. We are concerned that the proposed definition of *marriage* in section 270.7A(2) of the Bill is not inclusive of other types of relationships and that this may result in the most vulnerable victims of forced relationships being left without legal protection. This includes people in de facto relationships and also cultural and religious marriages that would not fall within the definition of a de facto relationship or marriage under Australian law.

Recommendation 7: The definition of *marriage* in section 270.7A(2) be expanded to include de facto relationships and religious and cultural marriages.

Ambiguity in the interpretation of *forced marriage* in section 270.7A

9. The proposed definition of *forced marriage* in section 270.7A of the Bill is ambiguous and capable of broad interpretation. Without further clarification the task of identifying what constitutes a forced marriage is at the discretion of those responsible for investigating allegations, bringing prosecutions and passing judgment. For example, without further guidance discovering that a new spouse has been dishonest about their virginity, which had been critical to the provision of free and full consent, may be sufficient to satisfy the element of *deception*. Please see our submission dated 4 March 2011 for additional case studies highlighting the difficulties in distinguishing a consensual marriage like relationship from a forced marriage as defined in the Bill.

Recommendation 8: Clarification of the intended scope of the elements *coercion, threat or deception* and *without freely and fully consenting* in section 270.7A.

We note that it is also important to not be too prescriptive about the steps to follow in a forced marriage prosecution as this may result in victims being overlooked or a disproportionate and inappropriate targeting of particular communities.

Further information

10. If you would like to discuss any aspect of this submission, please contact Carolyn Jones, Senior Solicitor or Janet Loughman, Principal Solicitor on 02 8745 6900.

Yours sincerely,

Janet Loughman
Principal Solicitor