



Australian Government
Department of Home Affairs



Australian
BORDER FORCE

Submission to the Inquiry into certain aspects of the Department of Foreign Affairs and Trade 2019-20 Annual Report – child and forced marriage

Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs,
Defence and Trade

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Introduction

1. The Department of Home Affairs / the Australian Border Force (the Department/ABF) welcomes the opportunity to provide a submission to the Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade's inquiry into certain aspects of the Department of Foreign Affairs and Trade (DFAT) 2019-20 Annual Report – child and forced marriage.
2. The Department/ABF notes that DFAT leads the Government's international advocacy on child and forced marriage. The Department/ABF supports the Government's international engagement on forced marriage by:
 - a. setting and maintaining the Government's domestic legal and policy response to forced marriage
 - b. implementing the *National Action Plan to Combat Modern Slavery 2020-25* (National Action Plan)
 - c. delivering Official Development Assistance (ODA) funded technical assistance and capacity-building in the Indo-Pacific region to strengthen regional responses to human trafficking, slavery and slavery-like practices (including forced marriage)
 - d. co-chairing with Indonesia, the Bali Process Working Group on Trafficking in Persons, comprising 16 countries in the Indo-Pacific region and three member international organisations
 - e. supporting the Government's engagement on forced marriage in international forums including the United Nations Human Rights Council
 - f. setting and implementing migration and visa frameworks and processes to identify and respond to forced marriages, and
 - g. maintaining strong visa character and cancellation settings to protect the community from non-citizens who could present a character, integrity or security risk, including those who seek to abuse or exploit women and children through forced marriage.
3. The Department/ABF acknowledges the focus of the Sub-Committee's inquiry, which will consider how combating child and forced marriage can be a targeted, coordinated and effective focus of Australia's international development strategy and programs.

Legal and policy response to forced marriage

4. The Department/ABF oversees the whole-of-government domestic response to forced marriage in Australia, which includes:
 - a. comprehensive criminal offences that criminalise forced marriage
 - b. a dedicated Support for Trafficked People Program (STPP) including the Forced Marriage Support Stream, administered by the Department of Social Services and delivered by the Australian Red Cross
 - c. specialist Australian Federal Police (AFP) teams responsible for investigations
 - d. funding to specialist non-government organisations to deliver projects that address modern slavery including forced marriage in Australian communities, and
 - e. implementing the National Action Plan, including measures that will strengthen responses to forced marriage over the five-year life of the plan.
5. The Australian Government has comprehensively criminalised forced marriage in the *Criminal Code Act 1995*. The term forced marriage is defined in Australian law to include child marriage. Under Australian law a forced marriage occurs when a person is married without freely and fully

consenting, because: they have been coerced, threatened or deceived; they are incapable of understanding the nature and effect of a marriage; or the person was under the age of 16 when married.

6. It is an offence to both cause a person to enter into a forced marriage and to be a party to a forced marriage. The offences apply to legally recognised marriages, registered relationships and cultural or religious ceremonies. They carry a maximum penalty of up to nine years' imprisonment. If a child is taken overseas for the purposes of forced marriage, this may also constitute a trafficking in children offence, which is punishable by up to 25 years' imprisonment. The Australian Federal Police (the AFP) is the Commonwealth law enforcement agency responsible for investigating allegations of forced marriage.
7. Australia's forced marriage offences have extended geographical jurisdiction and can therefore apply where the conduct occurred in Australia, or where the conduct occurred outside Australia and the offender was an Australia corporation, citizen or permanent resident.
8. The Department/ABF partners with specialist non-government organisations to implement the Government's response to forced marriage. In 2008, the Government established the *National Roundtable on Human Trafficking and Slavery* (the National Roundtable), which brings together civil society, business, unions, academia and the Australian Government departments responsible for combating human trafficking, slavery and slavery like practices, including forced marriage (collectively termed modern slavery).
9. The National Roundtable is the Government's primary mechanism to consult and collaborate with key stakeholders on responses to forced marriage. For example, in 2014, the National Roundtable's Communication and Awareness Working Group developed a Forced Marriage Community Pack to support the introduction of Australia's criminal offences and help communities recognise and respond to forced marriage. The Department/ABF has shared the Forced Marriage Community Pack with international delegations to demonstrate how governments can partner with non-government organisations to address forced marriage.
10. Members of the Roundtable have also developed and implemented community-based projects to combat forced marriage, supported by Australian Government grant funding.

National Action Plan to Combat Modern Slavery 2020-25

11. Launched in December 2020, the National Action Plan sets the strategic direction for the Government's response to modern slavery over the next five years. Under the National Action Plan, the Government has committed to 46 new actions in support of five National Strategic Priorities:
 - a. Prevent – implement prevention activities that combat the drivers of modern slavery and empower individuals and groups that are vulnerable to modern slavery.
 - b. Disrupt, Investigate and Prosecute – identify victims and survivors, implement disruption strategies, and deter perpetrators by holding them to account through effective investigations and prosecutions.
 - c. Support and Protect – provide holistic and tailored victim centred support and protection that meets the needs of victims and survivors.
 - d. Partner – collaborate across government and with international partners, civil society, business, unions and academia to ensure a coordinated response to modern slavery.
 - e. Research – strengthen data collection practices to build the evidence base to support our response to modern slavery.
12. Under the National Action Plan, the Department/ABF will implement a range of measures under each of the National Strategic Priorities that will strengthen the Government's response to forced marriage. This includes a commitment to develop a model for enhanced civil protection and remedies for individuals in or at risk of forced marriage (action item 23).

13. Under action items 1, 33 and 42, the Government has committed to providing funding and practical support through domestic grant programs to combat and undertake research on modern slavery. To deliver these commitments, the Department/ABF has established a new *National Action Plan to Combat Modern Slavery 2020-25 Grant Program* (Grant Program). Round One of the Grant Program opened on 10 March 2021 and closed on 15 April 2021, and is currently being finalised. Round One includes a stream focused on projects that support the Government's objectives to combat forced marriage and to support and protect victims.
14. The National Action Plan will also support international engagement on modern slavery including forced marriage, which will be led by DFAT. Specific international engagement action items in the National Action Plan include:
 - a. Action item 1: Provide funding and practical support through Australia's overseas development program and domestic grants programs to address drivers of modern slavery and empower individuals and groups vulnerable to modern slavery, including women and children.
 - b. Action item 8: Advocate for the promotion and protection of human rights, including adherence to international labour standards, in relevant international and regional fora.
 - c. Action item 21: Deliver and fund overseas capacity-building activities to support the identification of victims and survivors, and the investigation and prosecution of modern slavery crimes.
 - d. Action item 38: Promote effective and coordinated international and regional responses to modern slavery in line with the International Strategy on Human Trafficking and Modern Slavery.

Delivering ODA-funded technical assistance in the Indo-Pacific region

15. The Department/ABF notes that DFAT leads the Government's ODA strategy and programs. The Department/ABF supports DFAT's ODA priorities as a delivery-partner in the *Indo-Pacific Justice and Security Program* (IPJUSP) (2017–18 to 2020–21). Through IPJUSP, the Department/ABF delivers targeted, peer-to-peer technical assistance and capacity building to Indo-Pacific partner governments to strengthen legal and policy frameworks to combat modern slavery.
16. Delivering IPJUSP provides the Department/ABF with opportunities to share the Government's response to forced marriage. Through IPJUSP, the Department/ABF also engages non-government organisations to share experience and expertise addressing modern slavery, including forced marriage. For example, the Department/ABF has invited non-government organisations to speak to international delegations about providing support and protection to victims-survivors of forced marriage in Australia.
17. While IPJUSP concludes at the end of financial year 2020-21, the Department/ABF will continue its international engagements on modern slavery issues under the National Action Plan.

Bali Process Working Group on Trafficking in Persons

18. DFAT co-chairs with Indonesia the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (the Bali Process). The Bali Process has 45 member countries and four member international organisations and provides a regional forum for policy dialogue, information sharing and practical cooperation.
19. The Department/ABF supports the Government's engagement in the Bali Process by co-chairing with Indonesia the Bali Process Working Group on Trafficking in Persons (the Working Group), which aims to promote more effective and coordinated law and justice responses to combat trafficking in persons in the Asia-Pacific region. The Working Group has discussed forced marriage as an issue for further consideration and cooperation.

Supporting the Government's engagement on forced marriage in international forums

20. Australia recognises that forced marriage is a harmful practice that violates, abuses and impairs human rights and perpetuates other harmful practices and human rights violations. Such violations have a disproportionately negative impact on women and girls. Australia supports multilateral fora which promote and protect human rights and fundamental freedoms of women and girls, and prevent and eliminate the practice of forced marriage.
21. The Department/ABF recently provided information about Australia's commitment to combating forced marriage to the *United Nations Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography, and other child sexual abuse material*.
22. At the United Nations General Assembly 75th Session in 2020, the Department/ABF contributed to Australia's co-sponsorship of a Resolution on Child, Early and Forced Marriage. The Resolution referenced the impact of the COVID-19 global pandemic on child, early and forced marriage, noting that the incidence and risk of child, early and forced marriage can increase during humanitarian emergencies, situations of forced displacement and public health emergencies.

Addressing forced marriage in Australia's migration and visa frameworks

23. The Attorney-General's Department is responsible for the *Marriage Act 1961* (the Marriage Act). The legal age for marriage in Australia is 18. However, the Marriage Act provides that judicial authorisation may be given in exceptional and unusual circumstances to a person who is domiciled in Australia and aged between 16 and 18 years, and seeks to marry another person who is over 18 years of age, if there is parental consent. It is otherwise an offence under the Marriage Act to marry a person not of marriageable age, and a penalty of 5 years' imprisonment may apply. Foreign marriages where either party is aged between 16-18 are also recognised in Australia in certain circumstances. This may include, for example, an overseas marriage recognised by Australian law where both parties were at least 16 years old at time of marriage, the marriage was valid in the country in which it was solemnised, and neither party to the marriage was domiciled in Australia at time of the marriage.
24. Current Partner visa age requirements align with the provisions in the Marriage Act, which preclude the recognition of child marriages in most circumstances.
25. Current Partner visa provisions in the *Migration Regulations 1994* (the Migration Regulations) require that at time of application:
 - a. Partner visa applicants in a de facto relationship are 18 years of age or older;
 - b. applicants have a valid marriage under Australian law; and
 - c. for sponsors aged under 18 (but over 16), the parent/guardian sponsors the Partner visa applicant.
26. For the Prospective Marriage visa, the Migration Regulations require applicants and sponsors to be 18 years of age or older at the time of application. The Regulations also require that the sponsor and applicant have met in person since both have turned 18 years of age.
27. In determining whether a marriage is recognised for migration purposes, visa processing officers routinely undertake document and identity checking processes to ensure that the requirements set out in the Marriage Act and Migration Regulations are not circumvented through the submission of bogus documentation. Should there be any concerns that either party to an application may not be a willing participant in the marriage or the visa application, visa processing officers will conduct further integrity checks including by interviewing the sponsor and visa applicant. The Department/ABF also has in place risk profiles and treatments to identify and apply greater scrutiny to cases of applicants that may be at risk of forced marriage.

28. All non-citizens seeking to enter and stay in Australia must meet the criteria for the visa they have applied for and satisfy the character requirements set out in the *Migration Act 1958* (the Migration Act). Individuals may fail the character test for a number of reasons, including (but not limited to) because they have:
- a. a substantial criminal record;
 - b. a known association with a group or person involved in criminal conduct;
 - c. been involved in people smuggling, trafficking in persons, crimes of serious international concerns either in Australia or overseas;
 - d. past and present general or criminal conduct indicating they are not of good character;
 - e. been deemed to be a risk to the Australian community through their likelihood to engage in criminal conduct or vilify a segment of the community or incite discord;
 - f. been deemed to be a national security risk by the Australian Security Intelligence Organisation;
or
 - g. been convicted or found guilty of sexually based offences against a child.
29. When a non-citizen fails the character test, their visa can be refused, or if they hold a visa, their visa may be cancelled. As a result, the non-citizen may become liable for removal from Australia as soon as reasonably practicable and may be permanently barred from applying for an Australian visa. However, perpetrators or facilitators of forced marriage can be difficult to identify, particularly in instances where there is no prior information or intelligence to suggest that a forced marriage has or is going to take place, there is little information about the offending, or there is no conviction. In these cases, there may be challenges in meeting the evidentiary threshold to refuse or cancel a visa on character test based grounds, or the decision may be overturned upon review. To this end, on 15 April 2021, the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs issued a new direction to guide decision-making relating to the character test. The direction introduced specific guidance in relation to forced marriage, requiring decision-makers to seriously consider causing a person to enter into, or be a party to (other than a victim of) a forced marriage in deciding whether to refuse or a cancel a visa on character grounds, or to revoke a mandatory visa cancellation. The direction is binding on departmental decision-makers and members of the Administrative Appeals Tribunal.
30. The Migration Act has a number of additional cancellation provisions that allow visa cancellation of perpetrators or facilitators of forced marriage in certain circumstances, including where a temporary visa holder arrives in Australia to perform cultural marriages, or where they gain a benefit for performing such ceremonies. For instance, a visa may be cancelled where incorrect information was provided as part of the visa process (section 109 of the Migration Act), or under section 116 of the Migration Act where the Minister or delegate is satisfied that:
- a. the grant of the visa contravened a Commonwealth law;
 - b. the circumstance on which the visa was granted no longer or never existed;
 - c. the visa holder provided incorrect information;
 - d. the visa holder presents a threat the health, safety, good order of the Australian community or individuals; or
 - e. benefit was provided to the visa holder in return for a sponsorship related event.
31. The ABF has dedicated Human Trafficking Contact Officers (HTCO) who are onshore specialist officers in all states and territories. HTCOs are responsible for the Department/ABF's responses to modern slavery (including human trafficking, slavery and slavery-like practices) identified onshore. They manage all referrals to the AFP and liaise with the Human Trafficking Unit (HTU) in the Department.

32. If an individual is identified by the AFP as a suspected victim of forced marriage, and they are a temporary visa holder or an unlawful non-citizen, the Human Trafficking visa framework (HTVF) provides visa options to allow suspected victims to remain lawfully in Australia.
33. Individuals granted a visa under the HTVF are able to access the STPP, administered by the Department of Social Services (DSS). The STPP is available to individuals identified by the AFP as being suspected victims of modern slavery, including forced marriage.
34. The HTVF is comprised of two visas:
 - a. Bridging F visa (BVF) – a non-citizen assessed by the AFP as a suspected trafficked person may be eligible for a BVF for up to 45 days. A BVF can also be granted to the victim's immediate family members in Australia. A second BVF may also be granted for a further 45 days (making up to 90 days available) which is assessed on a case-by-case basis. Trafficked non-citizens on BVFs have work rights and are eligible to receive support through the STPP. A BVF may also be granted to allow victims to remain in Australia while they assist with the administration of the criminal justice process.
 - b. Referred Stay (Permanent) visa (RSV) – a trafficked person who has made a contribution to an investigation or prosecution of an alleged offender, and who would be in danger if they returned to their home country, may be eligible for an RSV. This visa allows the holder to remain in Australia permanently, and immediate family may be included in the visa application.
35. Few victims of forced marriage require a visa under the HTVF, as most victims are either permanent residents or Australian citizens.

Conclusion

36. The Department/ABF will continue to implement the priorities outlined in this submission. The Department/ABF will also continue to work with DFAT to support Australia's international engagements and their alignment with whole-of-government priorities.