



# WHAT IS FORCED MARRIAGE?

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A forced marriage is when a marriage is entered into without the free and full consent of one or both parties to the marriage because of threats, deception or coercion, or where a party was incapable of understanding the nature and effect of the marriage ceremony.

Where a party to the marriage is under 16 years of age, free and full consent is presumed to be absent because the person is incapable of understanding the nature and effect of the marriage ceremony.

While it may be clear if a person is threatened or deceived, coercion can be harder to see. Coercion could include:

- force;
- duress;
- detaining a person or restricting the movement of a person;
- psychological oppression;
- abuse of power; or
- taking advantage of a person's vulnerability.

Coercion might be very subtle, like making someone feel like they have a duty to their family to marry a certain person.

While forced marriage can happen to any person of any gender or sex, it predominantly happens to young women and girls.<sup>1</sup> Forced marriage is a slavery-like practice, a form of gender-based violence and a violation of human rights.

## WHAT IS AUSTRALIA'S RESPONSE TO FORCED MARRIAGE?

Forced marriage is considered a slavery-like practice in Australia. It is a crime under the [Criminal Code 1995 \(Cth\)](#) ('Criminal Code').

Section 270.7A of the Criminal Code defines forced marriage as one where there is not free and full consent. Section 270.7B makes it a criminal offence to:

- cause a person to enter into a forced marriage; or
- be a party to a forced marriage, where you know your spouse is the victim of a forced marriage.

As forced marriage is a relatively new offence (introduced in 2013), we are yet to see a great deal of prosecution of these offences in court.



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Section 23(1) of the *Marriage Act 1961* (Cth) also allows a marriage to be annulled or determined to be void by the Family Court, if it was obtained by duress or fraud or one party did not have the mental capacity to truly consent to the marriage.

## CHILD MARRIAGE

Children who are under the age of consent are not able to agree to a marriage. In that sense, child marriage will always be forced.

According to a report by the United Nations Special Rapporteur on Trafficking in Persons, child marriage “violates fundamental human rights standards and must therefore be strictly prohibited”.<sup>2</sup>

Sometimes children and young people in Australia are married in cultural ceremonies that are not considered a legal marriage under the *Marriage Act 1961* (Cth). The minimum marriageable age in Australia is 18 years, or 16 years in rare circumstances – there must be an Australian court order (as well as consent from the parties and the parents of the minor) authorising the marriage.<sup>3</sup>

Some young people may also be at risk of being taken outside of Australia to get married. It is illegal to take someone overseas to be forcibly married, regardless of their age. The Federal Circuit Court is able to prevent a minor being taken out of the country for this purpose.

As described above, a ‘forced marriage’ under Australian criminal law will include circumstances where one party is incapable of understanding the nature and effect of a marriage. A person under the age of 16 years is presumed to be incapable of understanding the nature and effect of a marriage ceremony, unless proven otherwise.

## HOW TO HELP

If you think someone is in a forced marriage, or in immediate danger of forced marriage, call the Australian Federal Police on 131 237.

A forced marriage community pack is available on the Attorney-General’s Department website, with more information about forced marriage translated into a number of languages. You can access this [here](#).



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Some possible signs that someone may be in a forced marriage situation include:

- A sudden announcement about an engagement
- The person's family seems to have more control over than their life than is normal
- The person seems nervous about an upcoming overseas family trip
- The person spends a long time away from school or work, or suddenly stops going to school/work
- There is evidence of family conflict or in some cases, violence.

Anti-Slavery Australia recently launched a new website dedicated especially to forced marriage. Go to My Blue Sky for more resources on how to get help.

## TRAFFICKING FOR FORCED MARRIAGE

The [United States Trafficking in Persons Report](#) released in 2010 explains how forced marriage can happen in the context of human trafficking:

*'Forced marriages render the forced party (in most cases a woman) vulnerable to abuse and exploitation by her spouse or his family, who exercise significantly greater power and control. This can trap the victim in conditions of enslavement, particularly in domestic or sexual servitude.'*<sup>4</sup>

For example, a woman may be forced into a marriage and arrive in Australia only to be made to work long hours in the family business without pay, and suffer physical and/or psychological abuse from her partner and his family.

While not all cases of forced marriage involve trafficking or other exploitation, regardless, forced marriage is in itself a slavery-like practice and a crime.

## WHAT ABOUT SHAM MARRIAGES?

A sham marriage is when an Australian citizen claims to be in a genuine relationship when they are not, in order to sponsor a person to migrate to Australia as their 'spouse' or 'partner'.

Unlike forced marriage, a sham marriage generally involves both parties knowing that it is not a genuine relationship.

However, the person being sponsored is still vulnerable to exploitation, despite the fact they may knowingly enter into the arrangement.



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For example, Australia's first reported case of trafficking for domestic servitude involved a sham marriage arranged between an Australian citizen and woman from the Philippines. The young woman was brought to Australia as a maid, and on arrival, she was placed in a situation of domestic servitude by the people who had arranged the marriage, and was repeatedly raped.<sup>5</sup> The perpetrators were both convicted in 2007 of using and possessing a slave and organising a sham marriage. After a retrial on technical grounds, in February 2010 they were again convicted of slavery offences.<sup>6</sup>

## VISA CONSIDERATIONS

Where forced marriage situations are otherwise linked to visa applications, one of the parties to the forced marriage may be sponsoring the other to come to Australia on a Partner Visa or Prospective Marriage Visa.

This is taken very seriously by the Department of Immigration and Border Protection (DIBP). A visa can be refused if either of the parties is not freely consenting to the marriage. To find out more, see [Factsheet 7: Visa options for trafficked people](#).

You can also read the DIBP's [Partner Migration booklet](#) for detailed information.

## FORCED MARRIAGE CASES IN AUSTRALIA

In Australia, there have been different types of cases of forced marriage, as outlined below.

In June 2010 a 17-year-old girl saved herself from a forced marriage in Lebanon by calling the Australian Federal Police.<sup>7</sup> The Federal Magistrates Court issued an order restraining her family from taking her outside of Australia.<sup>8</sup>

In August 2010, the Victorian Department of Human Services successfully applied for an order from the Family Court to prevent the parents of a 14 year old girl from taking her overseas to be married to another minor.<sup>9</sup>

In 2011 the Family Court held that the marriage of a 17 year old girl was void as her consent had been obtained by duress.

Her parents had threatened to physically harm her boyfriend's sister and mother if she did not agree to a marriage in her home country. Once back in Australia after the marriage, she withdrew her visa support for her 'husband' and applied to the court.<sup>10</sup>



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In 2012 it was found that a young man was forced into a marriage by his uncle. The young man told his new wife that he married her “under compulsion and out of a sense of duty to his family”. The woman assisted him in making the application to court to annul the marriage, which was successful on the grounds of duress.<sup>11</sup>

With the recent introduction of forced marriage offences, we anticipate that the reported number of forced marriage cases in Australia will increase.

## WHO CAN HELP?

In case of an emergency, or if the situation involves a child or actual or threatened physical violence, **call the Police on 000**.

The Australian Federal Police (AFP) take an active role in investigating trafficking and slavery-related offences. More information is available on their [website](#).

If you want to learn more about forced marriage, visit our forced marriage website, [My Blue Sky](#). You can also access a detailed submission made by Anti-Slavery Australia to the Attorney-General's Department [here](#) or view a report prepared by Plan International: ‘[Just Married, Just a Child](#)’. A forced marriage community pack containing more resources is available on the [Attorney-General's Department website](#).

*For free and confidential legal advice on forced marriage contact Anti-Slavery Australia on (02) 9514 8115, or use our forced marriage text line: 0481 070 844. You can also email us at [help@mybluesky.org.au](mailto:help@mybluesky.org.au). To learn more about this and related issues, sign up for our [free, online eLearning course](#).*

1. See F Simmons & J Burn (2013) ‘Without Consent: Forced Marriage in Australia’, 36 *Melbourne University Law Review* 970.
2. Human Rights Council, Report of the Special Rapporteur on the Human Rights Aspects of the Victims of Trafficking in Persons, Especially Women and Children, at [21] U.N. Doc. A/HRC/4/23 (January 24, 2007) (prepared by Sigma Huda).
3. *Marriage Act 1961* (Cth) ss 11-12, s 95.
4. United States State Department, *Trafficking in Persons Report*, (2010), p 15.
5. *R v Kovacs* [2008] QCA 417.
6. *R v Kovacs* [2008] QCA 417.
7. ABC online, ‘Police save Sydney Girl from forced marriage’, June 3, 2010.
8. *Kandal & Khyatt & Ors* [2010] FMCAfam 508.
9. *Department of Human Services & Brouker and Anor* [2010] FamCA 742.
10. *Kreet & Sampir* [2011] FamCA 22.
11. *Nagri & Chapal* [2012] FamCA 464.