**AUSTRALIAN RESPONSE**

**UN HUMAN RIGHTS – REQUEST FOR INFORMATION ON CHILD, EARLY AND FORCED MARRIAGE**

1. **How states are implementing their obligation under international human rights conventions and international human rights treaties on child, early and forced marriage at the national level;**

**Australia’s international obligations**

Australia has ratified several international instruments that prohibit forced marriage, including:

* The *United Nations Convention against Transnational Organized Crime* and it supplementary *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,* whichaddress slavery and slavery‑like practices. Australia considers forced marriage a slavery‑like practice.
* *The Universal Declaration on Human Rights,* which provides that ‘marriage shall be entered into only with the free and full consent of the intending spouses.’
* The *Supplementary Convention on the Abolition of Slavery 1956,* which prohibits any institution or practice whereby a woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group.
* The *International Covenant on Civil and Political Rights,* which provides that no marriage shall be entered into without the free and full consent of the intending spouses.
* The *Convention on the Elimination of All Forms of Discrimination Against Women,* which requires States Parties to eliminate discrimination against women in all matters relating to marriage and family relations and provides that the ‘betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory’, and
* The *Convention on the Rights of the Child.*

**The Australian Government’s response**

Australia’s response to child, early and forced marriage sits within Australia’s strategy to combat serious forms of exploitation, including human trafficking, slavery, and other slavery‑like practices such as servitude and forced labour. A forced marriage involving a minor (under 18 years) would be considered an aggravated offence (for more information see below).

***Legislation***

*Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013* (Slavery Act)

In February 2013, the Australian Parliament passed the Slavery Act, which amended the [Commonwealth *Criminal Code Act 1995*](http://www.comlaw.gov.au/Details/C2013C00366)(Criminal Code) to recognise forced marriage as a serious form of exploitation and a crime, akin to a slavery-like practice, and to ensure that Australia meets its international legal obligations to prevent forced marriage and to protect and support victims.

The amendment to include forced marriage into the definition of ‘exploitation’ in the Criminal Code makes it clear that forced marriage can be one of the purposes for which a person can be trafficked, along with debt bondage, servitude, forced labour and slavery or conditions similar to slavery.

Forced marriage is defined in the Criminal Codeas a marriage to which one or both parties does not fully and freely consent, because of the use of coercion, threat or deception. Coercion is defined to include force, duress, detention, psychological oppression, abuse of power or taking advantage of a person’s vulnerability. The offences apply to a range of marriage and marriage-like relationships, including registered relationships and those formed by cultural and religious ceremonies.

The Criminal Code captures causing a person to enter into a forced marriage, as well as being a party to a forced marriage. The latter offence only applies where the person is not a victim of the forced marriage, and does not have a reasonable excuse. The offences can apply to any person with a role in bringing about the forced marriage, including families, friends, wedding planners or marriage celebrants.

The offences have extended geographical jurisdiction, and as such can apply to conduct that occurs either inside Australia; or outside Australia if the offender is an Australian citizen, resident or corporation.

Under the Criminal Code, the forced marriage offences carry a maximum penalty of four years imprisonment, or seven years imprisonment for an aggravated offence. An offence may be aggravated in several circumstances, including where the victim is under the age of 18.

Arranged marriages are not captured by these offences. While an arranged marriage involves the spouse being chosen by a third party or family member, it requires the full and free consent of both parties, who have the right to accept or refuse the marriage arrangement. The forced marriage offences also do not capture ongoing, serious exploitation within a marriage. Such exploitation is captured by the forced labour, servitude and slavery offences under the Criminal Code.

*Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protection and Other Measures) Act 2013* (Vulnerable Witness Act)

In anticipation that victims of forced marriage may encounter difficulties in giving evidence due to the familial nature of the crime and the fear of retribution from their communities, the Australian Parliament passed the Vulnerable Witness Act on 27 June 2013 (which came into force 29 June 2013).

The Vulnerable Witness Act provides protections for vulnerable witnesses giving evidence in Commonwealth criminal proceedings, including victims of human trafficking, slavery and slavery-like practices such as forced marriage. Under the Act, trafficked people can give evidence by closed-circuit television, video link or video recording, have their contact with the defendant or members of the public limited, and have a support person with them while they give evidence. The Vulnerable Witness Act also makes it an offence to publish material identifying a trafficked person, and allows trafficked people to make victim impact statements to the court outlining the harm they have experienced.

Key amendments to the [*Crimes Act 1914*](http://www.comlaw.gov.au/Details/C2013C00369) made by the Vulnerable Witness Act include:

* the extension of existing vulnerable witness protections available to children in sexual offence proceedings to apply to all victims of human trafficking and slavery offences, as well as witnesses who apply to a court to be recognised as a ‘special witness’ due to a certain characteristic, such as age, culture or a disability
* the insertion of a new category of vulnerable witness protections to assist victims of child sex‑related, human trafficking and slavery offences to give evidence in retrials and subsequent trials for those offences, and
* the insertion of a scheme to provide for the use of victim impact statements in the sentencing of federal offenders.

The Vulnerable Witness Act also amended the Criminal Code to allow a court to hear evidence by video link from witnesses outside Australia in proceedings for human trafficking and slavery offences. The protections apply automatically to victims of human trafficking, slavery and slavery-like offences, including forced marriage, in recognition of the extreme forms of trauma and exploitation they have experienced.

*Other legal responses*

The [*Marriage Act 1961*](http://www.comlaw.gov.au/Details/C2011C00192) includes provisions whereby a marriage may be void if the consent of a party was not real, including because of duress or force, or if a party was not of the marriageable age of 18 years. The Marriage Act permits a marriage where a person is aged between 16‑18 years, where there is both parental consent and an Australian court order is in force from a judge or magistrate authorising the marriage.

Australia also has in place civil measures to prevent children being taken overseas for the purposes of exploitation. The Australian Federal Circuit Court can make orders to prevent a passport being issued for a child, require a person to deliver a child or accompanying adult’s passport to the court, restrain the removal of a child from Australia and place the child’s name on the Airport Watch List.

***Support for victims***

Australia provides a comprehensive range of support services for suspected victims of human trafficking, slavery and slavery-like practices, such as forced marriage, through the Support for Trafficked People Program (the Support Program). Possible victims are referred to the Australian Federal Police (AFP) for assessment and, where appropriate, entry to the Support Program. Where the victim is a minor themselves, he or she would also be referred to the relevant State or Territory child protection authority for appropriate assistance.

Through the Support Program clients have access to a range of support services, including suitable accommodation, financial assistance, legal and migration advice, medical treatment, counselling, skills development training, social support and access to legal and migration advice. As of 1 November 2013, no victims of early or forced marriage had been referred to the Support Program.

***Visa framework***

Victims of forced marriage who are identified by the Australian Federal Police and who do not hold a substantive visa are also eligible to access the Australian Government’s Human Trafficking Visa Framework. The Visa Framework allows victims of human trafficking, slavery and slavery-like practices to remain in Australia lawfully if they are not an Australian citizen or resident and do not hold a valid visa.

1. **Surveys, Assessments and studies carried out at national and sub national level on the prevalence of child, early and forced marriage and/or its impact on the human rights of women and girls and other affected group;**

Australia is improving its understanding of human trafficking, slavery and slavery-like practices, including child, early and forced marriage through its Human Trafficking Research Program, undertaken by the Australian Institute of Criminology. In 2012, the Australian Institute of Criminology (AIC) commenced its second four-year Human Trafficking and Slavery Program to examine human trafficking and slavery in Australia and the broader Asia‑Pacific region. Key areas of focus for 2012-13 included:

* improved monitoring of human trafficking and slavery in Australia and the Asia‑Pacific region, including through the collection and assessment of data
* further examination of the nature of human trafficking and slavery in non-sex industry contexts, specifically marriage and construction, and
* examining the nature of offending and offenders.

As part of this program, the AIC has finalised a report on marriage in the context of human trafficking, and will commence in early 2014 a research project specifically on forced marriage in Australia and New Zealand.

The Australian Red Cross is being funded to undertake a forced marriage scoping exercise to ensure that Support Program case workers are trained to provide an appropriate response to people who have experienced forced marriage. During the course of the project, the Australian Red Cross will develop mitigation strategies, develop links with stakeholders and service providers, and develop internal policies and procedures for this new group of Support Program clients. The Australian Government Department of Social Services is working with the Australian Red Cross on broader processes and policies surrounding child forced marriages and their acceptance into the Support Program.

1. **Policies, projects and measures at national and sub-national level to promote the elimination of child, early and forced marriage specifically including action taken to address the issue in marginalised and minority communities, and to address or mitigate its impact including information on the outcomes of such policies, projects and measures;**

The Australian Government has worked to make the community aware of early and forced marriage issues, in particular religious and civil celebrants, migrant and legal resource centres, domestic violence services, child support agencies, prospective partner and spouse visa applicants, families and community leaders, and persons from vulnerable demographics as well as culturally and linguistically diverse backgrounds.

A module about forced marriage issues has been included in the compulsory ongoing professional development training provided to civil celebrants. In July 2013 the Australian Government Attorney-General’s Department and Anti-Slavery Australia, a non‑government organisation (NGO), spoke about forced marriage issues at the Australian Federation of Civil Celebrants Annual Conference.

In May 2013 the Attorney-General’s Department briefed members of the diplomatic corps about Australia’s legislation relating to human trafficking, slavery and forced marriage and ways to seek assistance if their citizens request assistance from consular officials. The Consular Operations Handbook has also been updated to include guidance for consular officers on the management of forced marriage cases, including specific advice regarding the complexities and sensitivities of forced marriage cases involving minors.

This work was done in close collaboration with NGOs.

1. **Steps taken to prohibit child, early and forced marriage as well as examples of positive experiences and challenges encountered at the national level in adopting policies, measures and implementing strategies to address this issue.**

Australia’s strategy to combat human trafficking and slavery centres on four central pillars of: prevention and deterrence; detection and investigation; prosecution and compliance; and victim support and protection. Together these measures address the full cycle of trafficking from recruitment to reintegration and give equal weight to the critical areas of prevention, prosecution and victim support. Given the complexity of matters involving human trafficking and slavery, a range of Australian Government agencies work together to ensure that matters are effectively investigated and prosecuted, and that victims get the support they need.

***Prevention and deterrence***

See above section a) for details on Australia’s legislative approach.

Under the application process for the Prospective Marriage (subclass 300) visa there are a number of mechanisms in place to detect and prevent instances of forced marriage:

* As of 1 July 2013, both applicants and sponsors must be at least 18 years of age when the application is made. All persons under the age of 18 years are now interviewed to, amongst other things, ascertain the presence of non-consent of one party to a visa application.
* Visa application forms have also been amended to insert a question that requires the applicant and sponsor to respond on whether they were forced or coerced to enter into the relationship. Where it is found that the consent of one party was not given, the information is recorded in the Australian Government Department of Immigration and Border Protection’s systems. Where the officer is satisfied that, due to the non‑consent, the relationship is not genuine a decision is made to refuse the application.

***Detection and investigations***

Under Australia’s anti-human trafficking strategy, the AFP has established specialised Human Trafficking Teams (HTTs), which have responsibility for investigating human trafficking and related offences, including forced marriage. The HTT National Coordinator is based in Canberra, with HTTs located in Sydney and Melbourne. The AFP also has members trained in human trafficking and slavery in Adelaide, Brisbane, Darwin and Perth. For trafficking matters in other locations, HTTs can draw upon additional support from the AFP’s broader flexible investigative pool with members located in each capital city. The HTTs investigate matters both proactively and through referrals from other Commonwealth or State and Territory Government agencies, industry and NGOs.

The diplomatic corps have also received briefing about Australia’s legislation relating to forced marriage and ways to seek assistance if Australian citizens request assistance from consular officials. The Consular Operations Handbook has been updated to include guidance for consular officers on the management of forced marriage cases, including specific advice regarding the complexities and sensitivities of forced marriage cases involving minors.

As part of ongoing consular efforts to adapt to the evolving nature of communications, an “SMS facility” has been introduced to enable Australians seeking consular assistance to communicate with the Department of Foreign Affairs and Trade (DFAT) by way of SMS text. The SMS facility was specifically developed for use in forced marriage cases, given that victims of forced marriage are in an extremely vulnerable position, and often require a discreet means to seek consular assistance.

In addition, DFAT’s travel advisories are being progressively updated to include standard language advising that Australian laws, including on forced marriage, apply outside Australia: “Some Australian criminal laws, such as those relating to money laundering, bribery of foreign public officials, terrorism, forced marriage, female genital mutilation, child pornography, and child sex tourism, apply to Australians overseas. Australians who commit these offences while overseas may be prosecuted in Australia.”

***Prosecution and compliance***

Securing prosecutions is a key objective of the Australian Government strategy to combat human trafficking and slavery. The Commonwealth Director of Public Prosecutions (CDPP) is an independent prosecuting service established by the Australian Parliament to prosecute offences against Commonwealth law. The CDPP has no investigative function, and matters are referred to the CDPP from the AFP and other investigative agencies. See also the information on vulnerable witness protections in section a).

***Victim support and protection***

See section a) for details on Australia’s vulnerable witness protections and Support Program.

1. **Recommendations on good practices regarding possible appropriate measures and strategies to prevent and eliminate child, early and forced marriage.**

Australia fully supports efforts to address early and forced marriage and recognises the benefits of a consistent approach by member states to dealing with this issue.

The Australian Government intends for criminal sanctions to send a clear message that this type of conduct is not acceptable and will deter people from committing this heinous crime. Forced marriage is already a hidden problem. Criminalisation may help to provide the confidence and support to victims who are seeking to leave or avoid a forced marriage. It may also encourage and empower victims, family members and friends to come forward to report the crime and to seek help from authorities. The Government’s consultation processes on forced marriage indicated there was a high level of support from the community for the Government to implement criminal measures in conjunction with non‑legislative measures.

Australia is interested in hearing about the experiences and challenges faced by other member states, including the approaches taken by member states to the criminalisation of early and forced marriage.