



Peninsula
Community
Legal Centre

Submission in response to the Commonwealth Attorney-
General's Department's "Enhanced Civil Protections and
Remedies for Forced Marriages" Consultation Paper

23 September 2024



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1. Introduction

Peninsula Community Legal Centre (PCLC) welcomes the opportunity to make a submission in response to the *Enhanced Civil Protections and Remedies for Forced Marriages* Consultation Paper. We welcome the Commonwealth working with the States and Territories to tackle the complex issues surrounding forced marriage, including by developing a model to enhance civil protections and remedies for individuals in or at risk of forced marriage.

2. About Peninsula Community Legal Centre

Peninsula Community Legal Centre

Peninsula Community Legal Centre (PCLC) is an independent, not-for-profit organisation that has been providing free legal services to vulnerable and disadvantaged people in Melbourne's outer southeast since 1977. It is one of the largest community legal centres in Australia, with programs including large family violence and family law programs serving a population of over one million people across six local government areas. PCLC's head office is in Frankston, with branch offices in Bentleigh, Cranbourne and Rosebud, and 15 visiting outreach services across the catchment.

PCLC provides legal information, advice, ongoing legal assistance and representation and undertakes community legal education, community development and public advocacy activities. In addition to its general legal services, the Centre operates programs and services in family law, family violence, fines, tenancy, and rooming house outreach. We also have a specialist Migration Law Clinic supporting culturally and linguistically diverse clients who have applied for or hold a partner visa and are experiencing family violence.

PCLC provides clients with free and accessible legal services, particularly the most disadvantaged and marginalised in our community who may otherwise fall through the gaps as they cannot afford private lawyers and would not qualify for legal aid. 81 per cent of our clients exist on no or low income.

The most common legal problems for our clients are family law and family violence, with roughly half of clients grappling with family violence. Notably, a third of those clients come from culturally and linguistically diverse backgrounds. Our catchment area includes the outer south-eastern local government area of Casey, which has consistently had the highest number of reported family violence cases of all municipalities in Victoria over recent years. The City of Casey is one of the fastest growing areas in Australia with residents from around 150 cultural backgrounds.

Contrary to a common misunderstanding about the work conducted by community legal centres, PCLC's specialist programs in family law and family violence often involve complex and significant casework. Our family lawyers often conduct cases from start (negotiations/pre-action procedures) to finish (settlement/trial). Of the clients assisted by PCLC's family law litigation team, 75% instruct that they have experienced family violence either during the relationship or after separation. We also

operate family violence duty lawyer services in two Magistrates' Courts as well as the Family Advocacy and Support Service (FASS) duty lawyer service at the Dandenong registry of the Federal Circuit and Family Court of Australia.

In 2023-2024:

- Our family law lawyers assisted 1571 clients, providing 464 duty lawyer services, 272 representation services, and 1807 legal advice services.
- Our family violence lawyers assisted 1,657 clients, providing 2,238 duty lawyer services, 128 representation services, and 1,111 legal advice services.

We write this submission as a legal sector organisation “with experience working with victims and survivors of forced marriage, family and domestic violence frameworks, immigration and refugee law and family law specialists”. We have provided a limited response to the Consultation Paper and have addressed questions 1 to 9, and 11 to 16.

Forced marriage in our legal practice

PCLC recognises forced marriage as both a form of family violence and a modern slavery practice that is a grave violation of human rights. We recognise that young women and girls are at most risk, but that forced marriage can also happen to anyone regardless of gender, sexuality, age, cultural background or nationality. We note that forced marriage is not always easy to identify and that there are various intersecting barriers that may prevent a victim-survivor from making disclosures and accessing assistance, protection and justice. As is well-established, comprehensive measures need to be taken outside a legal response to address barriers faced by victim-survivors and the causes of forced marriage.

Despite having large family violence and family law programs, and despite our lawyers working in a trauma-informed way and being highly attuned to the varying forms and nuances of family violence, matters explicitly involving issues of forced marriage are relatively uncommon in our practice. This is likely reflective of forced marriage issues being under-reported and under-detected for a range of complex reasons.

In some matters, our lawyers may suspect there was an element of coercion or pressure around a marriage in matters where the client is presenting later with another legal issue or issues, but disclosures are not readily made. Occasionally one of our clients going through a separation will instruct that there were elements of coercion around their marriage many years previously. In a recent divorce matter, we realised from translated documentation that our client, the wife, was the victim-survivor of an historic case of early and forced marriage.

Victim-survivors of forced marriage have unique needs. We note that clients may not be aware they are victim-survivors of the crime of forced marriage, may still be experiencing pressure/coercion and/or may fear retribution (including escalated violence) or potential legal repercussions for their family members if they were to make disclosures. As in the Consultation Paper, we recognise that not all individuals who have experienced forced marriage or conduct intended to cause them to enter into a forced marriage may identify with the term “victim-survivor”, but we also use the term in this response.

We also recognise the potentially devastating consequences for victim-survivors if specialist support and advice, including rigorous safety planning, is not obtained in some instances. These can include increased risks to personal safety and their properties, including threats of harm or actual harm, and impacts on visa status.

Recent cases include:

Example 1: In one case, Victoria Police had applied for a Family Violence Intervention Order to protect a young woman at risk of forced marriage. The respondent in this matter was the client's father. Our client sought advice as she wanted the protection of an order so she wasn't forced to marry, but she also wished to continue having contact with her father. We were able to provide advice about how the Court may potentially vary the order to allow contact and communication between the parties.

Example 2: In another matter, our client, a woman in her early 20s, was the affected family member in a Police application for a Family Violence Intervention Order against her husband. Our client had very recently arrived in Australia to live with her husband, whom she had married in her home country. The husband had been living in Australia for several years and was well settled. Our client was on a temporary partner visa and had only met the husband a few times before she came to Australia. On arrival, the husband subjected our client to a high level of control and isolation, and verbally, psychologically, and emotionally abused her. She was not allowed to contact her family at all. Our client managed to call Police, who issued a Family Violence Safety Notice to protect her, and she went into safe accommodation. Although the Police application for a Family Violence Intervention Order referred to the marriage as an "arranged" marriage rather than a forced marriage, it was unclear whether our client had any choice about marrying the husband. Regardless, she was being coerced into remaining in the marriage with the husband and his family making threats of retaliation towards her and her family if she left, as well as making threats around her visa status.

Need for tailored legal services

As is widely recognised, a relationship of trust usually needs to be established over a course of time before clients feel ready to discuss issues around forced marriage. From our experience, disclosures around family violence issues generally can be encouraged by specific legal services providing time, confidentiality, and a safe space to build trust and rapport. These legal services can provide advice and support about legal issues and options. These consultations are also protected by legal professional privilege which can encourage disclosures.

Victim-survivors of family violence, including forced marriage, need access to safe, discreet, and non-stigmatising legal services, potentially embedded in relevant community service organisations. We recommend the adaptation of legal service models such as the Glen Eira Mums (GEMS) Project, which is a collaboration between Peninsula Community Legal Centre and the Glen Eira City Council, for which Glen Eira Council won the National Award for Local Government in the Addressing Violence Against Women and their Children category in 2023.

Please also see the case study below about our school lawyer service, which is embedded in a large secondary school in the City of Casey, Victoria, as a result of our preventive legal education initiative on forced marriage and family violence. This provides an example of the kind of ongoing service that is required to build relationships of trust that will encourage disclosures by young people on issues such as forced marriage and family violence.

We also acknowledge the work of sector colleagues such as inTouch in Victoria’s family violence response system. Intouch provides integrated, culturally responsive services to migrant and refugee communities from prevention and early intervention to crisis intervention, post-crisis support and recovery. The integrated model provides culturally responsive case management and has an in-house accredited community legal centre providing legal advice, court advocacy and immigration support to clients. We recommend that this model be replicated.

Prevention and education

PCLC recognises that prevention and early intervention work including education and awareness raising activities are critical to ending forced marriage in Australia.

Education and awareness-raising activities within affected communities need to be culturally appropriate and developed with the communities themselves. We support education and awareness raising activities that are collaborative, gender-sensitive, culturally-responsive and trauma-informed, including collaborative continuing legal education activities conducted by community legal centres.

Prevention case study: “*This is Not Who I Want to Be*” Youth Theatre Project

Reducing family violence and forced marriage through education for young culturally and linguistically diverse people

PCLC’s *This is Not Who I Want to Be* youth theatre project is a preventive community legal education initiative for culturally and linguistically diverse (CALD) secondary school students which deals with issues of family violence and forced marriage.

In 2021, PCLC launched the *Strengthening Legal Pathways for CALD women* project, funded by a grant from the Victoria Law Foundation. This initiative focused on addressing significant barriers women in multicultural communities face in accessing justice and legal education on family violence. Through this project and our family violence services, we noticed that some CALD teenagers were already experiencing controlling relationships and family violence. We also received feedback from our community partners that some young women were going on to forced marriages after leaving school. There were also reports about negative behaviours exhibited by teenage boys, supporting concern about young people experiencing, participating in and perpetuating family violence.

This is Not Who I Want to Be has been conducted in four large secondary schools in the City of Casey and uses a highly interactive and participatory theatre performance to increase students’ legal literacy about family violence and forced marriage. In addition to educating young people about their legal rights and responsibilities and how to access legal and other support services, the use of theatre aims to challenge attitudes that downplay or excuse violence and forced marriage by inviting the students to connect with the characters in the story and create longer-term attitudinal change.

The project is delivered in partnership with Uniting’s KOMAK program, which provides education and other supports for Afghan communities. Importantly, as part of the co-design process, over 45 stakeholder engagement meetings were held to develop the most appropriate way to deliver this material to younger audiences given the sensitivity of some of the issues.

At one large school, the performances led to an invitation for PCLC to deploy a school lawyer on campus for 2 days a week to providing legal advice and community legal education to students. That program is now well-established, and is enabling a relationship of trust to be created whereby ongoing information and support about family violence and forced marriage can be provided.

See question 5 below for further information about the development, content and outcomes of our youth theatre project.

3. Summary of Recommendations

We make the following broad recommendations:

1. Include forced marriage as a form of family violence across all Australian jurisdictions in a consistent manner, with the Victorian statutory example of forced marriage as a form of family violence to be used as a model.
2. Develop and implement nationally consistent risk assessment and safety planning tools.
3. Provide increased funding to community legal centres to deliver tailored legal services to victim-survivors of forced marriage, including school lawyer programs, where ongoing relationships of trust can be built to encourage disclosures.
4. Provide increased education programs on forced marriage to young people to empower them with knowledge about their rights, including the law on forced marriage, the difference between arranged and forced marriage, and how and where to seek help.
5. Provide dedicated funding to community legal centres for preventative forced marriage community legal education initiatives, such as Peninsula Community Legal Centre's *This is Not Who I Want to Be* youth theatre project.
6. Implement evidence-based training for all frontline service organisations and responders, including government agency workers, community workers, family violence workers, educators, police, child protection workers, lawyers, court staff and the judiciary to strengthen their capacity to recognise and respond to forced marriage as a form of family violence, including referral pathways to specialist support and advice. Include in the training the key message that it is critical to refer victim-survivors for early legal advice to avoid more complex problems.
7. Provide adequate resourcing for Courts, court staff, the legal assistance sector (including duty lawyer services) to support the introduction of enhanced civil remedies and protections for forced marriage.
8. Caution be taken with any proposals to broaden the range of applicants that could potentially apply for a civil forced marriage protection order due to potential misapplication or misuse of the process, which may increase risk to victim-survivors of forced marriage and/or limit their agency.
9. Further consideration be given to the impact on victim-survivors on temporary visas where their Australian partner sponsor withdraws, or threatens to withdraw, sponsorship, ensuring protections are appropriate and victim-survivors have access to specialist migration advice at the earliest opportunity.

4. Responses to Consultation Paper questions

Part 1 – Building a shared understanding of forced marriage as a form of family and domestic violence to improve victim-survivors’ access to family and domestic violence service

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

PCLC sees the proposed options as effective ways to improve nationally consistent responses to forced marriage, being:

- Building a shared understanding of forced marriage as a form of family and domestic violence to improve victim-survivors’ access to family and domestic violence services.
- Enhancing education and awareness training to support early identification, intervention and prevention.
- Strengthening forced marriage civil protections and remedies.
- Enhancing support services through the Forced Marriage Specialist Support Program.

PCLC welcomes the mid-2024 changes to the Support for Trafficked People Program [STPP] which will allow victim-survivors to access the STPP through a community service provider without the requirement to engage with the Australian Federal Police. We also welcome the establishment of the new Forced Marriage Specialist Support Service with a ‘no wrong door approach’ enabling victim-survivors to access the program through ‘soft entry’ points across the community. It is appropriate that victim-survivors of forced marriage are able to access specialist support programs without having to make a report to the Australian Federal Police given the significant barrier this poses. We also welcome the extension of the *Speak Now* project, delivered by Anti-Slavery Australia which aims to prevent forced marriage through education, awareness-raising and collaboration with service providers, frontline communities and young people from across Australia. These initiatives appear to respond broadly to best practice research and experience.

Any expansion of civil remedies and protections for forced marriage would need to be supported by increased funding for legal services that work with women and girls who are at risk of forced marriage. Legal services that work with clients affected by family violence are already overwhelmed.

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

PCLC recognises forced marriage as both a form of family violence and a modern slavery practice, and supports forced marriage being recognised as a form of family and domestic violence. In the words of Anti-Slavery Australia, “[s]ituating forced marriage as a form of gender-based violence, or as family and domestic violence (FDV), is useful for highlighting its social drivers”¹, and then developing appropriate and effective social and legal responses. We also acknowledge the importance of forced marriage also sitting in the human trafficking/modern slavery framework and support the *National Action Plan to Combat Modern Slavery 2020-2025*.

¹ Nelson, J. K. & Burn, J. (2024). *Forced marriage in Australia: Building a social response with frontline workers*, *Social & Legal Studies*, 1-21, doi: 10.1177/09646639241242125, p.3. <https://antislavery.org.au/wp-content/uploads/2024/05/Forced-Marriage-in-Australia-Building-a-Social-Response-with-Frontline-Workers.pdf>, viewed 17 September 2024).

We note that in our jurisdiction of Victoria, the Victorian *Family Violence Prevention Act 2008* was amended in 2018 by the *Justice Legislation Amendment (Family Violence Protection and Other Matters) Act 2018* to include forced marriage and dowry-related abuse as statutory examples of family violence. These new examples came into effect in March 2019 and were a specific recommendation of the Victorian Royal Commission into Family Violence, proposed by family violence practitioners, front-line service providers and forced marriage specialist services. Section 5 of the *Family Violence Prevention Act* provides that “*using coercion, threats, physical abuse or emotional or psychological abuse to cause or attempt to cause a person to enter into a marriage*” may constitute family violence. We support this formulation as it clearly enunciates that forced marriage is family violence and that it forms part of a pattern of behaviour intersecting and overlapping with other forms of family violence, rather than it being an isolated event/incident. We also note that the Victorian statutory examples were drafted after wide consultation with relevant stakeholders about appropriate wording.

As community legal centre lawyers, we often need to explain the meaning and extent of family violence to our clients, whether they are victim-survivors of family violence or alleged perpetrators. As frontline legal practitioners, the 2018 amendments around forced marriage and dowry-related abuse had an educative effect and made it clear that these were forms of family violence that were not tolerated in Victoria, without the need to extrapolate from the wider definition of family violence.

We also support the formalised recognition of forced marriage as a form of family violence nationally as family and domestic violence frameworks can benefit victim-survivors of forced marriage, including through protections and supports such as civil protection orders, legal assistance, medical care, counselling, financial assistance and emergency accommodation. However, we note that victim-survivors of forced marriage require specialised supports and safety planning due to the unique dynamics and risks associated with forced marriage.

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

We refer again to forced marriage being included as a statutory example of family violence in the Victorian *Family Violence Protection Act 2008* and recommend that a similar approach be taken across jurisdictions.

We recommend:

- Forced marriage should be consistently included in legislation as a form of family violence in all Australian jurisdictions, with consideration being given to using the statutory example in the Victorian legislation as a model.
- Nationally consistent risk assessment and safety planning tools.
- Ongoing training for all frontline responders such as community workers, family violence workers, educators, police, child protection workers, lawyers, and the judiciary to build capacity to recognise and respond to forced marriage as a form of family violence, including referral pathways to specialist support and advice.

4. What enhancement 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?

We note that in Victoria, the Family Violence Multi-Agency Risk Assessment and Management (MARAM) Framework contains reference to forced marriage. However, we also note criticisms that the MARAM Framework only prompts family and domestic violence caseworkers to ask about forced marriage issues if the client is from a culturally and linguistically diverse community. We would support all clients being screened for forced marriage issues as threats or coercion around marriage are not confined only to culturally and linguistically diverse communities.

We recommend consideration be given to the adoption of a consistent risk management framework with practical guidance across all jurisdictions to assist family violence response services to better identify and understand issues relating to forced marriage and the overlap/intersection between forced marriage and other forms of family violence.

Again, any legal and policy changes need to be supported by ongoing evidence-based training for all frontline responders such as community workers, family violence workers, educators, police, child protection workers, lawyers and the judiciary.

Adequate resourcing of frontline workers to facilitate identification of forced marriage issues is essential as it is a complex area of work. We note that community legal centres, including PCLC, regularly provide secondary consultations to community workers, where information about the law and processes can be provided to:

- help the community worker identify whether a client is experiencing a legal problem; and
- provide legal information (not advice) to the community worker that can guide their next steps (including booking the client in for legal advice about their specific circumstances) or be passed on to a patient or client.

Secondary consultations with community legal centres can provide valuable guidance to frontline workers to identify and respond to a wide range of legal issues, including family violence and forced marriage issues. We note that secondary consultation generally involves partner services communicating with each other about a client – with that person’s permission, but without their direct involvement in the conversation, or without sharing the person’s name or personal details. It can be particularly appropriate given the sensitivities and barriers to disclosure surrounding forced marriage issues.

Part 2 – Enhancing education and awareness raising

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

Education and awareness raising for frontline responders

Education or awareness-raising activities for frontline responders could focus on the overlap and intersection between forced marriage and family violence, how forced marriage issues may present (for example, a young woman dropping out of school) and appropriate referral pathways for legal and other specialist support. A key message would be that legal advice should be sought as soon as possible to avoid more complex legal problems (such as visa issues or inadequate family violence intervention orders).

In the community legal education that PCLC provides to community service organisations (including family and domestic violence caseworkers), one of our main messages is the need for workers to refer their clients for legal advice at an early stage. We also encourage workers to contact PCLC for secondary consultations about legal issues a client may be facing. In 2023, PCLC released *Resources for Workers Supporting Victim Survivors of Family Violence through Legal Systems* (2023). This is a series of short online modules that explain a few key intersecting legal systems family violence workers may encounter. See <https://pclc.org.au/resources-for-fv-workers/> We also developed an online tool called *Guide to Safety* which aims to empower community workers to understand when their clients on temporary visas may be able to access the family violence provisions in the Migration Framework and to refer their clients for specific legal advice: <https://pclc.org.au/guide-to-safety-tool/> Both of these resources are designed to help family violence caseworkers to identify issues and refer clients for specific legal advice at the earliest opportunity.

We also acknowledge the excellent, comprehensive resources for frontline workers that are already available on the /My Blue Sky website (<https://mybluesky.org.au/frontline-worker-guide>) website.

Education and awareness raising for young people

Given the fact that the majority of reports about forced marriage involve young people, this is a key group which requires education on the law on forced marriage, how to recognise forced marriage, and how and where to get help from legal and other specialised support services.

Our *This is Not Who I Want to Be* theatre program provides an example of innovative and creative ways to deliver these messages to young audiences, as well as the ongoing support that is required to promote disclosures.

Family violence, forced marriage and teenagers

Theatre performance can be a highly effective way to deliver legal information to young people from culturally and linguistically diverse communities as part of critical early intervention and prevention work around forced marriage and related family violence issues.

This is Not Who I Want to Be is an interactive theatre project for secondary school students that was created by PCLC in 2022 to provide legal education on family violence and forced marriage to young people from multicultural communities. The project was designed in response to data that culturally and linguistically diverse (CALD) teenage girls in the Melbourne LGA of Casey were already experiencing controlling relationships and family violence, and that some were going on to forced marriages after leaving school. There was also a large amount of data about negative behaviours exhibited by teenage boys, supporting concern about young people experiencing, participating in and perpetrating family violence.

This is Not Who I Want to Be uses professional actors to tell the story about the impact of family violence and forced marriage on a family of four. Students are taught to recognise various forms of family violence, challenge character behaviours, and explore avenues for change by seeking help.

The design and development of the project was collaborative. To ensure the appropriateness of the project material and its delivery, PCLC collaborated with people working in the community legal sector, specialist organisations assisting forced marriage victim-survivors and groups delivering education for young people from multicultural communities. There was consensus that storytelling was the most effective way for conveying complex legal information to a young audience, rather than typical legalistic information delivery.

As the project script took form, it centred around the family experiencing various forms of family violence, including forced marriage. With a team comprising actors, a director, a trauma-informed consultant and PCLC representatives, the performance evolved to convey its messages.

The performance illustrates how some of the four characters in the piece choose to take responsibility for their actions and challenge the dynamics of violence, while others don't. Audience participation is actively encouraged, prompting students to recognise various forms of family violence and the harmful impacts of the violence on the characters, challenge character behaviours and explore avenues for change by seeking help. Themes of self-reflection on agency, choice, change, and growth are interwoven throughout the performance. Students are invited to contemplate how cultural and societal norms influence behaviour and are urged to challenge underlying assumptions about forced marriage and family violence. Once the performance starts, and the character of the father starts shouting at the mother, the audience is drawn into the story in a very intense way from the first scene. We notice that any chatter and restlessness stops, and students continue to engage with the performance throughout.

The sessions are performed in a "circle of safety" that includes the students, performers and PCLC facilitators to create the familiarity and openness required for students to actively participate in discussion of such sensitive and challenging topics.

The project is being run alongside community partner Uniting's Komak program, which provides educational programs for young Afghan communities, and has been delivered to hundreds of students across four secondary schools. The schools have reported that students continued to discuss the performance months later, indicating its lasting impact. The Head of Wellbeing at one of the schools where the performance was conducted states, "*My team thought this was one of the best external programs that we have ever hosted*".

At one large school, the performance led to an invitation for PCLC to collaborate with the school to host a school lawyer on campus, providing legal advice and community legal education to students. That program is now well-established and is enabling a relationship of trust to be created whereby ongoing information and support about family violence and forced marriage can be provided.

More information about the project can be found here:

<https://www.victorialawfoundation.org.au/scheduled-events/the-power-of-performance-community-legal-education-through-theatre>

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

It is important that education and awareness raising activities in communities affected by forced marriage are designed and/or co-designed by members of the affected communities themselves to ensure they are culturally appropriate/safe and effective. We see huge benefits in collaboration between legal services (such as PCLC), family violence organisations and other community partners, such as in our "*This is Not Who I Want to Be*" theatre project.

7. Which groups in the community require education and increased awareness of forced marriage (eg frontline workers such as police, child protection and/or specific cohorts within the community)?

As noted above, education and awareness raising among young people is essential, given that this is the group most affected by forced marriage. Young people need to be empowered with knowledge

about their rights in order to be able to take action to resist the practice, and to know how and where to seek help.

Anyone involved in a social or legal response to forced marriage requires education and increased awareness of forced marriage issues to assist the identification and response to forced marriage. This includes school staff (e.g. teachers, counsellors, well-being officers), health workers (doctors, nurses, midwives, emergency department staff), mental health workers, disability workers, family violence workers, migrant and refugee workers, youth workers, faith leaders and marriage celebrants, police, child protection workers, lawyers and the judiciary.

Community, cultural, sporting and faith-based groups and organisations can play a key role in raising awareness and responses to forced marriage issues within their communities.

Part 3 – Strengthening civil protection and remedies

PCLC recognises that criminal laws prohibiting forced marriage, while important, are not sufficient protection for victim-survivors of forced marriage in Australia. We note there are many difficulties surrounding the criminal offence of forced marriage, including the reluctance of victim-survivors to expose their family members to criminal sanctions and difficulty of obtaining evidence of the offence to the high standard of proof required for a criminal offence. We recognise that civil protections may provide legal protections to victim-survivors in the earlier stages of forced marriage cases and may be more useful for protecting victim-survivors at risk.

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 the gaps?

PCLC recognises that there are gaps in the existing legal protections available to respond to and prevent forced marriage in Australia. We note that the Consultation Paper recognises that a criminal response alone is insufficient as many victim-survivors don't want to see their family prosecuted, but that civil protection mechanisms are currently limited, not tailored to forced marriage contexts, and vary across jurisdictions. We support a nationally consistent response to bring about equal outcomes for victim-survivors.

As a community legal centre that works with civil family violence intervention orders daily, we agree that civil protection and remedies can provide practical tools that can achieve preventative and time-critical outcomes for victim-survivors of forced marriage. We agree that civil protections are more accessible due to the lower standard of proof required (balance of probabilities) compared to the standard of proof required for a criminal conviction (beyond a reasonable doubt). Additionally civil orders may be a preferable legal option for victim-survivors who fear their family members would otherwise be arrested and prosecuted (noting, however, that respondents to civil family violence intervention orders are exposed to criminal penalties for breaching those orders). Equally, victim-survivors who are reluctant to use criminal mechanisms may be similarly reluctant to initiate and/or participate in civil protection mechanisms, even where police are not involved.

9. This paper discusses two options to strengthen civil legal protections: Option A (enhancing 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 any other options that should be considered?

As a community legal centre with family violence and family law programs, we often work at the intersection between the Victorian family violence system and the Commonwealth family law system and are very familiar with both jurisdictions, assisting clients to go navigate the different courts and systems. Without legal assistance, clients can find dealing with multiple legal systems overwhelming.

Without further details, we are currently unsure of the preferable option. We see advantages and risks in both approaches.

Option A

We note that Option A has much to commend it.

We support the concept of developing and agreeing shared principles or features of enhanced protections for jurisdictions to integrate as appropriate in their family or domestic violence or other relevant frameworks. We also agree that integrating enhanced protections into existing systems provides an opportunity to link into broader family violence supports including specialised Courts, protections and assistance.

We agree that this option could build on existing expertise and frameworks in the family violence sector. We note that our Legal Centre operates in Victoria with a very strong family violence sector with existing resources, expertise and networks in place that would be well placed to adapt to any changes around forced marriage and family violence. We also have specialist Courts. From our experience, the State family violence jurisdiction is generally more accessible and “user friendly” than Commonwealth jurisdictions, which is an important consideration. We don’t have experience on the ground in other States and Territories to know whether other jurisdictions are similarly equipped to deal with Option A.

As set out in the Consultation Paper, this option would need to be underscored by strong education, awareness-raising and capacity-building to support implementation, including with police officers and other frontline officials, service providers, courts and judiciary and with communities. We agree that strengthened coordination between different agencies and service providers would also be key.

Option B

The Option B model is attractive as it appears to be a cleaner way to establish legislation that applies equally and consistently across Australian jurisdictions to achieve similar protection outcomes. However, we are concerned that, while nationally consistent, the Option B model would potentially require applicants to access multiple systems to seek protection and support. As lawyers who work with victim-survivors of family violence who also need to engage with the Commonwealth family law system, we would be concerned about any further complexity or barriers being placed before victim-survivors of family violence/forced marriage and the professionals that work with them. However, we note that this could potentially be addressed by conferring jurisdiction to state and territory courts to hear applications for the Commonwealth orders, perhaps alongside family violence intervention orders.

As family violence duty lawyers, we submit that state family violence duty lists are already incredibly busy and there would need to be adequate resourcing for the Courts, court staff and duty lawyer services.

Grounds for orders

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?

Grounds that already exist in state and territory family violence frameworks would continue to be relevant.

We also see the grounds set out on p.17 of the Consultation Paper as useful.

We note that those working in State family violence jurisdictions are accustomed to dealing with matters where there is little documentary evidence of family violence, and the affected family member's account of violence/description of incidents is central. This is particularly the case for coercive control behaviours.

Scope of orders

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?

The proposed protections listed do address the most significant risks faced by people in or at risk of forced marriage.

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

We often see "systems abuse" by family violence perpetrators in our legal practice. There would need to be adequate safeguards in place to ensure that the proposed protections could not be weaponised by a family violence perpetrator, for example, by restraining a protected person (adult) from travelling internationally where they are not at risk.

We are also concerned that the proposed protections could affect the visa status of a protected person, and there are real risks around the potential for the sponsoring person to remove support for the victim-survivor's visa. There would need to be adequate protections for a victim-survivor on a temporary visa, as in the family violence provisions in the Migration Framework.

The risk of harm to other family members should also form part of specialist safety planning.

Applicants

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

No. Section 45 of the *Family Violence Protection Act 2008 (Vic)* sets out who may apply for a Family Violence Intervention Order in Victoria, and we support the list of applicants being confined to those set out in section 45 of the Victorian Act.

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

We do not support the widening of potential applicants beyond those that can currently apply for Family Violence Intervention Order in Victoria as set out in section 45 of the *Family Violence*

Protection Act 2008 (Vic). We are concerned if other third parties can make applications, they may expose the protected person or other family members to significant danger and may not act in the best interests of victim-survivors. We are also concerned that the process could be inappropriately weaponised.

Respondents

16. Should there be any limits on who can be a respondent for forced marriage civil protections?

We recognise that in forced marriage cases, the person posing a risk to the intended person may not be a family member. It may be appropriate to provide the court with discretion to make orders against any respondents that it considers appropriate. It would certainly be valuable to list potential respondents as a guide to the court even if the list was not exhaustive. We support the list of potential respondents set out on p.19 as an appropriate list of potential respondents.