

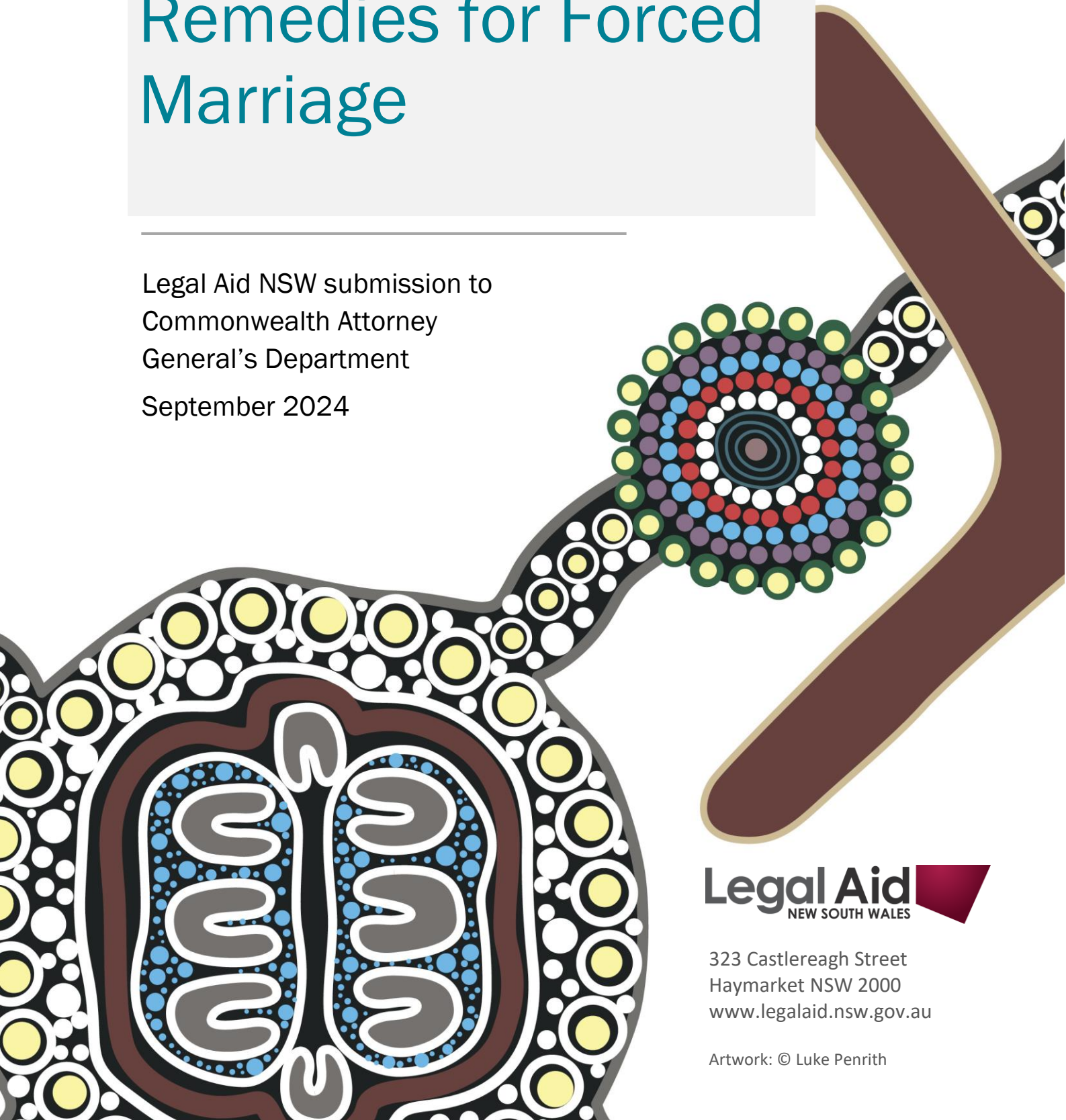
Enhancing Civil Protections and Remedies for Forced Marriage

Legal Aid NSW submission to
Commonwealth Attorney
General's Department
September 2024

Legal Aid
NEW SOUTH WALES

323 Castlereagh Street
Haymarket NSW 2000
www.legalaid.nsw.gov.au

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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, with a particular focus on the needs of people who are socially and economically disadvantaged.

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 and the early triaging of clients with legal problems through the Family Law Early Intervention Unit.

Legal Aid NSW provides duty services at a range of courts, including the Parramatta, Sydney, Newcastle and Wollongong Family Law Courts, 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 20 regional offices. It focuses 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.

2. Legal Aid NSW's experience responding to forced marriage

Question 1: Are these effective options to improve nationally consistent responses to forced marriage? Are there different options that should be considered?

Legal Aid NSW welcomes the opportunity to provide a submission to the Commonwealth Attorney-General's Department's Consultation Paper on Enhancing Civil Protections and Remedies for Forced Marriage.

On multiple occasions since 2014, the Family Law Division of Legal Aid NSW has acted to obtain orders under the *Family Law Act 1975 (Cth)* (**Family Law Act**) to prevent a young person from being married against their will. Since that time, we have urged the Commonwealth to respond to this issue.

Whilst we recognise that forced marriages take place within Australia, in each of the cases Legal Aid NSW has acted in, a member of the young person's family had planned for the young person to travel outside of Australia to be married.

In such cases, Legal Aid NSW has acted either on direct instructions from a young person or for an adult who has an interest in the care, welfare and development of a young person. If we are instructed that a young person is at risk of travelling outside Australia to be married against their will, our approach has been to apply to the Federal Circuit and Family Court of Australia (**FCFCOA**) under section 68B of the *Family Law Act* for injunctive relief in the form of an order preventing a person from forcing a child into marriage (and other orders as appropriate in the circumstances) and an order that the Australian Federal Police (**AFP**) place the young person on the Family Law Watchlist (known as a Family Law Watchlist Order, **FLWO**) to prevent the child from travelling outside of Australia.

Obtaining these orders, along with intensive social support from properly trained and resourced social workers, has helped in numerous instances to prevent a forced marriage from going ahead and has dramatically altered the trajectory of the young person's life.

However, applying for orders under the *Family Law Act* is a long and slow process and it is not always an appropriate avenue. There have been other instances where Legal Aid

NSW has been aware of the risk of a young person being married against their will, but we have been unable to act due to the limitations in our laws.

A young person can only be placed on the FLWL when they are under 18 and the order will stay in place only until they turn 18. Once a person turns 18 there is a clear gap in protection against forced marriage that needs to be addressed by the Commonwealth Government.

Legal Aid NSW has found that a significant drawback of using the *Family Law Act* to respond to forced marriage has been that in many cases the young person needed to be named as the applicant in the application for an injunction and to list their parents as respondents. This is a huge burden for our system to place on a young person and a significant barrier to a young person reporting forced marriage. In our experience, the adversarial nature of these court proceedings contributes to the breakdown of the relationship between the young person and their parents and in most instances, these young persons are forced to leave the family home.

A federal civil protections scheme that would allow for the AFP or the victim¹ (and other agencies or individuals with the approval of the intended victim) to apply for an order to prevent forced marriage would lift this burden from young people. It would place the responsibility on the Australian community to protect young people from forced marriage, instead of requiring them to apply for orders against their own family members.

Legal Aid NSW supports the options set out in the Consultation Paper and our view is that new standalone Commonwealth legislation is required to respond to forced marriage. However, we are concerned that introducing a new form of order and another layer of processes in this space could also create confusion for victims of forced marriage and the services that support them.

For the new protections to be effective, it will be essential for the Commonwealth and State and Territory governments to work collaboratively and have a clear understanding of the responsibilities of each jurisdiction. This will require an effective information sharing framework between governments. We are concerned that unless this occurs,

¹ Victim is used in this submission to denote a person who is the victim or complainant of forced marriage. Some people who experience domestic and family violence prefer the term 'victim' and others prefer the term 'survivor'. In this letter, the term 'victim' is intended to be inclusive of both victims and survivors. Legal Aid NSW acknowledges every person's experience is unique and individual to their circumstances.

victims of forced marriage will continue to be turned away from services and referred on without receiving the support they need.

Recommendations

Recommendation 1

- The Commonwealth Government should provide funding for each state and territory to establish and operate its own Working Group to Prevent Forced Marriage. This should include adequate funding for a secretariat for each working group.

Recommendation 2

- As a priority, we recommend providing education on forced marriage to teachers, school counsellors and psychologists, and school support staff.
- An extensive education program should be aimed at community groups in multi-faith and culturally diverse communities, community workers, multi-faith leaders and medical practitioners.

Education should cover:

- what forced marriage is and how to recognise and respond to a person at risk of forced marriage.
- the legal options and support services available.
- the risks and barriers to a victim disclosing a forced marriage.

Recommendation 3

- The Australian Government should introduce a civil forced marriage protection scheme through standalone Commonwealth legislation. This issue cannot be addressed by amending existing state or territory legislation.

Recommendation 4

- The scheme should give courts the power to make any orders they consider appropriate to prevent forced marriage and should empower courts to make orders preventing a protected person from travelling internationally. This power should extend to protected persons who are aged 18 and over.

Recommendation 5

- Forced marriage prevention orders should:

- prohibit behaviour of the defendant that might coerce, threaten or deceive the protected person to enter into a forced marriage or remain in a forced marriage
- allow for provisions preventing the protected person from travelling internationally
- allow for provisions mirroring NSW apprehended violence orders and
- allow for courts to impose non-standard orders.

Recommendation 6

- If the scheme includes a police power to make interim (or provisional) orders, then this power should be limited to making standard orders. Police should not be given a power to make non-standard orders.

Recommendation 7

- Supports for women on temporary visas, including allowing women on temporary visas to access social housing support, should be increased.

Recommendation 8

- The AFP should be primarily responsible for making applications for forced marriage protection orders, but the option of applying for a FMPO should be made available to the victim, and other agencies and individuals in certain circumstances.
- A new standalone grant of legal aid should be made available to lawyers on the family law legal aid panel to apply for a forced marriage protection order on behalf of a client or to defend a forced marriage protection order on behalf of a respondent.

Recommendation 9

- There should be a clear referral protocol in place between State and Territory police and the AFP, which requires State and Territory police to respond to reports relating to forced marriage.

Recommendation 10

- There should no limits on who can be a respondent to forced marriage civil protection orders.

Recommendation 11

- Readily accessible, effective, and free legal advice should be available to all interested parties to a forced marriage protection order.

Recommendation 12

- The new forced marriage protection order provisions should be accompanied by sufficient social support for victims of forced marriage, including readily available accommodation, mental health support, and ongoing case management.

Recommendation 13

- The scheme should include a provision based on section 102NA of the *Family Law Act*, which prevents an unrepresented litigant from cross examining the other party.

Recommendation 14

- The scheme should include provision for the court to make a property recovery order.

Recommendation 15

- The FCFCOA nullity application filing fee should be waived for victims of forced marriage who are wanting to apply to end the marriage.
- Consideration should be given to notifying the Registrar of Births, Deaths and Marriages when a forced marriage protection order or interim order is made.

Recommendation 16

- A referral protocol should be developed 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. This referral protocol should also contain a list of available support services to encourage appropriate referrals.

Recommendation 17

- All services and stakeholders that respond to forced marriage should use independent, qualified interpreters when obtaining information from victims, defendants and witnesses who do not speak English.

Recommendation 18

- Funding should be provided to allow victims of forced marriage to receive tailored assistance to access victim support services.

Recommendation 19

- Young persons impacted by forced marriage should be given support to attend school and assistance to remedy any impact that their experience has had on their education.

Recommendation 20

Specialist training should be provided to child protection caseworkers, state and territory police and legal practitioners on:

- the nature of forced marriage
- the responsibility of child protection services in preventing forced marriage
- how to respond appropriately to allegations and threats of forced marriage

3. Forced marriage as a form of family and domestic violence

Question 2: Should forced marriage be recognised as a form of family and domestic violence? Why?

Question 3: What legal, policy changes or additional guidance is needed to better recognise forced marriage as a form of family and domestic violence?

Question 4: What enhancements or additional guidance might be needed to help family and domestic violence services consistently recognise forced marriage as a form of family and domestic violence?

Forced marriage is recognised as a form of domestic and family violence in NSW.² Legal Aid NSW considers the current protections in NSW are appropriate.

Whilst Legal Aid NSW considers it of value to have a consistent definition of forced marriage as a form of domestic and family violence, our focus is on addressing the urgent need for a federal civil protection scheme to respond to forced marriage.

The Family Law Division of Legal Aid NSW has worked extensively with colleagues in other responsible agencies in both Commonwealth and State Governments to support and care for young people impacted by forced marriage.

The Family Law Division of Legal Aid NSW led the establishment of the NSW and Commonwealth Government Agencies Working Group to Prevent Forced Marriage, which met regularly from 2016 to end of 2019 and has led to effective connections across the sector. This was done with no additional funding or resource allocation.

Alongside the new Commonwealth civil protections, Legal Aid NSW recommends that the Commonwealth provide funding for each state and territory to establish and operate its own Working Group to Prevent Forced Marriage. This should include adequate funding for a secretariat for each working group. This will help to develop protocols and clear referral pathways in each state and territory and underline the importance of the

² See *Modern Slavery Act 2018* (NSW) s 3 and *Crimes Domestic and Personal Violence Act 2007* (NSW) ss 4, 7, 35.

Commonwealth and State funded agencies working collaboratively to prevent forced marriage.

The Commonwealth will also need to work closely with the child protection authority in each state and territory to ensure that forced marriage is consistently recognised as a form of family and domestic violence.

Recommendation 1

- The Commonwealth Government should provide funding for each state and territory to establish and operate its own Working Group to Prevent Forced Marriage. This should include adequate funding for a secretariat for each working group.

4. Education and awareness raising

Question 5: What topics could education or awareness raising activities focus on?

Question 6: Who should be involved in education and raising awareness in communities affected by forced marriage?

Question 7: Which groups in the community require education and increased awareness of forced marriage?

Legal Aid NSW agrees that education and awareness raising should be an essential component of the response to forced marriage. We support the actions proposed in the consultation paper and recommend developing education and resources that centre on the rights of young people.

In our experience, schools have played a central role in supporting young people at risk of forced marriage and making reports to the AFP or Child Protective Services. This role is illustrated in “Aisha’s” story.

*Aisha’s story*³

³ All case studies in this submission have been de-identified.

Legal Aid NSW represented Aisha in Family Law proceedings to prevent forced marriage when she was 15. Aisha recently told her story to the ABC:

“One day, when Aisha's mum kept her from school, Aisha planned her escape.

She jumped off the balcony attached to her parents' room and ran to school. Here, she told her principal about her parents' plan to send her to India to get married.

Aisha's principal took it seriously.

He got Legal Aid NSW involved, and the lawyer told Aisha that she could get on an airport watch list to stop her being removed from Australia.”⁴

Our view is that providing education to teachers, school counsellors and psychologists, and school support staff is key to responding to the issue of forced marriage. We recommend providing specialist training to school staff as well as teaching students about forced marriage.

We also recommend an extensive education program about these provisions aimed at community groups in multi-faith and culturally diverse communities, community workers, multi-faith leaders and medical practitioners.

Legal Aid NSW has previously been involved in providing training to the NSW Police Force (**NSWPF**) on forced marriage. In our view, specialist training for State and Territory police will be important to the success of the new scheme. The police have a critical and difficult role to play in recognising and responding to forced marriage, and the NSWPF will need to consider how to use their powers under the different State and Federal schemes appropriately and to the best effect to prevent forced marriage.

Our view is that it is most important to work with a variety of organisations, who have a focus on working closely with multi-faith and culturally diverse communities, and not to focus on particular faith groups or cultural groups.

⁴ Shalailah Medhora, 'Aisha was engaged by the time she was 13. Within three years she'd taken her parents to court to escape a forced marriage', *ABC News* (News Article, 3 September 2024) <https://www.abc.net.au/news/2024-09-03/escaping-forced-marriage/104300310?utm_source=abc_news_web&utm_medium=content_shared&utm_campaign=abc_news_web>

Legal Aid NSW recognises the work that the Commonwealth Government and My Blue Sky have already put into preparing resources to inform people at risk of forced marriage, frontline workers, and other stakeholders. Legal Aid NSW would welcome the opportunity to work with colleagues in this space on developing and presenting further resources on this area of the law when the new scheme is established.

Legal Aid NSW recommends that these new and updated resources include information about the new Commonwealth civil federal protections, as well as information about how apprehended violence orders (**AVOs**) can be used to prevent forced marriage and protect victims of forced marriage.

Recommendation 2

- As a priority, we recommend providing education on forced marriage to teachers, school counsellors and psychologists, and school support staff.
- An extensive education program should be aimed at community groups in multi-faith and culturally diverse communities, community workers, multi-faith leaders and medical practitioners.

Education should cover:

- what forced marriage is and how to recognise and respond to a person at risk of forced marriage.
- the legal options and support services available.
- the risks and barriers to a victim disclosing a forced marriage.

5. Civil protections and remedies

Question 8: Do you think there are gaps in the existing legal protections available to respond to and prevent forced marriage in Australia? If so, what are those gaps?

Question 9: This paper discusses two options to strengthen civil legal protections: Option A (enhance existing legislation, possibly through shared principles) and Option B (introduce standalone Commonwealth legislation). Which of these two implementation options would be most effective and why? What are the key risks? Are there other options that should be considered?

Legal Aid NSW is of the view that the Modern Slavery provisions in the Commonwealth *Criminal Code Act 1995*, have done much to influence community attitudes towards forced marriage, by making clear that stringent terms of incarceration can be imposed

on any person/s who try to force another into marriage. However, the high incidence of reports of forced marriage is not reflected in the number of prosecutions for this crime.⁵ In our experience assisting numerous victims of forced marriage since 2014, victims of forced marriage are very reluctant to seek criminal charges against the people who are seeking to force them into marriage as these people are often members of their own family, particularly their parents.

Legal Aid NSW has therefore been advocating for standalone Commonwealth legislation to create civil protections to prevent forced marriage. There is a clear gap in protection for young people aged 18 and over, who are outside the protection of the *Family Law Act*, but still vulnerable to forced marriage.

In all the cases involving forced marriage that Legal Aid NSW has worked on, a young person's family had planned for the young person to travel out of Australia to be married. Therefore, in our view, any effective response to forced marriage must allow for orders to prevent international travel.

While Family Law Watchlist Orders (FLWOs)⁶ and personal protection injunctions⁷ provide protection for children, a Commonwealth forced marriage protection order scheme is urgently needed to protect people over 18 years. Such a scheme, similar to the forced marriage protection orders in the United Kingdom,⁸ would allow the Australian

⁵ The AFP state they received 90 allegations of forced marriage in 2022-23. Australian Federal Police, 'Victorian woman jailed following the Australia's first forced marriage conviction' (Media Release, 29 July 2024).

⁶ An FLWO 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.

⁷ 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.

⁸ 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

Federal Police (**AFP**) and other interested persons or agencies to prevent travel for young people aged over 18 who are at risk of forced marriage.

The Australian Government has the constitutional power to prevent a person from travelling outside of Australia.⁹ State Governments do not have the constitutional power to enact such laws. For this reason, Legal Aid NSW supports option B, standalone Commonwealth legislation, and does not support option A.

Maya's story demonstrates the urgent need for a federal response.

*Maya's story*¹⁰

Maya called Legal Aid NSW Family lawyers for advice. She said that her family had organised for her to travel overseas to be married. She said she did not want to get married, but she did not think she could say no to her family and wanted to know if we could help her make an application to the then Federal Circuit Court.

Maya was aged 17 and 345 days.

Legal Aid NSW had to advise Maya that she could not apply for orders under the Family Law Act to prevent travel because she was only days away from attaining 18 years of age.

In our view, the only possible way that a state or territory government could prevent a potential victim of forced marriage from travelling overseas would be to enact provisions that give courts the power to require victims of forced marriage to surrender his or her passport to the court.

Similar powers exist under the *Bail Act (NSW) 2013 (the Bail Act)*, in relation to bail conditions. However, the purpose of the Bail Act is to "provide a legislative framework for a decision as to whether a person who is accused of an offence, or is otherwise required to appear before a court, should be detained or released, with or without conditions." Our view is that it would be highly inappropriate and problematic to rest the Commonwealth

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/610015/110417_-_statutory_guidance_part_2_-_GLAA_updates-_Final.pdf>

⁹ The external affairs power, *Australian Constitution* s 51(xxix).

¹⁰ All case studies in this submission have been de-identified.

response to forced marriage on such powers, which are not intended for and should not be used to curtail the freedoms of victims of crime.

Our strong view is that option A, enhancing existing state and territory legislation, is not sufficient to prevent and respond to forced marriage. It is critical that the Commonwealth government enacts new civil provisions that allow for courts to make orders to prevent people at risk of forced marriage from travelling overseas. These provisions should be clearly tailored to the needs of victims of forced marriage and not enacted through makeshift changes to State and Territory laws that were not drafted with this objective and are not fit for this purpose.

Additionally, existing state and territory laws designed to combat domestic and family violence are not currently consistent. Legal Aid NSW is of the view that any attempt to create civil protections for victims, or potential victims of forced marriage via the various state and territory domestic and family violence laws, will result in different outcomes in each state and territory meaning that victims in some states and territories will have a better outcome than others. This creates unfairness based on geography and for this reason we do not support it.

State and Territory and Commonwealth systems can and do work together to make and enforce orders. A clear and commonplace way this happens is with recovery orders. Both the FCFCOA and State and Territory based courts (with the exception of Western Australia) can make recovery orders pursuant to s 67Q of the *Family Law Act 1975* (Cth). These orders are then sent to the AFP in Canberra, who liaise with the appropriate State or Territory police in the location nearest to the subject child to arrange for the child to be recovered in accordance with the court order.¹¹

Recommendation 3

- The Australian Government should introduce a civil forced marriage protection scheme through standalone Commonwealth legislation. This issue cannot be addressed by amending existing state or territory legislation.

¹¹ 'Recovery Order Information Sheet' *Australian Federal Police* (Online Form)
<<https://www.afp.gov.au/sites/default/files/PDF/RecoveryOrderInformationSheet-04092020.pdf>>.

Recommendation 4

- The scheme should give courts the power to make any orders they consider appropriate to prevent forced marriage and should empower courts to make orders preventing a protected person from travelling internationally. This power should extend to protected persons who are aged 18 and over.

6. Grounds for Orders

Question 11: What evidence, or other types of actions, risks or harms connected to forced marriage should be considered as grounds for seeking a civil protection order for forced marriage?

Question 20: What grounds should be relevant to making interim orders where a person is in or at risk of forced marriage?

Question 22: What kind of evidence could point to a risk of forced marriage and be considered by police when considering the grounds for an interim order where a person is in or at risk of forced marriage?

Legal Aid NSW's view is that if a person believes they are at risk of forced marriage they should be able to make their own application for an order to prevent forced marriage. The AFP or other agencies or individuals should, in certain circumstances, also be able to make applications on behalf of a person at risk of forced marriage.

When Legal Aid NSW has made applications for injunctive relief to prevent forced marriage, we have relied on the following forms of evidence:

- Statements from the intended victim and third parties, such as medical professionals, counsellors, or teachers, showing
 - a history of forced marriage within the family of the intended victim;
 - Evidence of family violence, including reports to third parties;
 - Verbal communication between those trying to force an individual to marry against their will in which intention for the person to marry an individual is discussed;
- Text or other messages between individuals trying to force an individual to marry against their will;
- Messages to the intended victim from the person who intends to marry that person against their will;
- Reports to third parties such as medical professionals or trusted friends of the plans for the forced marriage to go ahead;

Evidence of travel documents purchased by the person/s trying to force an individual to marry against their will in another country.

7. Scope of Orders

Question 12: Do the proposed protections listed above address the most common and significant risks and harms faced by people in or at risk of forced marriage, including children? If not, what else should be addressed?

We support the orders proposed in the discussion paper. When we have applied for injunctions under the *Family Law Act* to prevent forced marriage, we have sought orders to the effect of:

- The person in need of protection is not to be forced or coerced into marriage.
- The person in need of protection is not permitted to travel out of the Commonwealth of Australia from (date) to (date).

We have also sought orders specific to the individual circumstances of the victim.

We also recommend that the scheme allows for Courts to make any of the orders available under NSW AVOs, as appropriate to each case. This is to ensure that victims of forced marriage can access the same protection that an AVO would provide, without needing to make an application for an AVO in addition to a federal forced marriage protection order. It would also reduce the risk of duplication and inconsistency that can occur when there are two protection orders in place.

In NSW 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 person in need of protection (PINOP) or intentionally or recklessly destroying or damaging a PINOP's property. These mandatory orders also protect anyone the PINOP has a domestic relationship with.

Mandatory orders are designed to protect PINOPs however they do not prohibit contact between the defendant and the PINOP and allow the defendant and PINOP to continue to have a relationship.

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, 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.”

Subsection 35(2)(f) of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (**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). We recommend that forced marriage prevention orders include a similar provision to allow for courts to craft an order to the specific needs of the individual.

Recommendation 5

- Forced marriage prevention orders should:
 - prohibit behaviour of the defendant that might coerce, threaten or deceive the protected person to enter into a forced marriage or remain in a forced marriage
 - allow for provisions preventing the protected person from travelling internationally
 - allow for provisions mirroring NSW apprehended violence orders and
 - allow for courts to impose non-standard orders.

Question 21: Should interim orders be limited to include some but not all of the proposed scope of orders (outlined in Scope of Orders)? If so, what protections should be included or excluded and why?

We recommend that interim orders include largely the same provisions as final orders.

The Consultation Paper anticipates that police will have the power to make interim orders to protect a person at risk of forced marriage. Our view is that if the police are empowered to make interim (or provisional) orders, this power should be limited to making orders from a list of standard orders, as is the case with provisional AVOs in NSW. We do not support allowing the police to write in their own custom orders.

In our view, such non-standard provisions should only be imposed by a court, to ensure that these conditions are appropriate to the circumstances, workable, and subject to oversight.

Recommendation 6

- If the scheme includes a police power to make interim (or provisional) orders, then this power should be limited to making standard orders. Police should not be given a power to make non-standard orders.

Question 13: Are there any other risks or unintended consequences of the proposed protections that should be considered?

Women on temporary visas

Legal Aid NSW agrees with the observation in the Discussion Paper that the making of a protection order could impact on an individual's visa arrangements. In Legal Aid NSW's experience, 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 NSW housing supports. They are often ineligible to work while their application for residency is 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.

Recommendation 7

- Supports for women on temporary visas, including allowing women on temporary visas to access social housing support, should be increased.

8. Applicants

Question 14: Are there any additional people or organisations who should be able to apply for a civil protection order for forced marriage? If yes, who and why?

Question 15: Are there risks associated with giving particular individuals or organisations the ability to apply for a protection order? If so, what are these risks and how could they be mitigated?

Legal Aid NSW's view is that potential applicants for a civil protection order should be limited to:

- The person at risk of forced marriage or another individual at the request of the person at risk of forced marriage
- A parent or guardian on behalf of a child
- A guardian on behalf of someone over the age of 18 with impaired decision making abilities; or
- The Australian Federal Police.

In our experience, community organisations, service providers and other non-government agencies play a critical role in supporting victims of forced marriage. We would support a model that allows for non-government agencies to act on behalf of victims of forced marriage, provided they have the consent of the victim. Such provisions would require careful drafting to ensure that systems abuses do not occur. We would welcome the opportunity to consult with the Commonwealth further on the nature of the application process.

Legal Aid NSW's view is that the AFP should be primarily responsible for making applications for protection orders. However, State and Territory police must play a role as responders and in enforcing protection orders. There should be a clear referral protocol in place between State and Territory police and the AFP, which requires State and Territory police to respond to reports relating to forced marriage.

Like AVOs in NSW, persons at risk of forced marriage, or their parent or guardian should also have the option of bringing a private application. Legal Aid NSW recommends consideration be given to notifying the Support for Trafficked People Program when private applications for protection orders are brought. We also support the creation of a standalone grant of legal aid allowing family law legal practitioners on Legal Aid Commission panels to make the application on instructions on behalf of an individual, or to represent a respondent to an application in certain circumstances.

Recommendation 8

- The AFP should be primarily responsible for making applications for forced marriage protection orders, but the option of applying for a FMPO should be made available to the victim, and other agencies and individuals in certain circumstances.
- A new standalone grant of legal aid should be made available to lawyers on the family law legal aid panel to apply for a forced marriage protection order on behalf of a client or to defend a forced marriage protection order on behalf of a respondent.

Recommendation 9

- There should be a clear referral protocol in place between State and Territory police and the AFP, which requires State and Territory police to respond to reports relating to forced marriage.

9. Respondents

Question 16: Should there be any limits on who can be a respondent for forced marriage civil protections? If so, how should they be defined (e.g. family members only)?

Legal Aid NSW supports providing discretion as to who can be nominated as a respondent to an application for a forced marriage protection order. This is consistent with applications for AVOs in NSW, and applications under the Family Law Act, and best positions the court to make orders appropriate to the facts of each case.

Recommendation 10

There should be no limits on who can be a respondent to forced marriage civil protection orders.

10. Victim-survivor agency

Question 17: How can the risk of victim-survivors being coerced into abandoning orders be addressed?

Question 18: How can the views of victim-survivors, including children, best be sought and incorporated into the process for hearing and issuing civil protections for forced marriage?

Legal Aid NSW recommends that readily accessible, effective, and free legal advice be made available to all interested parties to a forced marriage protection order.

The Family Law Division of Legal Aid NSW has experience in this area and would welcome the opportunity to be identified as a place where free, confidential and helpful legal advice can be obtained in relation to a forced marriage protection order.

To address the risk of victim-survivors being coerced into abandoning orders, the new provisions must be accompanied by sufficient social support for victims of forced marriage, including readily available accommodation, mental health support, and ongoing case management.

We find that young people impacted by forced marriage need ongoing support from multiple agencies as they are often unable to live at home after they have resisted family pressure to marry against their will. It is common for people to need assistance with multiple legal and non-legal issues.

At Legal Aid NSW we have an allied professional workforce (**APS**), who support our delivery of legal services and work to improve psychosocial outcomes for our clients.¹² In matters involving forced marriage, our APS have provided assistance ranging from acting as litigation guardian, to providing counselling and finding accommodation, to enrolling students in school and applying for opal cards.

Recommendation 11

- Readily accessible, effective, and free legal advice should be available to all interested parties to a forced marriage protection order.

Recommendation 12

- The new forced marriage prevention order provisions should be accompanied by sufficient social support for victims of forced marriage, including readily available accommodation, mental health support, and ongoing case management.

¹² The allied professional workforce includes psychologists, case workers, mental health workers, financial counsellors, information and referral support workers, community engagement officers, and Aboriginal field officers.

11. Courtroom protections and assistance through the legal process

Question 19: What other supports should be available to people in or at risk of forced marriage, including children, to support them through the civil protection order application process? For example, additional supports through the application process, or additional courtroom protections.

Legal Aid NSW supports the options proposed in the Discussion Paper, including arrangements to ensure that the victim does not have to see the respondent, having support persons in court, and giving evidence in a closed court where appropriate.

Cross Examination

We also recommend including a provision based on section 102NA of the *Family Law Act*, which prevents unrepresented litigants from cross-examining the other party in family violence matters before the FCFCOA. Unrepresented respondents should not be permitted to cross-examine people at risk of forced marriage in any proceedings relating to forced marriage.

It is highly distressing for victims of family violence to be cross-examined by the perpetrator of that violence. In cases where a person needs protection from forced marriage, the process of cross examination could allow the respondent to continue to exert pressure on that person. It could also deter people from pursuing an application.

In family law matters where section 102NA applies, the party must be represented at court proceedings for cross examination to take place. The Commonwealth government funds legal representation in these instances. If the party appears unrepresented, cross-examination of the victim will not take place. Legal Aid NSW administers this scheme in NSW and we would welcome the opportunity to administer funding in relation to cross examination in forced marriage matters.

Recommendation 13

- The scheme should include a provision based on section 102NA of the *Family Law Act*, which prevents an unrepresented litigant from cross examining the other party.

12. Other remedies

Question 24: Are there any remedies, in addition to civil protections, for people in or at risk of forced marriage that should be considered?

In Legal Aid NSW's experience, many people who are at risk of forced marriage move out of home to avoid being married against their will. In these matters, we have sought orders from the FCFCOA for people's possessions to be returned to them.

In NSW, section 37 of the *CDPV Act* provides for the making of ancillary property recovery orders alongside apprehended domestic violence orders.

The federal scheme should allow for the court to make a property recovery order at any stage of the application process.

Recommendation 14

- The scheme should include provision for the court to make a property recovery order.

Question 25: Currently, do forced marriage victim-survivors face barriers or difficulties when seeking a declaration of nullity in relation to their forced marriage? If yes, how could these barriers or difficulties be addressed?

The current FCFCOA fee structure for a divorce is \$1,100 (full fee paying) and \$365 for reduced fee.¹³ For a nullity application the application fee is \$1,560 and \$520 for reduced fee.¹⁴

Legal Aid NSW considers that the current FCFCOA fee structure for divorce and nullity is a barrier to victims of forced marriage pursuing a nullity application, rather than a divorce application.

The government could also consider including a requirement in the new scheme that upon the making of a forced marriage protection order or interim order, the court notifies the Registrar of Births, Deaths and Marriages in the relevant State or Territory to prevent a forced marriage being registered.

¹³ *Family Law (Fees) Regulations 2022* (Cth), s 2.13, sch 1 item 2.

¹⁴ *Family Law (Fees) Regulations 2022* (Cth), s 2.13 sch 1 item 1.

Recommendation 15

- the FCFCOA nullity application filing fee be waived for victims of forced marriage who have already been subject to the marriage and are wanting to apply to end the marriage.
- Consideration be given to notifying the Registrar of Births, Deaths and Marriages when a forced marriage protection order or interim order is made.

13. Risk factors and barriers to seeking support

Question 26: What are the risks and barriers for seeking support for people at risk of or in a forced marriage? What strategies could be considered to address these?

Question 27: What risks and barriers might a person face if they seek protection through legal systems? How can these be mitigated?

Question 28: Engaging with support systems and legal system may heighten risks for people facing forced marriage. Are there any actions that should not be undertaken by frontline responders or legal services when a person may be at risk of forced marriage?

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, a variety of social support services 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)
- mistrust of the police and of government
- 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.

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.

Responding to incidents of forced marriage is complex and requires not only a legal response but also coordinated delivery of social supports at both Commonwealth and NSW levels. It requires the involvement of multiple agencies and support services.

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.

Effective collaboration and co-ordination between these various stakeholders is therefore crucial.

Legal Aid NSW has observed that the existing protections against forced marriage can be confusing to navigate. It is not always clear which jurisdiction is responsible for supporting victims of forced marriage. We are concerned this confusion could be increased by the introduction of a new Commonwealth scheme unless there is a clear referral pathway between relevant stakeholders. In our view, services should adopt a "no wrong door" approach, to ensure that if people at risk of forced marriage reach out to a service for help, they are not turned away or referred elsewhere.

Recommendation 16

- A referral protocol should be developed 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. This referral protocol should also contain a list of available support services to encourage appropriate referrals.

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.

In our view, it is important for the NSWPF, and all services working with victims of forced marriage, to be trained on the issues with using family members as interpreters and the need to use independent and qualified interpreters to ensure that victim's voices are heard.

Recommendation 17

- All services and stakeholders that respond to forced marriage should use independent, qualified interpreters when obtaining important information from victims, defendants and witnesses who do not speak English.

Access to Victims Services

As we have discussed above, victims of forced marriage face multiple barriers to accessing legal and support services. In many instances, these barriers can mean that victims do not access the support schemes that are available to them and that could make a real difference to their circumstances. We have observed this to be the case in NSW.

In circumstances where there have been acts of violence, victims of forced marriage in NSW may be eligible for victims entitlements through Victims Services NSW. These entitlements include counselling, financial assistance for immediate needs, financial

assistance for economic loss and a recognition payment.¹⁵ These entitlements can assist victims to cover their urgent expenses and could make a significant difference to young people who are trying to escape family violence, including forced marriage.

However, since changes were made to the Victim Services NSW application process in 2020, applicants have been required to gather and provide their own supporting documents (except police reports) for their application to be assessed. In our experience, this requirement makes the scheme difficult to access for many people experiencing family violence, unless they have support.

Victims Services schemes vary across Australia and have different eligibility requirements and application processes. Legal Aid NSW recommends that the Australian Government fund tailored assistance for victims of forced marriage to navigate and apply for victim support.¹⁶

Recommendation 18

- Funding should be provided to allow victims of forced marriage to receive tailored assistance to access victim support services.

Education

Victims of forced marriage may experience absences from school and other disruptions to their education. School can be a significant source of practical and social support for young persons as well as providing education and opportunities.

Young persons impacted by forced marriage should be given support to attend school and assistance to remedy any impact that their experience has had on their education.

Recommendation 19

- Young persons impacted by forced marriage should be given support to attend school and assistance to remedy any impact that their experience has had on their education.

¹⁵ *Victim Rights and Support Act 2013* NSW (2013) s 26.

¹⁶ Some Applicants may be eligible for assistance under the Leaving Violence Program (LVP), which will commence from mid-2025.

14. Supporting children

Question 29: What additional supports and protections could be considered to help children to access the proposed legal protections and to assist them through applications, courtroom and other legal processes?

As discussed above, our view is that multiple support services should be involved in these cases and ongoing case management is essential to assisting children through such legal processes. Children should have access to free and readily available legal advice.

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

State and territory child protection services have an important role to play in protecting and assisting children and young people who are at risk of forced marriage. The nature of this risk requires a specialised response and therefore increased education and training.

Recommendation 20

LANSW recommends providing specialist training to child protection caseworkers, state and territory police and legal staff on:

- the nature of forced marriage
- the responsibility of child protection services in preventing forced marriage
- how to respond appropriately to allegations and threats of forced marriage



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