

STATEMENT ON CHILD, EARLY AND FORCED MARRIAGE: AUSTRALIA Commission on the Status of Women (CSW62)—2018

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Defining Child, Early and Forced Marriage

Every year 15 million girls are married before the age of 18.¹ Child, Early and Forced Marriage (CEFM) is fuelled by gender inequality, poverty, tradition and insecurity. Individuals facing CEFM experience huge challenges including being deprived of their fundamental rights to health, education and safety.

Whilst CEFM impacts on both boys and men, women and girls, it is universally understood that the practice disproportionately impacts on women and girls. The Asia Pacific Institute on Gender Based Violence² articulates clearly that CEFM is gender-based violence perpetrated by parents that can lead to increased vulnerability to and/or abuse by other family members.³

CEFM has been recognised as a priority under the Sustainable Development Goals (Goal 5), and in 2017 it was reported that

Child marriage is declining, but not fast enough. Around 2000, nearly 1 in 3 between 20 and 24 years of age reported that they were married before 18 years of age. Around 2015, the ratio was just over 1 in 4. The decline is driven by an even steeper reduction in the marriage rate among girls under 15 years of age during that period.⁴

¹ Girls Not Brides, 'What is the Impact of Child Marriage, Accessed on 19/2/2018, at: <https://www.girlsnotbrides.org/what-is-the-impact/>.

² Asian Pacific Institute on Gender Based Violence, What is Forced Marriage? Accessed on 19/2/2018, at: www.api-gbv.org/aboutgbv.

³Reported impacts of CEFM include: coerced sexual initiation, marital rape, statutory rape, suppression of sexual orientation or gender identity, interrupted education, domestic violence by husbands and in-laws, transnational abandonment, reproductive coercion resulting in early and/or multiple pregnancies. Accessed on 19/2/2018 at: www.api-gbv.org/aboutgbv.

⁴ Sustainable Development Knowledge Platform (2017) 'Progress of Goal 5 in 2017' Accessed on 19/2/2018, at: <https://sustainabledevelopment.un.org/sdg5>.

The long-lasting, life-altering and detrimental impacts of CEFM makes it imperative for the issue to remain on the global agenda. No country is immune, and it will require informed collective efforts to end the practice and uphold the rights and dignity of all women and girls.

CEFM has been used as a collective term to capture all manifestations of marriage without consent, or marriages conducted using force, fraud or deception.

CEFM varies in definition internationally. There are a number of legal and cultural frameworks applied to the practice which has influenced the vast array of definitions, policies and legal frameworks applied to intervention. Despite the nuances, Member States are unanimous in a single understanding of the practice:

A child, early or forced marriage is a marriage entered into without the free and full consent of both parties.⁵

Legislation across the world differs significantly in relation to CEFM. Some Member States define a minimum age of marriage whilst others do not. A minimum age of marriage is considered to be an important goal for setting basic standards with regard to marriage, and avoiding the risk of child marriage.

Under international law, rights in relation to marriage are enshrined in a number of instruments.⁶ Of particular relevance is Article 16 of the Universal Declaration of Human Rights, which is mirrored in its entirety by Article 23 of the International Covenant on Civil and Political Rights (1976) and Article 10 of the International Covenant on Economic, Social and Cultural Rights (1954), and which states:

(1) Men and women of full age without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. (2) Marriage shall be entered into only with the free and full consent of the intending spouses.⁷

In many jurisdictions around the world, there is an inherent assumption that all child marriage is forced marriage because children are incapable of providing free and full consent.

Child, Early and Forced Marriage in Australia

In Australia, forced marriage was introduced into the *Commonwealth Criminal Code Act (1995)* in 2013. The practice is defined and understood under Australian law as a practice of slavery. The national strategy to address forced marriage is included as Australia's National Action Plan to Combat Human Trafficking and Slavery (2015-2019).

⁵ Vidal, L (2017) 'Developing Innovative and Best Practice Solutions to Addressing Forced Marriage in Australia', Winston Churchill Memorial Trust of Australia, Accessed on 19/02/2018, at: <https://www.churchilltrust.com.au/fellows/detail/4179/Laura+Vidal>.

⁶ Universal Declaration of Human Rights (1948), International Covenant on Civil and Political Rights (1976), International Covenant on Economic, Social and Cultural Rights (1954), Convention on the Rights of the Child (1990), Slavery Convention (1926) and Supplementary Convention on the Abolition of Slavery, Slave Trade and Institutions and Practices Similar to Slavery (1956), and the Convention on the Elimination of All Forms of Discrimination Against Women (1981)

⁷ Universal Declaration of Human Rights (1948), Article 16 (1) and (2).

Under the *Commonwealth Criminal Code Act (1995)*, forced marriage is defined as:

A marriage entered into without free and full consent of one, or both of the parties involved, as a result of coercion, threat or deception. The definition applies to legally recognised marriages as well as cultural or religious ceremonies and registered relationships; regardless of age, gender or sexual orientation.

Marriage offences apply to marriages which:

- Occur in Australia (and)
- Outside of Australia involving an Australian Citizen or Resident.⁸

The true extent of the issue is unknown as available data is not comprehensive. The National Children's Youth Law Centre, in their study on child marriage, reported that between 2011-2013, 250 cases were identified by research respondents.⁹ In 2016-2017, the Australian Federal Police received 70 referrals of forced marriage, bringing the total since criminalisation in 2013 to 174.¹⁰ This prevalence of forced marriage in Australia is believed to be only the tip of the iceberg.

The common trend concerning CEFM in Australia involves Australian residents or citizens under the age of 18 being forced into a marriage overseas, with the expectation that the individual will sponsor their spouse for migration to Australia. Often, relatives are alleged to have organised or be organising a marriage without free and full consent.¹¹

Under Australia's current approach, individuals at risk or who have experienced CEFM must engage with the Australian Federal Police (AFP) in order to access a government funded support program. There have been recent changes to make the support program more accessible to individuals, however, referral to this program continues to be maintained by the AFP. Anecdotal evidence from both law enforcement and community organisations shows that many individuals do not wish to engage with law enforcement for fear that their family members will face a criminal prosecution; as a consequence they are unable to access appropriate support.

To date, there remain no prosecutions under the newly formed criminal legislation. Whilst criminalisation sparked a number of initiatives led by the Australian Government and civil society, there is growing acknowledgement that in order to prevent the practice, legislation is only one part of a complex and comprehensive response to best support individuals and their families. Young people aged 16-18 years represent a significant number of those at risk, and a more nuanced intervention is required.

⁸ Australian Commonwealth Criminal Code Act (1995), Section 270 and 271.

⁹ National Children and Youth Law Centre (2013) 'Ending Child Marriage- Australia. Research Report on the Forced Marriage of Children in Australia'.

¹⁰ As reported each year in the Interdepartmental Committee on Human Trafficking and Slavery Report, accessed at:
<https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Pages/Australias-response-to-human-trafficking.aspx>.

¹¹ Interdepartmental Committee on Human Trafficking and Slavery (2016) *Trafficking in Persons - The Australian Government Response 1 July 2015 - 30 June 2016* accessed at:
<https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Pages/Australias-response-to-human-trafficking.aspx>.



Australian Case Study

Ara is a young Australian girl. At 15 years of age, Ara's parents took her back to their country of origin for a holiday. Ara thought that the purpose of the trip was to attend her cousin's birthday party. However, Ara's parents told her that she was getting married. Ara told them that she didn't want to get married, but they disregarded her wishes.

Ara was forced to marry a man named Rashid. Rashid was in his 20s and was a friend of the family. He took the view that a man's wife was his property and, while they were overseas, forced Ara to have intercourse with him.

After the wedding, Ara and her parents returned to Australia and she went back to high-school. After one year, her husband came to Australia on a spousal visa. At the age of 16, Ara was pulled out of school. She started working in a cafeteria to support herself and her husband.

Ara's husband was violent, and would regularly beat her. He also forced her to have intercourse with him. Ara told her mother that her situation was "awful." Her mother said "You just have to accept it for the sake of the family."

Ara wanted to leave her husband, but her brothers and her father said that they would kill her if she did so, as this would "destroy the honour of the family." Ara's husband also threatened to kill her if she left him.

As the years went on, the threat to Ara's safety escalated. Although her family had threatened to kill her if she left her marriage, she also feared that staying in her marriage would "be the death of her." When she was 20 years old, she escaped to a family violence refuge. Ara's family violence worker, Jennifer, said: The honour of the family was something that Ara spoke about a lot. But where does the honour of the woman fit in with that?

Jennifer believes that Ara's situation should have been detected by the authorities sooner, saying that: It appeared people knew what was going on, but no one did anything. They seemed to think it was a 'cultural thing' so they didn't want to intervene.

Recommendations - for Australia

The context of CEFM in Australia is unique. As noted above, it largely concerns individuals being taken out of Australia for the purpose of marriage. In comparison with other Member States, Australia has a developed social welfare service system and a sound legislative framework, designed to protect individuals facing CEFM. Albeit not perfect, the following recommendations are focused on enhancing Australia's approach, rather than suggesting that there are not measures already in place. The proposed recommendations should be viewed with consideration to this context.

Following research undertaken by both Good Shepherd Australia New Zealand (GSANZ),¹² and Laura Vidal as part of a Winston Churchill Fellowship¹³ the following recommendations are proposed to both prevent the practice of forced marriage from occurring and to intervene appropriately and adequately to support individuals at risk:

1. Expand the definition of CEFM to include intersections with gender-based violence, family violence and child protection. This will improve community engagement and ensure comprehensive service delivery frameworks are developed.
2. The Federal Government should fund a national community education campaign to raise the public's awareness of key issues relating to CEFM, including the difference between forced and arranged marriage, legal capacity to consent to marriage and the implications of the forced marriage provision under the Commonwealth Criminal Code Act (1995). The campaign should include resourcing for face to face engagement with communities, and opportunities to work with communities to understand the issues from various perspectives and work together to find solutions.
3. The Federal Government, in consultation with State and Territory Governments, should include information about CEFM into 'Respectful Relationships' or other related curricula nationwide.
4. The Federal Government, in consultation with State and Territory Governments across Australia, should fund an Information Development Framework for data relating to CEFM in order to identify data gaps and determine priority information needs. This work should inform the collection of nationally consistent data which will establish the true nature and prevalence of CEFM, and support targeted interventions to both prevent CEFM from occurring and protect individuals at risk.
5. Resource a prevention program for local communities founded on partnership and inclusion. This approach must include an investment in long-term behaviour

¹² McGuire, Magdalena (2014) *The Right to Refuse: Examining Forced Marriage in Australia*, Good Shepherd Youth & Family Service, Domestic Violence Victoria and Good Shepherd Australia New Zealand: Melbourne.

¹³ Vidal, L (2017) 'Developing Innovative and Best Practice Solutions to Addressing Forced Marriage in Australia', Winston Churchill Memorial Trust of Australia, accessed at: <https://www.churchilltrust.com.au/fellows/detail/4179/Laura+Vidal>.

change, versus a top-down legislative approach, acknowledging that whilst there is a strong legal framework, a complex social problem requires multiple solutions. Initiatives could include funding for:

- a. Engaging influential community stakeholders including faith leaders and men, who are often carriers of culture and tradition. Leadership from within communities is an essential element to changing in attitudes and behaviours.
 - b. Targeted community-led strategies where prevalence has been identified that focus on dialogue and localised action within communities.
6. State and Federal Governments across Australia should fund services and communities to appropriately identify and respond to individuals at risk of CEFM, including providing appropriate accommodation options for individuals where home is not a safe place to remain. Services should be provided to individuals freely and without obligation.

International Recommendations - Best Practice for Preventing Child, Early and Forced Marriage

GSANZ recognises that there is no single solution to end CEFM, however, there are a number of steps that will enable women and girls to live full and free lives.

GSANZ endorses the *Girls Not Brides Theory of Change*¹⁴ as international best practice in preventing CEFM. The key features of this model ensure that women and girls are empowered, families and communities are mobilised, services are available and accessible, and laws and policies are established.

The following recommendations set minimum standards internationally in addressing CEFM:

1. Establish a minimum of age of marriage—18 years, without exception. A minimum marriageable age is considered to be a key pillar of a supportive legal framework. This recommendation is in line with international human rights standards.
2. Introduce legislation that ensures adequate protection for individuals impacted by CEFM—including the criminalisation of the practice. Further, acknowledge the limitations of legislation and ensure it is introduced alongside additional measures that address the underlying causes (See, recommendations three, four and five)
3. Invest in genuine and equal education for women and girls. Educating women and girls is not only a human rights obligation for countries that have ratified the Convention on the Rights of a Child but is a long term investment.¹⁵

¹⁴ Girls Not Brides, Theory of Change, Accessed on 19/2/2018, at:

<https://www.girlsnotbrides.org/child-marriage-theory-of-change/interactive/#strategies-outcomes>.

¹⁵ Girls Not Brides (2018) 'Addressing child marriage through education, what the evidence shows' Accessed on 19/2/2018, at: <https://www.girlsnotbrides.org/wp-content/uploads/2018/01/Addressing-child-marriage-through-education-what-the-evidence-shows-knowledge-summary.pdf> Cites: "The economic impact of child marriage was shown most recently in a 2017 report by the World Bank: 'in countries where child marriage rates are high, girls'

4. Generate economic opportunities that increase participation in education and contribute to safe livelihoods including, cash transfers, school vouchers and payment of school related costs.
5. Prioritise the empowerment¹⁶ of women and girls in education and/or employment settings including—life skills training, livelihoods training, gender-rights awareness training and exposure to future careers.
6. Engage in a whole-of-community approach to shift attitudes and behaviours toward CEFM, including men and boys. Community dialogue, street theatre and community contracting should be built into community development programs focused on attitudes toward women and girls that influence rates of child marriage.

About Good Shepherd Australia New Zealand

Good Shepherd Australia New Zealand (GSANZ) is a community services organisation that has been delivering on its mission to disrupt the intergenerational cycle of disadvantage, with a focus on women and girls, since 1864 in Australia and 1886 in New Zealand. We achieve this by challenging disadvantage and gender inequality through services, research, advocacy, and social policy development.

Our specific expertise is in:

- **Safety and resilience** - supporting women to be resilient provides a buffer between an individual and adversity, allowing them to achieve improved outcomes in spite of difficulties.
- **Financial security** - supporting women to ensure they have access to sufficient economic resources to meet their material needs so that they can live with dignity.
- **Educational pathways** - assisting women and girls to overcome the obstacles in their life that hinder them from achieving their educational/vocational capacity.
- **Outcomes and evaluations** - developing evidence-based program designs across all Good Shepherd Australia New Zealand programs and services.
- **Research, social policy and advocacy** - needs-based research into emerging issues, identifying effective change interventions for program design, policy analysis and systemic advocacy.

GSANZ is part of a global network of services and advocates established by the Congregation of Our Lady of Charity of the Good Shepherd, which has had special consultative status with the United Nations Economic and Social Council (ECOSOC) since 1996.

educational attainment is low, which in turn leads to reduced lifetime earnings and a lower GDP.’ By investing in efforts to reduce barriers to girls’ education, government could make huge strides toward ending child marriage, and make significant savings”.

¹⁶ ‘Empowerment has been found as the most popular and most successful approach for reducing child marriage’ Population Council, Girl Center for Innovation, Research and Learning (2018), ‘The Global State of Evidence on Interventions to Prevent Child Marriage’, Accessed on 19/2/2018, at: <https://www.girlsnotbrides.org/resource-centre/ending-child-marriage-evidence-say-webinar-slides-summary-question-answer/>.

GSANZ is part of the Good Shepherd Asia-Pacific Anti-Trafficking Network which includes units representing 19 countries across the region dedicated to ending trafficking and exploitation; GSANZ is also represented as a key stakeholder on state wide networks to address forced marriage in New South Wales and Victoria.