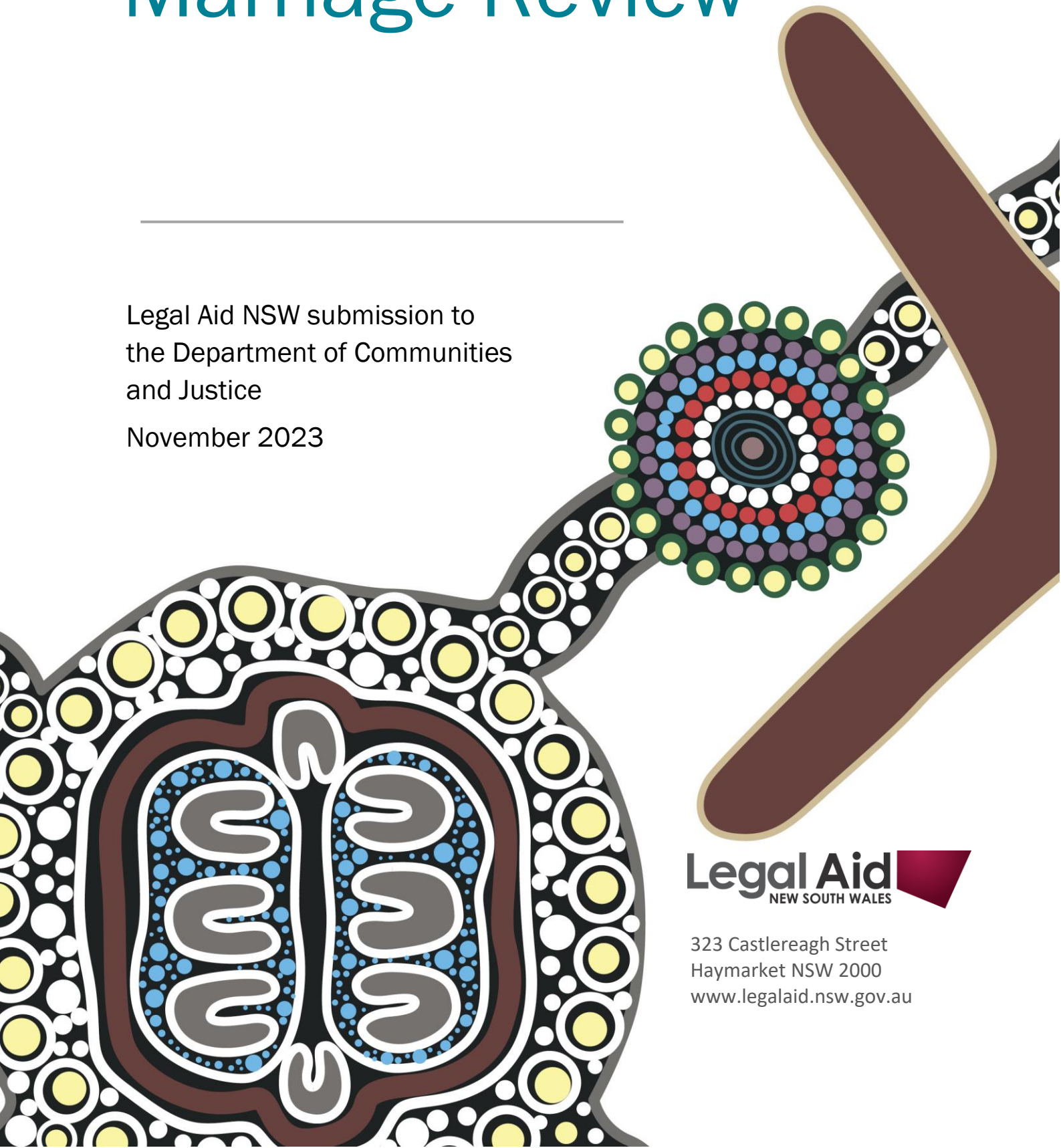


NSW Forced Marriage Review

Legal Aid NSW submission to
the Department of Communities
and Justice

November 2023



Legal Aid
NEW SOUTH WALES

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Acknowledgement

We acknowledge the traditional owners of the land we live and work on within New South Wales. We recognise continuing connection to land, water and community.

We pay our respects to Elders both past and present and extend that respect to all Aboriginal and Torres Strait Islander people.

Legal Aid NSW is committed to working in partnership with community and providing culturally competent services to Aboriginal and Torres Strait Islander people.

1. About Legal Aid NSW

The Legal Aid Commission of New South Wales (**Legal Aid NSW**) is an independent statutory body established under the *Legal Aid Commission Act 1979* (NSW). We provide legal services across New South Wales through a state-wide network of 25 offices and 243 regular outreach locations, with a particular focus on the needs of people who are socially and economically disadvantaged. We offer telephone advice through our free legal helpline LawAccess NSW.

We assist with legal problems through a comprehensive suite of services across criminal, family and civil law. Our services range from legal information, education, advice, minor assistance, dispute resolution and duty services, through to an extensive litigation practice. We work in partnership with private lawyers who receive funding from Legal Aid NSW to represent legally aided clients.

We also work in close partnership with community legal centres, the Aboriginal Legal Service (NSW/ACT) Limited and pro bono legal services. Our community partnerships include 27 Women's Domestic Violence Court Advocacy Services, and health services with a range of Health Justice Partnerships.

The Legal Aid NSW Family Law Division provides services in Commonwealth family law and state child protection law.

Specialist services focus on the provision of family dispute resolution services, family violence services, services to Aboriginal families and the early triaging of clients with legal problems through the Family Law Early Intervention Unit.

Legal Aid NSW provides duty services at all Family and Federal Circuit Court registries and circuit locations through the Family Advocacy and Support Service, all six specialist Children's Courts, and in some Local Courts alongside the Apprehended Domestic Violence Order lists. Legal Aid NSW also provides specialist representation for children in both the family law and care and protection jurisdictions.

The Civil Law Division provides advice, minor assistance, duty and casework services from the Central Sydney office and most regional offices. The purpose of the Civil Law Division is to improve the lives of people experiencing deep and persistent disadvantage or dislocation by using civil law to meet their fundamental needs. Our civil lawyers focus on legal problems that impact on the everyday lives of disadvantaged clients and communities in areas such as housing, social security, financial hardship, consumer protection, employment, immigration, mental health, discrimination and fines. The Civil Law practice includes dedicated services for Aboriginal communities, children, refugees, prisoners and older people experiencing elder abuse.

The Criminal Law Division assists people charged with criminal offences appearing before the Local Court, Children's Court, District Court, Supreme Court, Court of Criminal Appeal and the High Court. The Criminal Law Division also provides advice and representation in specialist jurisdictions including the State Parole Authority and Drug Court.

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2. Executive summary

Legal Aid NSW welcomes the opportunity to provide a submission to the Department of Communities and Justice's (DCJs) review of legal protections for victims of forced marriage in NSW.

Legal Aid NSW has assisted numerous victims of forced marriage and those who were at risk of forced marriage, including by making applications to the Federal Circuit and Family Court of Australia for airport watch list orders, and personal protection injunctions to protect children at risk of being taken overseas to be forced into marriage. We have also represented children in state care and protection proceedings who were at risk of, or who had been, forced into marriage.

Legal Aid NSW welcomes the growing awareness of forced marriage as a form of modern slavery and an act of domestic and family violence, and commends New South Wales for being the first Australian jurisdiction to pass specific modern slavery legislation.¹ The *Modern Slavery Act 2018* (NSW) and the amendment Bill amended the *Crimes Domestic and Personal Violence Act 2007* (NSW) (**CDPV Act**) to:

- ensure that potential adult and child victims of forced marriage can access apprehended violence orders (**AVOs**) if they experience coercion or threats to enter a forced marriage²
- include conduct amounting to coercion of a child to enter into a forced marriage (within the meaning of the proposed new offence), and coercion of a person to enter into a forced marriage (within the meaning of the *Commonwealth Criminal Code 1995* (Cth), in the definition of 'intimidation.'

Legal Aid NSW supported these amendments.³

The present review seeks to assess the adequacy of the existing legal protections in NSW to determine whether any further protections are necessary. Legal Aid NSW submits that the issue of forced marriage is primarily a federal issue, and stronger protections are required at that level, including through the introduction of a forced marriage protection order scheme.

However, in addition to any Commonwealth forced marriage protection order scheme, Legal Aid NSW supports the use of AVOs, which provide some level of protection to potential victims of forced marriage. On the whole, we consider the current legal protections in NSW as appropriate. In particular, we consider:

1. the current obligation on NSW Police Force (**NSWPF**) to apply for a provisional AVO in the context of forced marriage as appropriate.
2. current protections that mandate the making of an AVO in certain circumstances⁴ sufficient, and not requiring expansion.
3. the current grounds for making both apprehended domestic violence orders (**ADVOs**) and apprehended personal violence orders (**APVOs**) effectively recognise and respond to circumstances of forced marriage.

¹ The *Modern Slavery Act 2018* (NSW) predates the *Modern Slavery Act 2018* (Cth), which was enacted in December 2018 and which commenced on 1 January 2019. Both the NSW Act and the Commonwealth Act are based on the *Modern Slavery Act 2015* (UK).

² It did this by including reference to the offences of forced marriage under the *Commonwealth Criminal Code 1995* (Cth) in the definitions of 'personal violence offence' and 'serious offence' and by including the new offence of child forced marriage in the definition of 'personal violence offence' in the *CPDV Act* (Schedule 5.3, [1]).

³ Inquiry into the *Modern Slavery Act 2018* and associated matters, Legal Aid NSW submission to the Legislative Council Standing Committee on Social Issues, 18 October 2019. Available [here](#).

⁴ Pursuant to sections 40 and 39 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW).

4. the existing AVO conditions that can be imposed by a court as adequate and not requiring expansion, particularly given the court can impose non-standard conditions restricting a defendant's behaviour.
5. the existing criminal offences under the NSW legislation as adequate and appropriate, and the introduction of new offences as inappropriate.

Legal Aid NSW considers that the following legislative amendments would increase protection and support for potential victims of forced marriage:

1. an amendment to section 48(2) of the *CDPV Act* to give standing to apply for an AVO to the Australian Federal Police (**AFP**), and
2. an amendment to section 35(3) of the *CDPV Act* to allow provisional AVOs to contain non-standard conditions that specifically relate to forced marriage. This will allow conditions that restrict a defendant's behaviour to be imposed on an urgent basis before the matter comes before a court.

Legal Aid NSW also recommends several changes to practice and procedure to streamline support for victims of forced marriage, including the development of information sheets, enhanced collaboration between jurisdictions and agencies, the use of interpreters and translated documents, increased training, an expansion of available support services, and greater assistances from Victims Services NSW.

Recommendations

Recommendation 1

To ensure a holistic response between Australian Government and the NSW Government on the issue of forced marriage, Legal Aid NSW recommends:

- a) that the NSW Government communicate and collaborate with the Australian Government on their response to forced marriage, and
- b) should the Australian Government implement a forced marriage protection order scheme, the NSW Government should review its own system to ensure that there is no duplication or inconsistencies between the two systems.

Recommendation 2

Section 48(2) of the *Crimes Domestic and Personal Violence Act 2007 (NSW)* should be amended to give the Australian Federal Police standing to apply for AVOs in NSW courts.

Recommendation 3

Amend section 35(3) of the *Crimes Domestic and Personal Violence Act 2007 (NSW)* to state:

A provisional order may

- a) impose any or all of the prohibitions or restrictions specified in subsection (2)(a)–(e), and/or
- b) prohibit behaviour of the defendant that might coerce, threaten or deceive the protected person to enter into a forced marriage within the meaning of the *Crimes Act 1900*, section 93AC or the *Commonwealth Criminal Code*, section 270.7A (Definition of forced marriage), if the issuing officer is satisfied that there are reasonable grounds for the order doing so and the defendant is not a child.

Recommendation 4

A referral protocol between all relevant support services and agencies should be developed. This referral protocol should clearly outline the responsibilities of each agency in assisting victims of forced marriage and should contain information on the referral pathways between agencies/ support services and how each agency will accept referrals. The protocol should include a list of all available support services.

Recommendation 5

The standard AVO form and all standard conditions should be available in multiple languages.

Recommendation 6

NSW Police Force should only use qualified and independent telephone interpreters instead of relying on family and community members to translate.

Recommendation 7

The Red Cross Support for People Trafficked Program should accept referrals from the Department of Communities and Justice, the NSW Police Force and other relevant stakeholders.

Recommendation 8

The Department of Communities and Justice should, through its Multicultural Policy and Engagement Team, deliver culturally appropriate training to all frontline child protection workers on how to appropriately respond to allegations and threats of forced marriage.

Recommendation 9

The NSW Government should increase its funding to enable the expansion of Legal Aid NSW's Domestic Violence Unit and Early Intervention Unit. This will ensure Legal Aid NSW has the capacity to assist victims of forced marriage.

Recommendation 10

The NSW Government, in consultation with the Australian Federal Police, and relevant support services, should develop an information sheet aimed at support services and the domestic violence sector. This information sheet should contain information on the use of AVOs to prevent and protect victims of forced marriage, information about the federal protections to prevent and protect victims of forced marriage, information about the available support services and how to make appropriate referrals, and information about the reasons a victim may be reluctant to disclose a forced marriage (for example, due to concerns about alienating themselves from their families) and the pathways and services available for these women.

Recommendation 11

The NSW Government, in consultation with the Australian Federal Police, and relevant support services, should develop three separate information sheets aimed at victims of forced marriage, community and religious leaders, and new arrival communities. These information sheets should contain information on the illegality of forced marriage, available support services, AVOs, and how to identify and respond to suspected forced marriage.

Recommendation 12

NSW Police Force, the Australian Federal Police, and other government agencies should develop a practice of immediately referring potential victims of forced marriage to appropriately qualified case workers to assist them to navigate the legal system and work through any concerns regarding reporting forced marriage.

Recommendation 13

Women on temporary visas who have experienced forced marriage or other forms of domestic violence should not be restricted from accessing the Services Australia Special Benefit and social housing supports as a result of their visa status.

Recommendation 14

Victims Services NSW's earlier information gathering function should be reinstated to enable victims of crime to access relevant entitlements.

3. A federal issue

The issue of forced marriage is primarily a federal issue and strengthened protections are required at a federal level. In our experience, forced marriage cases commonly involve victims being removed from Australia in order for them to marry. AVOs are not always an effective way of preventing international travel.

While Airport Watch List orders⁵ and personal protection injunctions⁶ provide protection for children, we continue to advocate for the implementation of a Commonwealth forced marriage protection order scheme to protect people over 18 years. Such a scheme, similar to the forced marriage protection orders in the United Kingdom,⁷ would allow the Australian Federal Police to prevent travel for young people aged over 18 who are still vulnerable to forced marriage.

As at November 2023 it remains unclear whether the Australian Government will legislate to enact a forced marriage protection order scheme. The uncertainty around this is problematic. Legal Aid NSW is concerned about the risk of duplication, inconsistency and confusion between NSW and Commonwealth laws, if the Australian Government enacts a forced marriage protection order scheme. We submit that the NSW Government response must consider potential Commonwealth reforms.

We call for a holistic and collaborative response between the Australian Government and state and territory governments on the issue of forced marriage. We further recommend that DCJ monitor and review the Commonwealth response to limit inconsistency and duplication between the two schemes.

Recommendation 1

- To ensure a holistic response between the Australian Government and the NSW Government to the issue of forced marriage Legal Aid NSW recommends:
 - a) that the NSW Government communicate and collaborate with the Australian Government on their response to forced marriage, and
 - b) that should the Australian Government implement a forced marriage protection order scheme, the NSW Government should review its own system to ensure that there is no duplication or inconsistencies between the two systems.

⁵ An airport watch list order is made by the Federal Circuit and Family Court of Australia if there is a real and immediate risk of a child being taken from Australia without consent. If a child is on a watch list and a person attempts to take them outside of Australia, Customs will tell the Australian Federal Police and the child will not be able to travel until the order is lifted.

⁶ Personal protection injunctions are orders made by the Federal Circuit and Family Court of Australia. They restrain another person from doing certain things. The court has the power to make injunctions for the protection of children, a parent or someone else involved in the child's life.

⁷ The *Modern Slavery Act 2015* (UK) provides for the making of "slavery and trafficking prevention orders" (pursuant to ss 14-22) which apply in circumstances where there is a "risk" a person will commit a slavery or human trafficking offence and it is necessary to make the order for the purpose of protecting persons generally, or particular persons, from physical or psychological harm. For information about the operation of such orders see the Home Office's "Guidance on slavery and trafficking prevention orders and slavery and trafficking risk orders under Part 2 of the *Modern Slavery Act 2015* (UK)", April 2017, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/610015/110417_-_statutory_guidance_part_2_-_GLAA_updates-_Final.pdf.

4. Applications for AVOs

4.1 Question 1: Is the obligation to apply for a provisional AVO in the context of forced marriage appropriate, sufficiently clear and consistently complied with?

An AVO can be made as a provisional, interim or final order. Interim and final AVOs can only be made by a court. A provisional AVO can be made by the NSW Police Force (**NSWPF**).

Provisional AVOs are designed to provide protection to a PINOP for a short period of time between an incident attended by, or reported to police, and the AVO application coming before a court. A provisional AVO is taken to be an application to the court for a final AVO. A provisional AVO should be brought before a court on the next AVO list day after it is made or, at the latest, 28 days after it is made.⁸

Section 27 of the *CDPV Act* requires NSWPF to apply for a provisional ADVO in certain circumstances including:

- if they believe or suspect that a specific offence⁹ has been committed or is likely to be committed, or is imminent, or that proceedings for such an offence have been commenced, and
- if they have good reason to believe 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.¹⁰

However, if the potential PINOP is over 16 years of age at the time of the incident, and a police officer investigating the incident believes there are good reason not to make the application, that requirement does not apply provided the officer formally records their reasons.¹¹

Legal Aid NSW considers the obligation to apply for a provisional ADVO in the context of forced marriage to be sufficiently clear and appropriate.

4.2 Question 2: Are there any other circumstances in which the making of an AVO should be mandated in matters involving forced marriage?

Legal Aid NSW considers the current protections that mandate the making of an AVO in certain circumstances are sufficient and that it is not necessary or appropriate to mandate the making of an AVO in any further circumstances.

The current mandates include:

- section 40 of the *CDPV Act*, which requires the court to make an interim AVO against a person who is charged with a serious offence, unless the court considers that it is not required, and

⁸ *Crimes (Domestic and Personal Violence) Act 2007* (NSW), s 29(3).

⁹ This includes the NSW and Commonwealth forced marriage offences, the NSW child forced marriage offence (if the relationship between the victim and accused is a domestic relationship- see ss 4 and 11) AND the offence of intimidation (which includes conduct amounting to the coercion or deception of, or a threat to, a person to enter into a forced marriage (see *Care Act*, s 227).

¹⁰ *Crimes (Domestic and Personal Violence) Act 2007* (NSW), s 27

¹¹ *Crimes (Domestic and Personal Violence) Act 2007* (NSW), s 27(5).

- section 39 of the *CDPV Act*, which requires the court to make a final AVO against a person who pleads guilty or is found guilty of a serious offence, unless the court considers that it is not required.

The definition of 'serious offence' includes a domestic violence offence (including stalking and intimidating) and the NSW and Commonwealth forced marriage offences.¹²

We do not consider it appropriate nor warranted to further fetter a judicial officer's discretion. Rather, the need for an AVO should be primarily determined on the individual facts and circumstances of each case.

¹² *Crimes (Domestic and Personal Violence) Act 2007* (NSW), s 40(5)(c1)).

5. Applications for AVOs and standing

5.1 Question 3: 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?

Section 48(2) of the *CDPV Act* gives standing to apply for a final or interim AVO to:

- the PINOP¹³ or a PINOP's guardian¹⁴
- a NSWPF officer (this does not include an Australian Federal Police (**AFP**) officer)¹⁵
- in cases of child forced marriage, DCJ.¹⁶

We support an amendment to give AFP officers standing to make an application for an AVO under the CPDV Act.

The AFP are currently the primary reporting pathway for forced marriage allegations. They have information and expertise regarding forced migration which other services may not be able to access. Allowing the AFP to make applications for AVOs could provide a smoother and more trauma-informed process for victims of forced marriage.

Recommendation 2

- Section 48(2) of the *Crimes Domestic and Personal Violence Act 2007* (NSW) should be amended to give the Australian Federal Police standing to apply for AVOs in NSW courts.

5.2 Question 4: 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?

Legal Aid NSW does not foresee any risks associated with allowing the AFP to have standing to apply for AVOs in NSW courts.

Expanding standing to apply for AVOs to any other agencies could be problematic and we urge caution in this regard. Expanding standing any further, may cause confusion and make it difficult for a court to determine which parties are acting in the true interests of a PINOP in applying for an order. It may also increase the potential for system abuse to occur.

¹³ However only a police officer has standing to apply for an AVO if each of the PINOP is a child.

¹⁴ If the PINOP is subject to a guardianship order.

¹⁵ Section 48(2) of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) gives standing to a "police officer" to apply for an AVO. The term, "police officer", is defined in section 21 of the Interpretation Act 1987 (NSW) as a member of the NSW Police Force who is a police officer within the meaning of the Police Act 1990 (NSW).

¹⁶ *Crimes (Domestic and Personal Violence) Act 2007* (NSW), s 48(2)(c)

6. Grounds for making an AVO

6.1 Question 5: 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?

Legal Aid NSW considers that the grounds for making an ADVO do effectively recognise and respond to circumstances of forced marriage, and that these grounds do not require further strengthening for this purpose.

For an ADVO to be made, the court needs to be satisfied, on the balance of probabilities, that the PINOP has reasonable grounds to fear that:

- a) the defendant will commit a domestic violence offence (including both the NSW and Commonwealth forced marriage offences¹⁷) against the PINOP; or
- b) the defendant will engage in conduct in which they intimidate the person (which could include coercing a person to enter a forced marriage) or stalks the person, and that conduct is sufficient to warrant the making of the order.¹⁸

The court must also be satisfied that the PINOP does in fact fear the conduct above (except where the PINOP is a child, has a cognitive impairment, or where there is a history of violence and the making of the order is necessary to protect the PINOP from further violence, or if the court is satisfied that the PINOP has reasonable grounds to fear the commission of a domestic violence offence).

6.2 Question 6: 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?

The definition of domestic relationship under the *CDPV Act* is broad.¹⁹ However there could be cases where a PINOP does not have a 'domestic relationship' with the person (or people) who are seeking to facilitate a forced marriage (for example, religious or community leaders).

The grounds for making an APVO are similar to those for an ADVO (set out above), however they refer to the commission of a personal violence offence²⁰ rather than a domestic violence offence.

Further, the court must be satisfied that the PINOP actually fears the relevant conduct, except where they are a child or are suffering from an 'appreciably below average general intelligence function'.²¹ This is slightly narrower than the test for making an ADVOs, however it is likely that any adult at risk of being forcibly married would satisfy the 'actually fears' test.

¹⁷ This includes both the NSW child forced marriage offence and the Commonwealth forced marriage offences, see *Crimes (Domestic and Personal Violence) Act 2007* (NSW), s 11(1)(a) and then s 4(b2). From 2024 it will also include coercive control.

¹⁸ *Crimes (Domestic and Personal Violence) Act 2007* (NSW), s 16

¹⁹ *Crimes (Domestic and Personal Violence) Act 2007* (NSW), s 5.

²⁰ This includes both the NSW child forced marriage offence and the Commonwealth forced marriage offences, see *Crimes (Domestic and Personal Violence) Act 2007* (NSW), s 4(b2). From 2024 it will also include coercive control.

²¹ *Crimes (Domestic and Personal Violence) Act 2007* (NSW), s 19(2)

7. Prohibitions and restrictions under AVOs

7.1 Question 7: 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?

There are mandatory conditions that are included in every AVO. These are often referred to as 'standard orders' or order 1 a, b & c. These orders prevent a defendant from assaulting, threatening, stalking, harassing or intimidating a PINOP or intentionally or recklessly destroying or damaging a PINOPs property. These mandatory orders also protect anyone the PINOP has a domestic relationship with.

Mandatory orders are designed to protect persons in need of protection (**PINOPs**) however they do not prohibit contact between the defendant and the PINOP.

Additionally, the court has the power to impose any such prohibitions or restrictions on the behaviour of the defendant in an AVO as appear necessary or desirable to the court,²² and specifically the following prohibitions or restrictions:

- “(a) prohibiting or restricting approaches by the defendant to the protected person,
- (b) prohibiting or restricting access by the defendant to any or all of the following--
 - (i) to any premises occupied by the protected person from time to time or to any specified premises occupied by the protected person,
 - (ii) to any place where the protected person works from time to time or to any specified place of work of the protected person,
 - (iii) to any specified premises or place frequented by the protected person, whether or not the defendant has a legal or equitable interest in the premises or place,
- (c) prohibiting or restricting the defendant from approaching the protected person, or any such premises or place, within 12 hours of consuming intoxicating liquor or illicit drugs,
- (c1) prohibiting or restricting the defendant from locating or attempting to locate the protected person,
- (d) prohibiting or restricting the possession of all or any specified firearms or prohibited weapons (within the meaning of the *Weapons Prohibition Act 1998*) by the defendant,
- (e) prohibiting the defendant from interfering with the protected person's property,
- (f) prohibiting or restricting specified behaviour by the defendant that might affect the protected person.”²³

Subsection 35(2)(f) of the *CDPV Act* gives the court the power to impose non-standard prohibitions or restrictions regarding a defendant's behaviour that are not captured in subsections (a)-(e). Section 35(2A) of the *CDPV Act* states:

“Without limiting the generality of subsection (2)(f), an apprehended violence order may prohibit behaviour of the defendant that might coerce, threaten or deceive the protected person to enter into a forced marriage within the meaning of the *Crimes Act 1900*, section 93AC or the Commonwealth Criminal Code, section 270.7A (Definition of forced marriage).”²⁴

Legal Aid NSW considers these restrictions and prohibitions to be adequate.

²² *Crimes (Domestic and Personal Violence) Act 2007* (NSW), s 35(1).

²³ *Crimes (Domestic and Personal Violence) Act 2007* (NSW), s 35(2).

²⁴ *Crimes (Domestic and Personal Violence) Act 2007* (NSW), s 35(2A).

7.2 Question 8: 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?

Legal Aid NSW supports amending CDPV Act to enable provisional AVOs to contain conditions that prohibit behaviour of the defendant that might coerce, threaten or deceive the protected person to enter into a forced marriage. However, we do not support section 35(3) being amended to allow the imposition of a condition under section 35(2)(f). Legal Aid NSW considers the types of prohibitions and restrictions that can be made pursuant to subsection 35(2)(f) too broad to be included in provisional AVOs which are subject to limited oversight. In our view this approach could lead to NSWPF imposing inappropriate conditions on provisional AVOs. To avoid this undesirable consequence, we instead recommend that section 35(3) be amended to state:

A provisional order may

- a) impose any or all of the prohibitions or restrictions specified in subsection (2)(a)–(e), and/or
- b) prohibit behaviour of the defendant that might coerce, threaten or deceive the protected person to enter into a forced marriage within the meaning of the Crimes Act 1900, section 93AC or the Commonwealth Criminal Code, section 270.7A (Definition of forced marriage).

if the issuing officer is satisfied that there are reasonable grounds for the order doing so and the defendant is not a child.

Recommendation 3

- Amend section 35(3) of the CDPV Act to state:

A provisional order may

- a) impose any or all of the prohibitions or restrictions specified in subsection (2)(a)–(e), and/or
- b) prohibit behaviour of the defendant that might coerce, threaten or deceive the protected person to enter into a forced marriage within the meaning of the Crimes Act 1900, section 93AC or the Commonwealth Criminal Code, section 270.7A (Definition of forced marriage).

if the issuing officer is satisfied that there are reasonable grounds for the order doing so and the defendant is not a child.

8. Practice and procedure for AVOs

8.1 Question 9: 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?

Legal Aid NSW recommends multiple practice changes to better support victims of forced marriage.

Increased coordination and collaboration between stakeholders

Responding to incidents of forced marriage is complex and requires not only a legal response but also co-ordinated delivery of social supports at both Commonwealth and NSW levels. It requires the involvement of multiple agencies and support services.²⁵ Effective collaboration and co-ordination between these various stakeholders is therefore crucial.

Unfortunately, Legal Aid NSW has observed a lack of coordination between stakeholders that has the potential to cause confusion about what services are available, which jurisdiction is responsible for supporting victims of forced marriage, and which agency is the most appropriate to refer.

We therefore recommend the development of a referral protocol between the relevant stakeholders that clearly specifies the responsibilities of each agency in assisting victims of forced marriage, and sets out the referral pathway between agencies. We also recommend this referral protocol contain a list of available support services²⁶ to encourage appropriate referrals.

Case Study: Hafsa's story

[Redacted content]

²⁵ For example, forced marriage often comes to light in school settings, creating an involvement for the NSW Department of Education; disclosures can also be made to health professionals, thereby involving the Department of Health; state police can be called to a domestic violence situation which involves forced marriage; the young person's care and protection and housing issues need to be addressed, also involving DCJ Child Protection and the young person is usually in need of independent legal advice thereby involving Legal Aid NSW.

²⁶ Including Empower You, the Support for People Trafficked Program, and the Indian Subcontinent Crisis and Support Agency.

Recommendation 4

- A referral protocol between all relevant support services and agencies should be developed. This referral protocol should clearly outline the responsibilities of each agency in assisting victims of forced marriage, and should contain information on the referral pathway between agencies/support services and how each agency will accept referrals. The protocol should include a list of all available support services.

The translation of the standard AVO form and all standard AVO conditions into multiple different languages

Legal Aid NSW solicitors spend a significant amount of time translating individual AVO conditions and the effects of breach to both PINOPs and defendants through telephone interpreters booked through the Translating and Interpreting Service. This usually occurs days after the provisional AVO is made, when the AVO is first listed before a court.

The translation of the standard AVO form and all standard AVO conditions into multiple different languages would enable PINOPs and defendants to quickly understand AVO conditions and the implications of breach. This will limit confusion and increase compliance from the earliest possible stage.

Recommendation 5

- The standard AVO form and all standard conditions should be available in multiple languages.

The use of qualified interpreters by police

Legal Aid NSW has observed that NSWPF regularly rely on family and community members (including children) to translate information between NSWPF officers and PINOPs, defendants and witnesses. This can be problematic (particularly in the context of forced marriage, where the person interpreting may have been involved in arranging the forced marriage) and can lead to important information being incorrectly interpreted, or NSWPF not being given all relevant information. We recommend the NSWPF use independent, qualified interpreters when obtaining important information from victims, defendants and witnesses who do not speak English.

Recommendation 6

- NSW Police Force should only use qualified and independent telephone interpreters instead of relying on family and community members to translate.

Increasing referrals to the Red Cross Support for Trafficked People Program

The Red Cross *Support for People Trafficked Program*²⁷ provides accommodation, financial support, counselling, legal and immigration advice to victims of forced marriage. This program is run by the Commonwealth Government and only accepts referrals from the AFP. We recommend allowing referrals from NSWPF, DCJ and other relevant stakeholders. This will ensure victims who are supported by these agencies are provided with the same quality wrap around service that is provided to victims who are receiving support from the AFP.

²⁷ Information on this program can be found [here](#).

Recommendation 7

- The Red Cross *Support for People Trafficked Program* should accept referrals from the Department of Communities and Justice, the NSW Police Force and other relevant stakeholders.

Increased training for child protection workers on the issue of forced marriage

Legal Aid NSW has observed a general reluctance of DCJ Child Protection to initiate care proceedings for teenage children. This is problematic given child victims of forced marriage are commonly in their teens. The below case study provides an example of delayed action in initiating care proceedings for a child at risk of forced marriage.

Case Study: Ayesha's story

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

We recommend further training for frontline child protection workers to ensure they respond appropriately to allegations and threats of forced marriage.

Recommendation 8

- The Department of Communities and Justice should, through its Multicultural Policy and Engagement Team, deliver culturally appropriate training to all frontline child protection workers on how to appropriately respond to allegations and threats of forced marriage.

An expansion of Legal Aid NSW's Domestic Violence Unit

Legal Aid NSW provides support to victims of forced marriage through our Domestic Violence Unit (DVU) and Early Intervention Unit (EIU). Both units offer advice, legal assistance, and in some instances representation, to victims of forced marriage. Forced marriage cases often involve complex legal and jurisdictional issues and often involve a significant amount of work for our lawyers.

Legal Aid NSW are currently experiencing unprecedented demand for DVU services – over the financial year 2021-2022 DVU received over 11,245 telephone calls, in excess of 5,500 email referrals, and provided 7,460 duty services, 1,750 advice services and 1,530 minor advice services.²⁸

Expanding the DVU and EIU will increase our capacity to assist victims of forced marriage.

Recommendation 9

- The NSW Government should increase its funding to enable the expansion of Legal Aid NSW's Domestic Violence Unit and Early Intervention Unit. This will ensure Legal Aid NSW has the capacity to assist victims of forced marriage.

8.2 Question 10: 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?

Guidance for support services and the domestic violence sector

Legal Aid NSW recommends that the NSW Government, in collaboration with AFP develop an information sheet aimed at support services and the domestic violence sector to provide additional guidance and increase sector awareness and, in turn, improve responses to forced marriage. This information sheet should include:

- information about the use of AVOs to prevent and protect victims of forced marriage
- information about the federal protections to prevent and protect victims of forced marriage
- information about the available support services for victims of forced marriage
- information about the reasons a victim may be reluctant to disclose a forced marriage (for example, due to concerns about alienating themselves from their families) and the pathways and services available for these women.

²⁸ Legal Aid NSW, *Annual Report: 2021-2022*, p 50.

Recommendation 10

- The NSW Government, in consultation with the Australian Federal Police, and relevant support services, should develop an information sheet aimed at support services and the domestic violence sector. This information sheet should contain information on the use of AVOs to prevent and protect victims of forced marriage, information about the federal protections to prevent and protect victims of forced marriage, information about the available supports services and how to make appropriate referrals, and information about the reasons a victim may be reluctant to disclose a forced marriage (for example, due to concerns about alienating themselves from their families) and the pathways and services available for these women.

Guidance for victims and potential victims of forced marriage, community and religious elders, and new arrival communities

We also recommend the development of three separate information sheets aimed at:

- victims and potential victims of forced marriage
- community and religious leaders, and
- new arrival communities.

These information sheets should include:

- information about the illegality of forced marriage and the reasons it is illegal
- information about the use of AVOs to prevent and protect victims of forced marriage
- information about the available support services for victims of forced marriage
- information about how to identify and respond to suspected forced marriage.

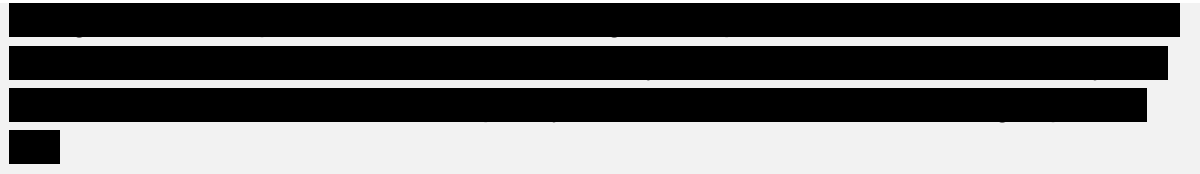
These information sheets should be available in multiple languages.

Recommendation 11

- The NSW Government, in consultation with the Australian Federal Police, and relevant support services, should develop three separate information sheets aimed at victims of forced marriage, community and religious leaders, and new arrival communities. These information sheets should contain information on the illegality of forced marriage, available support services, AVOs, and how to identify and respond to suspected forced marriage.
-

Case study: Yasmin's story

[Redacted text block containing the case study details for Yasmin's story]



8.3 Question 11: Are there additional barriers for specific cohorts of the community in obtaining protections against forced marriage under the AVO system?

The legal response to allegations of forced marriage can span across jurisdictions, requiring victims to engage with a range of services including the AFP, NSWPF, various courts, and the Commonwealth Director of Public Prosecutions. Legal Aid NSW considers the complexity of the system as a barrier for many victims.

The criminal justice response may itself present as a barrier. Communities and victims may be reluctant to engage with law enforcement systems. The reasons for this are many and nuanced, but can include:

- language barriers
- fear of criminalising their family members
- fear of not being believed
- fear of an escalation in the violence if the defendant becomes aware they have reported the conduct
- fear for family members (particularly for family members overseas, where the defendant might hold community power and influence)
- fear of becoming homeless or financially destitute without the support of the defendant
- fear of being socially isolated or isolated from their community
- fear of being deported, if they are in Australia illegally or on a temporary visa
- fear of being prosecuted themselves, if the defendant has reinforced a criminal narrative as a form of systems abuse.

Victims may also face barriers due to religious beliefs and practices, including potential stigma and shame associated with leaving a marriage.

These barriers are compounded for victims living with a disability and victims from non-English speaking backgrounds.

To assist in overcoming these barriers it is crucial that all victims of forced marriage have access to appropriately qualified case workers to help them navigate the system and liaise with key professionals and relevant agencies.

Recommendation 12

- NSW Police Force, the Australian Federal Police, and other government agencies should develop a practice of immediately referring potential victims of forced marriage to appropriately qualified case workers to assist them to navigate the legal system and work through any concerns regarding reporting forced marriage.

Women on temporary visas

Women on temporary visas face additional barriers to obtaining protection against forced marriage, as they are unable to access the limited supports available. For example, people

on temporary visas cannot access the Services Australia Special Benefit²⁹ or housing supports. They are often ineligible to work while their applications for residency are being considered (which can take months or years) meaning they have no way of financially supporting themselves. These barriers can result in a reluctance to report domestic violence perpetrated against them.

Legal Aid NSW recommends increasing supports for women on temporary visas to encourage them to report the offence and assist them to leave the relationship. Increased support should include allowing women on temporary visas to access social housing support and the Services Australia Special Benefit.

Recommendation 13

- Women on temporary visas who have experienced forced marriage or other forms of domestic violence should not be restricted from accessing the Services Australia Special Benefit and social housing supports as a result of their visa status.

Access to Victims Services NSW

Victims of forced marriage may be eligible for Victims Services NSW entitlements, however the current Victim Services NSW application process requires applicants to gather and provide supporting documents (except police reports) for their application to be assessed.

In our experience, placing the evidentiary burden on victims creates barriers to many victims accessing support, which for some is insurmountable due to their circumstances, the impact of trauma, and/ or the costs and complexities involved in collecting their own evidence. This disproportionately impacts vulnerable populations, particularly victims of domestic violence, victims of sexual violence, children, people from non-English speaking backgrounds and people with low literacy levels.

While the Victims Services Commissioner has the power to compel production of information from any person or government agency pursuant to section 12 of the *Victims Rights and Support Act 2013* (NSW), victims must use other processes such as the *Government Information (Public Access) Act 2009* (NSW) (GIPA), which can be difficult, bureaucratic and routinely take up to six months. Delays in receiving information under GIPA requests can prevent victims from being able to meet application time limits.

Victims Services NSW previously used its information gathering powers to assist victims to access the evidence needed to support their claim. The decision in 2020 by Victims Services NSW to stop offering this assistance has created a barrier to accessing these services for many victims of crime in NSW and will likely impact victims of forced marriage.

Recommendation 14

- Victims Services NSW's earlier information gathering function should be reinstated to enable victims of crime to access relevant entitlements.

²⁹ The Special Benefit is a Services Australia payment provided to people in financial hardship who are not eligible for any other income support. See [Who can get Special Benefit - Special Benefit - Services Australia](#) for further information on eligibility criteria.

9. Forced marriage offences

9.1 Question 12: 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)?

Legal Aid NSW considers the existing criminal offences under the NSW legislation to be adequate and appropriate as a criminal justice response to forced marriage. We do not support the introduction of new offences, particularly ones that risk duplicating the existing Commonwealth criminal offences.

Forced marriage can currently be prosecuted under the following legislation:

Commonwealth offences

- section 95(1) of the *Marriage Act 1961* (Cth), which makes it an offence to marry someone who is not of marriageable age³⁰
- section 95(2) of the *Marriage Act 1961* (Cth), which makes it an offence for a person to marry someone between the ages of 16 and 18 unless the necessary consents are obtained or the young person has been married before³¹
- section 98 the *Marriage Act 1961* (Cth), which makes it an offence to witness a marriage of a child³²
- section 270.7B of the *Commonwealth Criminal Code 1995* (Cth) which makes it an offence for a person:
 - a) to engage in conduct causing someone to enter into a forced marriage; and
 - b) who is not a victim of the forced marriage to be a party to the forced marriage, without a reasonable excuse³³
- section 271.4(2) of the *Commonwealth Criminal Code 1995* (Cth) which is a child trafficking offence (a person could be guilty of this if they take, or arrange to send a child overseas to be married offshore)³⁴

NSW Offences

- Two offences pursuant to section 93AC of the *Crimes Act 1900* (NSW) being:
 - a) causing a child to enter a forced marriage, and intending to cause or being reckless as to causing that forced marriage³⁵
 - b) entering into a marriage with a child and knowing that it is a forced marriage, if they are not a victim of the forced marriage³⁶
- section 7 of the *CDPV Act* (stalk/intimidate)– the definition of intimidation expressly covers conduct relevant to forced marriage.³⁷



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³⁰ This offence has a maximum penalty of five years imprisonment.

³¹ This offence has a maximum penalty of six months imprisonment or 5 penalty units.

³² This offence has a maximum penalty of six months imprisonment or 5 penalty units.

³³ This offence has a maximum penalty of seven years imprisonment or 9 years imprisonment if aggravated.

³⁴ This offence has a maximum penalty of 25 years imprisonment or 5 penalty units.

³⁵ This offence has a maximum penalty of nine years imprisonment.

³⁶ This offence has a maximum penalty of nine years imprisonment.

³⁷ This offence has a maximum penalty of five years imprisonment.