

Submission  
No 28

## INQUIRY INTO HUMAN TRAFFICKING

**Organisation:** NSW Government

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## HUMAN TRAFFICKING – SUBMISSION BY NSW GOVERNMENT

### INTRODUCTION

Human trafficking offences include trafficking of persons for the purpose of sexual servitude, sexual exploitation, slavery, forced labour, child labour, deceptive recruiting, debt bondage, forced marriage and organ harvesting.

Australia is a state party to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children<sup>1</sup>, supplementing the United Nations Convention against Transnational Organized Crime.<sup>2</sup> On a domestic level, human trafficking in Australia is regulated by Divisions 270 and 271 of the *Criminal Code Act 1995* (Cth).

Due to the nature of human trafficking, it is predominately regulated and enforcement by Commonwealth law and Commonwealth agencies; however, state agencies also play a strong role in combatting these crimes. The primary agencies involved in NSW are the NSW Police Force (NSWPF) and the Department of Family and Community Services (FACS). The role of FACS is to support children who are victims of human trafficking.

Most prosecutions in Australia involving human trafficking concern sexual servitude of woman brought in from overseas (commonly Thailand).<sup>3</sup> The NSW Government is unaware of prosecutions in Australia for domestic trafficking or organ harvesting. One mode of human trafficking that can often be unreported is forced marriage and underage forced marriage (UFM).

The NSW Government considers that UFM should be included within the scope of the Inquiry on the basis that it:

- Involves coercion and deceit<sup>4</sup>
- Involves violating the rights of those under 18 years of age. That is, it constitutes an abuse of power over individuals in a position of vulnerability. It often involves taking people across borders, without their consent.
- Can result in circumstances similar to that of slavery. It can include forms of labour exploitation, sexual servitude and/or deception on the part of the sponsoring partner about the nature of the relationship.

In NSW, the term UFM can refer to either a planned or actual forced marriage. The main method that appears to be used for UFM in NSW involves taking the child/young person overseas for the marriage ceremony.

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<sup>1</sup> Australia ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children in 2005.

<sup>2</sup> Australia ratified the United Nations Convention against Transnational Organized Crime in 2004.

<sup>3</sup> See *Queen v Wei Tang* [2008] HCA 39 and *Sieders v R*; *Yotchomchin v R* [2008] NSWCCA 187

<sup>4</sup> UNCTOC Art 3(a)

Forced marriage is predominantly a Commonwealth responsibility and is a criminal offence. Under the Commonwealth *Criminal Code Act 1995*, it is illegal to cause a person to enter a forced marriage or to be a party to a forced marriage. UFM can also be the subject of child sex offences under the *Crimes Act 1900 (NSW)*. Such cases will be investigated by the NSW Police Force; in most other instances of UFM, FACS is the lead agency in prevention and detection. (See Attachment A for further detail).

Given the NSW Police Force's ancillary role regarding the regulation of the brothel industry, there is limited scope for operations in which human trafficking might be uncovered. This may mean that the incidence of sexual servitude in NSW is significantly higher than the number of criminal investigations and legal actions would suggest.

There may also be significant underreporting of cases of trafficking involving *non-sexual* servitude, such as forced, unpaid labour, whether in a domestic or commercial role. The most likely victims of such crimes would be migrants whose documents are retained by the exploiting employer, or whose insecure immigration status is used to keep them in servitude.

The observations of an Australian Institute of Criminology report "Human trafficking and slavery offenders in Australia" are noted in this regard:<sup>5</sup>

*"Relationships between offenders and victims is an important theme in the international literature, in part because these relationships help explain how offenders can control their victims without physical force. In his research on slavery, the sociologist Kevin Bales emphasised that the relationship between the victim and the offender can be manipulated to achieve control over the victim ... The features of relationships that can be manipulated are often deeply embedded in a victim's circumstances and history, such as:*

*cultural, religious, social, political, ethnic, commercial, and psychological influences and combinations of these influences...[which] follow general patterns reflective of the community and society in which that relationship exists ....*

*Human trafficking offenders can manipulate crime contexts such that force is not necessary ... and across social, cultural and even spiritual dimensions, non-physical methods of control will vary depending on the victim's susceptibilities and context .... The increasing use of very subtle forms of control in human trafficking is observed internationally:*

*in Austria, [where] most women trafficked into prostitution are currently (as opposed to the past) earning a small salary which provides hope in paying*

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<sup>5</sup> Frances Simmons, Brynn O'Brien, Fiona David and Laura Beacroft, Trends & issues in crime and criminal justice no. 464, *Australian Institute of Criminology*, November 2013, <http://www.aic.gov.au/publications/current%20series/tandi/461-480/tandi464.html>

*off their debts...Dutch police report this same phenomenon...they are living in their own apartments, provided 'courtesy' of their traffickers...*

*Part of the impetus for non-physical control of victims is that it reduces the risk of escape ... and can enhance profits. Human trafficking is commonly characterised as a crime type where many of the offenders are motivated by profit rather than by a desire to harm a victim ... [citations omitted]."*

## **PART ONE – WORK BY NSW POLICE FORCE AND OTHER LAW ENFORCEMENT AGENCIES**

### **The role of national and NSW law enforcement agencies**

The Australian Federal Police (AFP) has primary investigative carriage for offences of trafficking for sexual and domestic servitude and forced marriage either transnationally or between Australian law enforcement jurisdictions. It also facilitates notifications or requests for assistance to the Commonwealth Department of Immigration and Border Protection (DIPB) for matters involving people trafficking or transnational border offences.

The NSW Police Force has sole carriage of sexual servitude investigations where the victim has not been trafficked from one country to another and there are no border-related offences involved.

### **Training and expertise**

Charles Sturt University provides specialist training on human trafficking to NSW Police Force investigators as part of the subject: Emerging Issues and Professional Practices in Trans-national Crime Investigations. The AFP's 'Human Trafficking Investigation Program' is also made available to NSW Police Force officers – in particular, members of the Sex Crimes Squad (SCS) who have responsibility for issues in relation to Human Trafficking and Sexual Servitude.

In the NSW Police Force, the SCS has particular expertise in dealing with human trafficking for the purpose of sexual servitude. The Squad liaises with the AFP Human Trafficking Team and both agencies attend quarterly meetings to discuss issues, exchange intelligence and plan operations.

### **Sexual servitude investigations**

The SCS also forms part of a multi-disciplinary team that conducts operations at various brothels within the Sydney metropolitan area. Those teams include the AFP, DIPB (including the former Customs Service) and the relevant NSW Police Force Local Area Command (LAC). Police in NSW do not have a regulatory or compliance function with respect to brothels, so their involvement alongside other law enforcement agencies is generally concerned with serious criminal offences including - but not limited to - human trafficking and sexual servitude.

In addition to such planned operations alongside the SCS and other law enforcement bodies, police from LACs act as first responders to reports of offences involving sexual servitude. Their first priority is to locate victim(s) and remove them from harm

or future risk. They then follow standard procedures, including investigative procedures, such as securing and interviewing witnesses and protecting crime scenes and exhibits.

Generally, if the sexual servitude activity has no transnational border-related offences, investigators from the LAC will undertake the investigation. However, if human trafficking is suspected, the investigation may be passed to the SCS within State Crime Command. Even if it is decided that the LAC should retain carriage of the investigation, intelligence holdings related to people trafficking and sexual servitude will be disseminated to that Command.

SCC, in turn, disseminates intelligence holdings on these matters to external agencies such as the AFP, DIBP and the Australian Criminal Intelligence Commission.

As well as participating in joint operations with the AFP where both Commonwealth and state crimes apply (for example, trafficking and sexual assault offences), NSW Police also provide the AFP operational assistance when required through assisting in the execution of Commonwealth warrants.

### **Underage Forced Marriage**

Detectives from the SCS are rarely alerted to cases of underage forced marriage taking place in NSW. However, in 2015 there was one case that received considerable media coverage. The SCS was alerted that a 15-year-old girl attended Bankstown Hospital on 20 January, believing she had suffered a miscarriage. The ensuing investigation led to a 19 year old man being charged with marrying an underage girl in a backyard 'wedding'.

In contrast to FACS (as outlined below), the NSW Police Force have little experience in dealing with UFM directly. As noted below, it is likely that most UFM victims involve sending young girls overseas, but it may also be the case that the crime is occurring locally but is significantly underreported.

The example mentioned above depended on notification arising from a hospital admission. Without this, Police may never have become aware of the crime. Finding ways to ensure that UFM is reported to Police whenever it occurs is an issue the Committee could usefully explore in this inquiry.

## **PART TWO: WORK BY FAMILY AND COMMUNITY SERVICES and other agencies**

### **Definition of Underage Forced Marriage**

In NSW, the term UFM can refer to either a planned or actual forced marriage. The main method that appears to be used for UFM in NSW involves taking the child/young person overseas for the marriage ceremony.

### **Agencies involved in UFM**

Numerous State and Commonwealth agencies have responsibility for dealing with a planned or actual forced marriage, including the AFP, the Family Law Court National Enquiry Centre, Legal Aid NSW, NSW Police, FACS the Department of Education and non-government organisations (NGOs) such as the Red Cross and Salvation Army.

The level of and need for intervention from government and non-government agencies varies depending on whether there is a risk of forced marriage or if the marriage has actually occurred. Where a child or young person is at risk of being taken overseas to be forcibly married, the Australian Federal Circuit Court can:

- make orders to ensure that a child cannot be taken overseas for this purpose and is able to prevent a passport being issued;
- request the surrender of the child or accompanying adult's passport and prevent the removal of a child from Australia and place the child's name on the Airport Watch List.

### *Online training*

In March 2015, Anti-Slavery Australia launched the first free Australian online training program for frontline workers dealing with human trafficking, slavery and slavery-like practices including forced labour and forced marriage.

The course is funded by the Australian Government through the Proceeds of Crime program and offers comprehensive training developed for frontline workers from community organisations, government, teachers, health care professionals and law enforcement. The course also covers principles for working with trafficked people and details available support, indicators and referral pathways.

### **About FACS**

In NSW, FACS has statutory responsibility for protecting children and young people of risk of significant harm. FACS works with children, adults, families and communities to improve their lives and help people realise their potential.

### **FACS' role in UFM**

FACS' involvement in UFM is through its child protection role in responding to and supporting children and young people at risk of or in a forced marriage. FACS also has a role in building and maintaining a cohesive and harmonious multicultural society within NSW (Multicultural NSW).

### *Reporting and assessing UFM*

In NSW, UFM is specifically identified as a child protection issue that is defined in the NSW Mandatory Reporter Guide (MRG) under the psychological harm and sexual abuse decision trees. This means that when a reporter applies the MRG to

determine what action to take for concerns about UFM, the final outcome is to immediately report the matter to the Child Protection Helpline for further assessment.

### *Numbers*

UFM is a highly sensitive issue that like other forms of abuse is likely to be underreported. In addition to this, research indicates that UFM can be hidden behind other issues such as physical abuse or self-harm and may as a result be overlooked<sup>6</sup>. This means it is difficult to obtain accurate figures on the number of children and young people who have been forced into underage marriage in NSW. Between August 2014 and September 2016, there were 77 reports about 69 children to the FACS Child Protection Helpline about UFM. Some details are:

- 99% of the reports were about females with an average age of 14.8 years of age;
- The most frequent source of reports were schools.

The rate of these reports was constant over this period, at 2 - 4 per month.

### *Challenges working on UFM*

There are numerous challenges in the work to support children and young people at risk of or in a UFM. These include:

- The travel path taken to traffic the individual;
- The 'symptoms' of UFM can be hidden and as a result, it can be difficult to identify if a UFM is planned or has occurred;
- The range of organisations with a role in UFM that have different legal and jurisdictional responsibilities and the need for coordinated and consistent definitions and responses.

Many of these issues are being considered by the Joint Commonwealth State Working Group that is mentioned below (see FACS work with government and non-government agencies).

### **Training and support for FACS and NGO (non-government organisation) staff**

In 2014, FACS undertook a review of child protection reports of underage forced marriage. One of the recommendations of this review was to develop training and resources to support FACS and NGO staff responding to children and young people at risk of or experiencing forced marriage.

In 2016, FACS held four early and forced marriage master classes in partnership with the Australian Women's Centre of Human Rights, Australian Federal Police, Anti-Slavery Australia and the Joint Investigation Response Teams (FACS/NSW Police Force). These classes were designed to ensure child protection and service providers understand the difference between violating the rights of a child and cultural practices. Furthermore, the objective of these courses was to provide

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<sup>6</sup> Tina Jelenic and Matthew Keeley, 'End Child Marriage: Report on the Forced Marriage of Children in Australia' (Research Report, National Children's and Youth Law Centre, 2013).

insights into the cultural and marriage practices in communities where underage or forced marriages may take place and the strategies that can be used to address this issue with families.

### *NSW Forced Marriage Network meeting*

FACS representatives also attend meetings of the NSW Forced Marriage Network, which is chaired by Anti-Slavery Australia and Advance Diversity Services. Other attendees include staff from non-government organisations and other government agencies.

### *Community Awareness*

In 2015, the Office of Women, which was then based in FACS, funded a community awareness campaign titled “Child not bride”.<sup>7</sup> The objectives were to increase awareness of the illegality and the harmful effects of UFM.

### **FACS work with government and non-government agencies**

Work to reduce underage forced marriage requires collaboration between federal and state governments and community representatives. A joint NSW and Commonwealth Working Group has been established to:

- foster communication and information sharing;
- work on the development on a consistent definition (so that both planned and actual UFM are included);
- develop protocols to prevent forced marriage (both underage and of age);
- Identify service gaps and initiate projects to support people impacted by underage forced marriage.

Membership includes the AFP, Legal Aid NSW (chair), FACS, Department of Education and Multicultural NSW. The Working Group commenced meeting in September 2016. Representatives from key NGOs can also be invited to attend meetings of this group.

### **Conclusion**

UFM is a complex issue that requires an appropriate, cross government and agency response. The characteristics of the work currently underway indicates that responses need to include the expertise of a range of stakeholders, including the community, consistent assessment and referral practices and strategies that include legislation, policy development, education and training, service development and research.

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<sup>7</sup> See: [https://www.facs.nsw.gov.au/about\\_us/media\\_releases/pru/child-not-bride-campaign-to-end-underage-forced-marriage](https://www.facs.nsw.gov.au/about_us/media_releases/pru/child-not-bride-campaign-to-end-underage-forced-marriage)



## ATTACHMENT A

### Further information on Underage Forced Marriage

Anti-Slavery Australia (a specialist legal research and policy centre at the University of Technology, Sydney) defines forced marriage as “a marriage that is entered into without the full and free consent of one or both parties, as a result of threats, deception or coercion”.<sup>8</sup> It is considered to be a slave like practice, because along with the involvement of children who are unable to give full consent, the coercion, deception and threats involved in UFM are fundamental characteristics of human trafficking.<sup>9</sup>

#### Impact on Victims

According to the Women’s Research, Advocacy and Policy (WRAP) Centre’s 2016 Position Paper, victims of forced marriage may experience mental health issues, isolation, physical or sexual violence, estrangement from their families, unwanted or early pregnancies, kidnapping, abduction, and even death. UFM can also result in an interruption to education creating an additional disadvantage for the child or young person.

Research in Australia<sup>10</sup> has identified that forced child marriage can be hidden and linked with other more obvious presenting issues such as, physical abuse or self-harm. The research also notes that there are obstacles that hinder disclosure by children at risk of or in a forced marriage including that they are:

- Often dealing with feelings of fear, shame and isolation
- Fearful of threats of violence for seeking help
- Unsure where to go for assistance
- Fearful of reporting their circumstances to law enforcement agencies due to the repercussions on their family member or even being disowned by their family<sup>11</sup>

#### Cultural and socio-economic factors that lead to UFM

The Australian Muslim Women’s Centre for Human Rights has identified some of the motivating factors for parents to organise a UFM, these include:

- For economic benefit;
- To obtain visas and for migration purposes for relatives in other countries;
- To help extended family members;
- To uphold family reputation due to cultural practices.

Early marriage can also be a way for families to decrease financial strain and be a strategy to overcome insecurity, poverty and crisis.<sup>12</sup>

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<sup>8</sup> Anti-Slavery Australia, <http://www.antislavery.org.au/resources/fact-sheets/104-fact-sheet-3-forced-marriage.html> (accessed 20/12/2016)

<sup>9</sup> The Aha Foundation <http://give.theahafoundation.org/blog-0/bid/149715/Forced-Marriage-and-the-Many-Faces-of-Human-Trafficking> (accessed 20/12/2016)

<sup>10</sup> Tina Jelenic and Matthew Keeley, ‘End Child Marriage: Report on the Forced Marriage of Children in Australia’ (Research Report, National Children’s and Youth Law Centre, 2013).

<sup>11</sup> BMA: Victims of forced marriage – guidance for health professionals, July 2008

## Legal Context of UFM

Forced marriage is predominantly a Commonwealth responsibility and is a criminal offence. Under the Commonwealth *Criminal Code Act 1995*, it is illegal to -force a person to enter marriage or to be a party to a forced marriage. Forced marriage is defined as a marriage based on coercion or threats, or when a person is not capable of understanding the nature of marriage such as a person under the age of 16. It is also illegal to take a child overseas for the purpose of marriage. The maximum penalty is 25 years' imprisonment if the victim is under 18 and taken overseas for the purpose of forced marriage. State child sex offences may also apply where that is a UFM.

The *Marriage Act 1961* also makes it clear that a marriage can be voided if the consent of a party was not real, or if a party was not of marriageable age (section 23B).

The *Criminal Code* and *Marriage Act* address those situations where a UFM has already occurred. In NSW, UFM whether it has occurred or a child is at risk, is considered a child protection issue under the *Children and Young Persons (Care and Protection) Act 1998*. The Child Protection Helpline takes a more preventative approach and accepts reports "of underage marriage or similar union that has occurred or is being planned".

## Policy Context

Forcing a child to marry is a violation of their human rights, and is a form of child abuse. Child marriage is a global problem that occurs in many countries, cultures, religions and ethnicities. As a result, forced child marriage is best contextualised as an issue of human rights, gender inequality and child protection.<sup>13</sup> Forced child marriage is also a violation of children's rights under the United Nations Convention on the Rights of the Child (UNCRC).<sup>14</sup>

The UNCRC sets out the human rights of children, including the right to:

- Uphold the 'best interest of the child'<sup>15</sup>
- Survive and develop to their fullest<sup>16</sup>
- protection from harmful practices, abuse and exploitation<sup>17</sup>
- participate fully in family<sup>18</sup>, cultural<sup>19</sup> and social life<sup>20</sup>

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<sup>12</sup> Australian Muslim Women's Centre for Human Rights 'Early and Forced Marriage in Muslim Communities in Australia' (accessed 03/01/2017) from the FACS (CS) Intranet see 'Masterclass Training Handout' <http://docsonline.dcs.gov.au/service-delivery/multicultural-services/early-and-forced-marriage-masterclass>

<sup>13</sup> Tina Jelenic and Matthew Keeley, 'End Child Marriage: Report on the Forced Marriage of Children in Australia' (Research Report, National Children's and Youth Law Centre, 2013)

<sup>14</sup> Australia became a State Party in 1990 (need to check)

<sup>15</sup> UNCRC, Art 3(1)

<sup>16</sup> UNCRC, Art 6(2)

<sup>17</sup> UNCRC, Art 34(b)

<sup>18</sup> UNCRC, Art. 2,5, 8(1), 9(4), 16(1), 20(1)

<sup>19</sup> UNCRC, Art 30, 31

In signing the Convention, governments commit to take ‘all effective and appropriate measures with a view to abolish traditional practices prejudicial to the health of the children’, which includes, among other practices, female genital mutilation and child marriage.

Australia’s national response to child abuse and neglect includes the development of the National Framework for Protecting Australia’s Children (2009–2020), endorsed by the Council of Australian Governments in April 2009, and the National Plan to Reduce Violence against Women and their Children. The National Framework focuses on providing timely and universal support to all families (not just those deemed ‘at risk’) to prevent abuse and neglect and reduce the over-representation of Aboriginal children in the protection system, in line with Articles 2 and 19 of the UNCRC.<sup>21</sup>

### **Responses to UFM**

UFM is highly complex and involves criminal, child wellbeing, health, education and housing issues. Action to prevent and reduce the incidence of forced marriage relies on collaboration between the Federal and State governments and community representatives, all of which have different roles and responsibilities in relation to the various aspects of UFM.

The reasons for forced marriage are complex and relate to the interplay of cultural, socio-economic factors. Because of this, the work to address UFM needs to involve:

- *Education and engagement* with communities where UFM occurs, to raise awareness about the illegality of UFM, its impact, how to identify and respond to it, and how to support a child or young person who is at risk of or in a forced marriage;
- *Standardised reporting, referral and documentation protocols* so that when a planned or actual UFM is reported (to any agency) consistent information is collected, particularly to identify if overseas travel is imminent. This will assist with a consistent approach to assessment and referrals and improve the quality of data that is collected about UFM;
- *Training and professional development* of staff in government and non government agencies to raise awareness about UFM, how to report or refer cases and increase consistency in responses;
- *Legislative and policy development* to standardise definitions, increase the range of options available to respond to UFM and strengthen collaboration across jurisdictions, agencies and the community;

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<sup>20</sup> UNCRC, Art 32(1)

<sup>21</sup> Tina Jelenic and Matthew Keeley, ‘End Child Marriage: Report on the Forced Marriage of Children in Australia’ (Research Report, National Children’s and Youth Law Centre, 2013).

- *Services* to provide support, eg counselling, financial assistance, legal advice, security, accommodation and education.

### **Work by other agencies in NSW**

In NSW, there are services which can be contacted by persons facing forced marriage; some of these provide services to children and young people and others only to people aged over 18. These services provide a range of support including accommodation, counselling, advocacy, raising awareness and vocational training. These services are community based, non-profit organisations and/or non-government organisations and include:

- Australian Red Cross: Support for Trafficked People Program;
- Good Shepherd Australia New Zealand;
- Immigrant Women's Speakout Association;
- Multicultural Youth Affairs Network NSW (MYAN);
- Shakti Migrant & Refugee Women's Support Group NSW;
- The Salvation Army Freedom Partnership to End Modern Slavery;
- The Freedom Hub.

A full list of services within each state, territory and throughout Australia can be located on the My Blue Sky website, which is government funded by Anti-Slavery Australia and launched in December 2015 - <https://www.mybluesky.org.au/>

### **Work in other jurisdictions**

#### *The United Kingdom and Forced Marriage Protection Orders*

The United Kingdom (UK) legally recognises forced marriage as a crime. Forced marriage and underage forced marriage is understood in the broader context of honour based violence and harmful cultural practices. The UK recognises that Forced Marriage (FM) and UFM are associated with other social issues, such as domestic and family violence.

In the UK, a range of methods are used to prevent UFM and support those affected by it. This includes Forced Marriage Protection Orders (FMPO) which are civil protection orders, to protect current and potential victims of forced marriage. Intake and reporting are handled primarily through a helpline administered by the Forced Marriage Unit, which is a government body.

Support is also provided by specialised non-government organisations, which provide culturally appropriate services such as advocacy, case management, financial support, refuge and referrals to other services. Scotland has established a 'Forced Marriage Network', which is a collaborative body of statutory and voluntary agencies associated with FM and UFM.