

13 December 2023

Rebecca Kang
Manager
Domestic and Family Violence Law and Policy
Women, Family and Community Safety Directorate
Department of Communities and Justice

Dear Ms Kang,

Review of NSW legal protections for victim-survivors of forced marriage

1. Women's Legal Service NSW (**WLS NSW**) thanks the Department of Communities and Justice for the opportunity to comment on the review of NSW legal protections for victim-survivors of forced marriage.
2. WLS NSW is a specialist accredited women-led 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 support, care and protection, human rights and access to justice.
3. We make some brief comments in relation to forced marriage and apprehended domestic violence orders (**ADVOS**) as well as the need for community led preventative work, community education and effective supports, including easier access to Victims Support. However, the focus of this submission is to highlight the need for a comprehensive review of the *Crimes (Domestic and Personal Violence) Act*. We are concerned by a piecemeal approach that fails to address fundamental concerns with the *Crimes (Domestic and Personal Violence) Act (Crimes (DPV) Act)*.
4. In summary we recommend:
 - 4.1 A comprehensive review of the *Crimes (Domestic and Personal Violence) Act 2007*, including, but not limited to consideration of issues arising in relation to forced marriage.
 - 4.2 Responses to forced marriage include a greater focus on community led prevention and community education as well as access to domestic and family violence informed, trauma informed safe models of mediation where, for example, the victim-survivor of forced marriage makes an informed decision to participate.
 - 4.3 Improving access to Victims Support, including for victim-survivors of coercive control more broadly and modern slavery, including forced marriage.



This review and the case for a broader review

5. We understand this review is in response to the NSW Government implementing Recommendation 17 of the *NSW Legislative Council Standing Committee on Social Issues Modern Slavery Act and Associated Matters Final Report*.

6. Recommendation 17 states:

That the NSW Government establish a working group which includes the Anti-Slavery Commissioner, NSW Police, the Department of Justice and Communities and other relevant stakeholders to develop further amendments to the Crimes (Domestic and Personal Violence) Act 2007 to protect potential victims of forced marriage, to be introduced following the statutory review recommended in Recommendation 2.

7. While we recognise there could be improvements to the *Crimes (DPV) Act* in relation to forced marriage, we are concerned by a piecemeal approach. We support a holistic review of the *Crimes (DPV) Act*.

Standing

8. We note some issues raised in this Discussion Paper are relevant beyond forced marriage. This includes the issue of standing which has been raised in the Order 6 Working Group of the Domestic Violence Reforms Consultation Group.

9. Victim-survivors of domestic and family violence and abuse and victim-survivors of forced marriage should have standing in apprehended domestic violence order proceedings so they can exercise agency and be heard on matters impacting them, particularly where they may seek to vary an order prior to the order being recognised as an interim order.

10. We recognise that the Court is the decision-maker and may not make the order that the victim-survivor seeks. However, it is important victim-survivors are given the opportunity to be heard if they would like to be.

11. This issue can be addressed through legislative amendment as well as guidance for Magistrates.¹ It is important to consider this issue holistically and not narrowing to the lens only of forced marriage.

12. Consideration should also be given to any potential role the Australian Federal Police can play in applying for an apprehended violence order in relation to forced marriage and other Commonwealth offences.

13. We believe it is beneficial to consider this issue in the context of a broader, comprehensive review of the *Crimes (DPV) Act*.

Domestic relationship

14. Question 6 in the Discussion Paper asks:

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

¹ See for example, Local Court of NSW Specialist Family Violence List Pilot Practice Note paragraphs 8.37, 8.48,

victim-survivors in these cases? If not, how could these grounds better respond to the needs and circumstances of victim-survivors of forced marriage?

15. The Discussion Paper acknowledges those who seek to facilitate or are involved in a forced marriage may include a member of the victim-survivor's local or cultural community or a family friend. These relationships are not included in the current definition of 'domestic relationship'.
16. There are limitations in only being able to apply for apprehended personal violence orders (**APVOs**), including that police guidelines/obligations about police making an application are different, costs provisions are different, Legal Aid eligibility is different and APVOs generally may not be considered by police or courts with the same gravity. It is therefore important that relationships between victim-survivors of forced marriage and those who seek to facilitate or are involved in a forced marriage are included in the definition of 'domestic relationship'. Consideration should also be given to the expansion of the definition of 'domestic relationship' in relation to domestic and family violence and abuse more broadly.

Power to make conditions in ADVOs

17. We acknowledge the courts powers in making apprehended violence orders are currently limited to prohibitions and restrictions on behaviour.
18. The Discussion Paper inquires whether police or an authorised officer should have an explicit power *"to impose a specific order in a provisional AVO to prohibit behaviour that might coerce, threaten or deceive another to enter into a forced marriage"*.
19. There may possibly be a role for such a power. It would also be beneficial to consider extending this power to other circumstances of domestic and family violence and abuse, with appropriate safeguards.

Prevention and community education

20. We strongly support a greater focus on community led prevention and community education in any response to forced marriage.
21. Further, greater access to domestic and family violence informed, trauma informed safe models of mediation where the victim-survivor makes an informed decision about participation should be explored, noting the importance of agency and that some victim-survivors of forced marriage would prefer an opportunity to be heard that does not necessarily involve criminal and/or civil sanctions imposed on their parents or other family members.
22. It is important that any possible amendments to legislation do not happen in isolation of a prevention and community education campaign.

Other proposed solutions

23. In cases of forced marriage, consideration must also be given to other solutions and supports beyond AVOs and criminal sanctions. This could include ensuring easier access to annulments, through free legal advice and assistance and fee waivers. Not only is this a practical solution, but it can also assist with reducing stigma associated with forced marriage.

The need for a comprehensive review of the *Crimes (Domestic and Personal Violence) Act 2007*

24. Since August 2022, Women's Legal Service NSW has been calling for a comprehensive review of the *Crimes (DPV) Act*. In May 2023, following a misidentification of the person most in need of protection forum hosted by DVNSW over 50 organisations have called for a comprehensive review of the Act.
25. Drawing on terms of reference of other inquiries, a review of the *Crimes (DPV) Act* should:
 - 25.1 consider whether the *Crimes (DPV) Act* is based on a coherent philosophy and whether, having regard to national and international experience, its approach to domestic and family violence and abuse is the best approach available to NSW;
 - 25.2 enable careful consideration of drafting of a definition of domestic and family abuse that is clear and easily understood with a clear function and educative role. The review could consider drafting in other Australian jurisdictions;
 - 25.3 consider legislative guidance about the person most in need of protection to assist with accurate identification of the person most in need of protection as well as legislative guidance relating to cross-applications. We note the legislative guidance recently inserted into Queensland law through the [Domestic and Family Violence Protection \(Combating Coercive Control\) and Other Legislation Amendment Act 2023](#);
 - 25.4 identify any procedural, administrative and legislative changes which may be necessary to ensure that the *Crimes (DPV) Act* provides the best available response to the problem of domestic and family violence and abuse;
 - 25.5 independently examine the effectiveness of current training and gaps in training including for police, judicial officers, legal practitioners, sexual, domestic and family violence sector and beyond in relation to:
 - 25.5.1 identifying and responding to domestic and family violence and abuse,
 - 25.5.2 improving practice in identifying and responding to domestic and family violence and abuse,
 - 25.5.3 reflecting the experiences of priority populations, barriers to reporting and ways to overcome these barriers,
 - 25.5.4 accurately identifying the person most in need of protection,
 - 25.5.5 identifying tactics used by perpetrators,
 - 25.5.6 cultural safety,
 - 25.5.7 bias,
 - 25.5.8 anything else relevant, and
 - 25.5.9 opportunities for co-development and co-delivery of training with input from subject matter and lived experience experts in relation to domestic and family violence and abuse and the *Crimes (DPV) Act*.

26. This review should consider issues relating to forced marriage, issues arising in the Domestic Violence Reforms Consultation Group, a clear and effective definition of domestic and family abuse, and legislative guidance to improve accurate identification of the person most in need of protection and to better respond to cross-applications.

Improving access to Victims Support

27. It is important there is ready access to support for victim-survivors of coercive control including forced marriage. This includes access to Victims Support.
28. We recommend improvements to the Victims Support Scheme for both victim-survivors of forced marriage as well as coercive control more broadly.

Forced marriage

29. As raised in our 2022 [submission](#) in response to the Department of Communities and Justice consultation on the statutory review of the *Victims Rights and Support Act*, we recommend:

Amend the definition of “victim of crime” and “act of modern slavery” in the Victims Rights and Support Act to include all forms of modern slavery. This requires:

a. The definition of “victim of crime” in s5(1) of the Victims Rights and Support Act specifically referring to sections 5(1)(a) and 5(1)(b) of the Modern Slavery Act 2018 (NSW).

b. The definition of “modern slavery” in s19A of the Victims Rights and Support Act be amended so an “or” exists between s19A(1)(a) and s19A(1)(b) rather than an “and” or it reads “and/or”.

30. Additionally, it is currently very difficult to argue for a recognition payment for forced marriage due to the limits of s35 of the *Victims Rights and Support Act* which focuses on particular offences. While elements of forced marriage may be captured, such as sexual assault, the experience of forced marriage per se is not adequately captured as the offence of forced marriage is not explicitly included. This has the effect of not fully and properly acknowledging the experiences of victim-survivors of forced marriage.
31. We note the current statutory review of the *Victims Rights and Support Act*, the importance of the Scheme and the need for timely improvements that are victim-survivor centric.

National compensation scheme for victim-survivors of modern slavery

32. In addition, we support a national compensation scheme for victim-survivors of modern slavery as proposed by Anti-Slavery Australia.

If you would like to discuss any aspect of this submission, please contact me or Liz Snell, Law Reform and Policy Coordinator on 02 8745 6900.

Yours faithfully,

Women's Legal Service NSW

Philippa Davis
Principal Solicitor