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Australian Government
Attorney-General's Department
Criminal Justice Division
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**DISCUSSION PAPER
FORCED AND SERVILE MARRIAGE**

To Whom It May Concern:

We are pleased to have the opportunity to make comment on the Discussion Paper released by the Criminal Division of the Attorney General on Forced and Servile Marriage.

WEAVE (Inc) would be available to provide oral evidence or offer any other information as requested.

Yours sincerely,

Marie Hume
Secretary
WEAVE Inc



Women Everywhere Advocating Violence Elimination Inc (Australia)

Women Everywhere Advocating Violence Elimination Inc (WEAVE Inc), formed in 2009, is a National Women's Alliance that aims to eliminate gendered violence (including sexual assault, domestic violence, stalking, sexual exploitation and trafficking). As a non-partisan coalition WEAVE Inc brings together groupings that have sometimes worked separately from one another, such as sexual assault services, women's health services, women's legal services, domestic and family violence services, and organisations working against trafficking. In drawing together key stakeholders that make up the 'violence against women sector' as well as survivors, and activist and interest groups, WEAVE embeds a wealth and diversity of experience and expertise within a single body.

WEAVE Inc Vision

To ensure that all women and children are able to live free from all forms of violence and abuse.

WEAVE Inc Values and Principles

HUMAN RIGHTS

WEAVE Inc employs a human rights framework that recognises that gendered violence is one of the most serious and widespread violations of fundamental human rights, in particular, the right not to be treated in an inhuman and degrading way, the rights to respect, physical, sexual and psychological integrity.

FEMINIST FRAMEWORK

WEAVE Inc works within a feminist framework that recognises that gendered violence is both a consequence and cause of gender inequity, embedded deeply within all levels of our society, and that efforts to end such violence must be accountable to women and promote women's empowerment and gender equality.

EQUITY, DIVERSITY & INCLUSIVITY

WEAVE Inc is committed to representing and working respectfully with the diversity of women in Australia. WEAVE Inc recognises, and seeks to advocate and lobby for, the particular and urgent needs of Indigenous women, women from immigrant, refugee and/or non-English speaking backgrounds, women with disabilities, as well as the challenges faced by young women, older women and women in rural and remote areas.

WEAVE Objectives

- (a) To provide leadership and advocacy at state and national levels in relation to all aspects of gendered violence.
- (b) To bring together in a single body the key stakeholders concerned with all aspects of gendered violence in order to access and disseminate the wealth and diversity of knowledge within the sector as a whole.
- (c) To contribute to and monitor policies, legislation and programs which impact on women and children experiencing gendered violence.
- (d) To promote and prioritise equity of access to services for all women including Aboriginal women, Torres Strait Islander women, women from immigrant, refugee and/or non-English speaking background, women in rural and isolated areas, older women, young women and women with disabilities.
- (e) To promote greater community awareness of gendered violence and its personal and social consequences using community development and educational strategies.
- (f) To build and promote alliances and collaborative relationships with other key stakeholders and networks.
- (g) To promote, further develop and disseminate 'cutting edge' knowledge of gendered violence arising from practice, research, community and activism.
- (h) To connect with international developments in advocacy, research and practice concerning gendered violence.

Invitation to comment

“The Australian Government is seeking views on the options for possible reform that are outlined in Part 3, in particular:

Are additional legislative and non-legislative measures needed to provide:

- a) adequate deterrence against the practices of forced and servile marriage, and*
- b) appropriate protection for victims of forced and servile marriage?*

Any other information which may assist the Government to address the issues in relation to the practices of forced and servile marriage is welcome.”

WEAVE Inc welcomes the opportunity to comment on options for possible reform that the Government is proposing in relation to forced and servile marriage, as defined below.

“The terms servile marriage and forced marriage are used interchangeably. Although there is no settled definition at international law, forced marriage is generally used to describe a marriage entered into without the full and free consent of both parties. A key element to the definition may be the use of force.¹ Situations of forced marriage may involve physical, emotional or financial duress, deception by family members, spouse or others, the use of force or threats or severe pressure.”

WEAVE acknowledges that forced and servile marriages are an abuse of human rights and agree with the Discussion paper that:

“A failure to prevent, address and respond to these practices is a failure to protect individuals (including children) from a range of crimes and abuses. It is also a failure to protect and support individual rights, specifically involving freedom and autonomy.”

Gender-based violence

We would like to emphasise that forced and servile marriages are a gendered phenomenon and that it is a form of domestic violence.

“The Working Group believes that forced marriage must be seen primarily as an issue of violence against women. It was clear from the consultations that it is women who most often live in fear and suffer violence as a result of forced marriage. The Working Group recognises that forced marriage affects men as well as women and that the experience of men who are forced into a marriage should not be ignored. The Working Group also recognises that both women and men perpetrate forced marriages”

(Home Office Communications Directorate, June 2000, p.11.)

Most of the research available to us came from the United Kingdom. Their research shows that it is mainly young women who are victims of forced and

servile marriage and it is perceived as part of a cycle of abuse and violence within the family of origin. (Khanum, N. 2008).

Physical and emotional abuse of young women is present in families where these young women are being forced into marriages, accompanied by isolation – being removed from educational facilities – and imprisonment. (Brandon et al, 2008, p. 15) The gendered nature of such behaviour is of paramount importance.

“The behaviour is therefore linked to attitudes towards gender equality. Families which attempt to bully their daughters into marriage will also bully them on other issues – notably in marrying young and attempting to prevent them from continuing their education. There is also likely to be aggression against other females in the household...” (Khanum, N. 2008, p. 12)

According to statistics from the Forced Marriage Unit in the U.K. the overwhelming majority of victims are female, with only 15% of those forced into marriage being men. (Khanum, 2008; Brandon et al, 2008)

“Most of the cases of forced marriage that the Working Group encountered involved young women, from teenagers to people in their early twenties.”(Home Office Communications Directorate, June 2000, p.11.)

The issue of gender equality therefore needs to be considered in responding to the issue of forced and servile marriage. Strategies used to address domestic violence, sexual assault and sexual trafficking should also be considered in dealing with forced and servile marriages.

Abuses after a forced marriage

Research from the UK also suggests that domestic violence is prevalent within forced marriages.

“Some specialised refuges for South Asian women say that almost half of their service users come to them after being forced to marry. Often they have suffered various forms of domestic violence as well as marital rape, imprisonment and, in the most extreme cases, forced prostitution.”(Brandon et al 2008, p.21)

Link between forced marriage, sexual trafficking and prostitution

It is also apparent that there are links between forced marriage, sexual trafficking and prostitution. The submission made to this inquiry by the Fitzroy Legal Services et al highlight their experiences of women from overseas being *“deceptively recruited into servile marriages”*

The submission of the Fitzroy Legal Service has documented how the use of spouse and other visas are used in bringing women from other countries to Australia into forced marriage/relationships.

Recommendation: We would support their recommendation that:

“Whilst it is possible to amend the Marriage Act (as referred to in the Discussion Paper), we recommend that the Attorney-General positively consider the legislation to expressly include “servile marriages and intimate relationships.” It is our experience that if the proposed legislation only refers to married relationships, then cases such as the ones referred to in this submission will continue unchecked.” (Fitzroy Legal Service submission)

The UK research also highlights the link between forced marriage, sexual trafficking and prostitution.

“On a few occasions, families have reportedly married their children from abroad in order to import a bride to work in prostitution.” (Brandon, J and Salam Hafez 2008 p.22)

(There is) “...a direct link between domestic violence and forced marriage, conceptualizing forced marriages as a form of domestic violence in itself, and contributing to domestic violence after marriage (FCO and DoH, 2003). Strategies suggested to reduce forced marriage are similar to those used for tackling domestic violence, such as improving interagency cooperation (Interights et al. 2000; HO 2003).” (Gangoli, A, Razak ; M McCarry; Geetanjali. June 2006, p. 6)

Controlling sexual behaviour

Information from the UK suggests that some motivations for forcing marriage on young women in the UK are parental and community concern about their sexual behaviour. It has been found that forced marriages are used to curb what is perceived as inappropriate sexual behaviour by young women and prevent young women from forming relationships with men who are not from the same cultural communities. There is also concern that young lesbian women are being forced into marriages in order to curb their sexuality. (Khanum 2008) This is an obvious violation of their human rights and needs to be considered in any Australian responses to the issue of forced and servile marriages

Criminalization of forced marriages

Recommendation: WEAVE believes that specific criminal legislation on forced and servile marriages should be developed in Australia.

Some of the factors for criminalization:

- Primacy legislation could change practices by changing public opinion
- That it could have a strong deterrent effect;
- Empowering victims

- Making it clear and easier for people to tackle problem eg public and community sector
- Bring perpetrators to justice.

Brandon and Hafez (2008) have studied the situation in the UK and argue that “making forced marriages a civil offence has not worked.” (p.145)

“A high profile law to criminalise forced marriage is needed to tell communities that this practice is wrong and that people who carried out forced marriages will be held accountable.” (Brandon, J and Salam Hafez 2008, p.145)

The Government’s discussion paper also highlights the arguments for implementing criminal measures:

81. Criminalising the practice of servile marriage would be consistent with the Supplementary Convention in relation to servile marriage (the practices described under Article 1(c) of the Supplementary Convention).

82. Criminalising the practice of forced marriage would be consistent with Australia’s obligations in relation to forced marriage, which are consistent across several treaties and require Australia to take effective and appropriate measures against this practice.

83. Creating specific forced and servile marriage offences would send a clear message to the community that this type of conduct is prohibited in Australia and would reflect the seriousness of the issue and the harm that may be caused. This may provide a deterrent effect, although would be contingent on a high level of awareness of, and public support for, the new offences.

84. Criminalising the behaviour may also encourage and provide the confidence for victims to speak out and seek help from authorities. It may also lead to authorities having a better understanding of the seriousness of a victim’s claims of being forced into marriage.

WEAVE believes that these arguments are legitimate and hold greater significance than the counter arguments.

The difficulties and costs of enforcing criminal sanctions should not be used as a deterrent to criminal legislation against forced and servile marriages. Neither should we be using cultural sensitivity as a reason not to criminalize behaviour which is a serious form of domestic violence and a serious abuse of human rights.

Australian Research

As the Government’s discussion paper points out there is very little information in Australia regarding the extent of forced and servile marriages.

Research in Britain tends to suggest that forced marriages are generally hidden from statistical analysis and as such the statistics collected in the U.K.

“...represent only the tip of the iceberg. (THE GOVERNMENT REPLY TO THE SIXTH REPORT FROM THE HOME AFFAIRS COMMITTEE SESSION 2007-08 HC 263, p. 3)

The above report also suggests that the lack of comprehensive data makes it difficult to effectively respond to the problem. (p.4) Our understanding is that there is very little data in Australia in relation to forced marriages and very little research has been conducted into forced marriages in Australia.

Recommendation: a comprehensive study should be commissioned by the Government into the prevalence of forced and servile marriage in Australia, as a matter of urgency.

Services and Support

The Government discussion paper rightly points out that:

“Victims of forced or servile marriage may require a range of support including housing or refuge assistance, legal advice, counselling, financial assistance, potential change of identity, assistance returning to education, and in some cases assistance to return to Australia. Individuals may also require assistance with language or other cultural barriers. A high level of cooperation between a range of agencies and organisations would be needed to ensure victims are able to access timely and coordinated assistance”

Legislative and non-legislative measures can be implemented jointly to address the practice of forced and servile marriages.

Such non-legislative measures could include:

- information and education to inform individuals of their rights, responsibilities and the range of support services available
- education, training and awareness raising for professionals who may come into contact with individuals affected by forced or servile marriage and who may be able to inform and educate individuals about the issues
- engagement between government, the community, support groups and organisations to discuss relevant issues and propose strategies for addressing these practices.
- Public education

Major public information campaign.

Recommendation: WEAVE recommends an information campaign specifically on forced marriage.

Current domestic violence and sexual assault awareness and information campaigns should also include information about forced marriages in their

campaigns. This would not only raise awareness about forced marriages within the general community, but also ensure that those who are likely to come into contact with victims of forced marriages are sensitive to the issues around forced marriages.

Such training should place forced and servile marriages within the wider context of domestic violence and human rights violations.

Education in schools.

There are currently a number of programmes in schools throughout Australia which focus on respectful relationships. We suggest that the government review such programmes to ensure they include information and awareness about domestic violence, sexual assault, child abuse and forced marriages.

We note the UK report which states:

“...schools can provide a lifeline to vulnerable pupils by providing information on support services.” (THE GOVERNMENT REPLY TO THE SIXTH REPORT FROM THE HOME AFFAIRS COMMITTEE, 2008)

Service Provision

Recommendation: Services must be resourced sufficiently to meet any increased demand due to increased awareness of the problem.

Community Engagement

Recommendation: WEAVE Inc recommends that a special taskforce be set up to engage with communities around the issue of forced and servile marriages.

This would aid in identifying the extent and specifics of the problem. The taskforce should also be commissioned to consult with communities in regard to their assessment of the issue and recommendations for addressing and responding to the practice of forced and servile marriages.

Such a taskforce should be a multi-agency group, composed of representatives of immigrant women’s communities, domestic and sexual assault service and women’s legal services.

Training

Recommendation: Training programmes should be developed to identify, respond appropriately and refer victims to appropriate resources.

Accredited training courses in domestic violence, child abuse, sexual assault and forced marriages need to be developed for teachers, child protection service workers, health professionals, police, prosecutors, legal professionals, judicial officers inclusive of magistrates' courts, criminal courts and family law courts.

Child Protection Issues

It is important that forced marriage is included in child protection responsibilities. We must acknowledge that victims of forced marriage may be children, under the age of 18 years.

Recommendation: All personnel in child protection services should be trained in detecting/identifying risk factors for forced marriages and appropriately responding to the issue. This should be included in broader training in relation to domestic violence, child abuse and sexual assault and forced marriage being seen as one aspect of domestic violence.

Linguistically and culturally specific services

Recommendation: WEAVE recommends that therapeutic services for victims of domestic violence, child abuse, sexual assault and forced marriages needs to be developed and adequately resourced.

Recommendation: It is recommended that increased resources should be made available. In particular there is a need for culturally competent services for women from minority communities.

Legal services for victims of domestic violence, child abuse, sexual assault and forced marriages

Recommendation: WEAVE recommends an increase in funding, resources and training for legal aid professionals to respond to the practice of forced and servile marriages.

Mediation

Mediation outside the court may be an effective means to resolve conflict and reconcile families. However, it should only be conducted if all parties to the mediation agree to participate, if it would not place the victim at further risk of harm, and if it is conducted by highly skilled staff. Victims should be adequately supported during the mediation process to ensure their safety and that they are able to participate in the process free from intimidation and fear. Cultural considerations should be taken into account when determining whether to proceed with a mediation process, and if so, what specific measures may be needed to provide a culturally appropriate service.

WEAVE has significant concerns about the use of mediation in forced marriage cases. There has been much research in the area of mediation within the family law and other contexts in cases of domestic violence which have highlighted the risk to victims of abuse in facing their abuser in the context of mediation. Concerns have also been raised about the viability of mediation being conducted in an environment of inequality when there are inevitably power differentials between victims of abuse and their abusers. We would therefore highlight the need for extreme caution in recommending mediation in these cases.

“The Working Group has found that mediation, with the aim of reconciliation, is a controversial issue in cases of forced marriage. Some women’s groups have opposed the provision of mediation in any case of actual or threatened forced marriage.

Based on the evidence presented, the Working Group feels that victims should be able to access mediation as a means of conflict resolution if they wish to do so. Their choice should be respected.

But mediation services should only be provided where there are professional guidelines and a code of conduct, and only staff specifically trained in mediation skills should undertake this work.

The Working Group has heard of a number of specific risks of mediation and care should be taken to ensure that:

- it does not place the victim at further risk of abuse – the safety of the individual must be the paramount concern*
- a victim’s advisor is not compromised by their involvement in mediation, leading to a loss of the victim’s confidence in their advisor’s role as advocate*
- agreements are monitored and reviewed*
- failures do not deter women from seeking further help, because of their experience of poor quality and unsuccessful mediation.*

The Working Group recommends that further work should be undertaken to evaluate mediation in cases of forced marriage, with the aim of ensuring the safety of victims. “

(Home Office Communications Directorate, June 2000, p. 19)

It is essential to note that, drawing on experience of domestic abuse, all of the guidance should contain strong warnings of the risks of attempting to mediate between the victim and the family:

“Mediation, reconciliation and family counselling as a response to forced marriage can be extremely dangerous. Social workers undertaking these activities may unwittingly increase the young person’s vulnerability and place them in danger. ... There have been cases of young people being murdered by their families whilst mediation was being undertaken. Never allow the young person to have unsupervised contact with their family even if they request it.’

(Khanum, N. 2008, p. 14)

Immigration Issues

In some instances forced marriages are conducted overseas with victims being sent to their country of origin where such marriages take place. As such visas are often applied for by the families through the Department of Immigration. Education and awareness-raising is needed within Department of Immigration in regard to forced marriages with the facility to refuse visas if it is found that the aim is to force a marriage on a victim. Such training should also include the risk factors associated with forced and servile relationships.

Recommendation: WEAVE recommends that part of a task force's undertaking will be to examine what procedures could be implemented within the Department of Immigration to identify those at risk of forced marriage, to provide support and advice for potential victims and to develop appropriate procedures in handling such matters.

We refer to the submission made by Fitzroy Women's Legal Service which has highlighted the significant changes which need to be made both in legislation and procedures within the Department of Immigration. WEAVE supports their recommendations.

"Politicians must recognise that not standing up for the rights of ethnic minority women is racism; it is to say that immigrant women feel pain, humiliation and fear less than native Britons and that they should not aspire to the freedom that they would want for themselves; it is to say that they are less human for being part of a foreign culture. The government must show that it believes that all women should have the right to choose their own futures regardless of the culture of their parents and community; similarly to proclaim that the desire to live free of violence and servitude, fear and intimidation is not a 'western' trait but one that is common to all people." (Brandon and Salam Hafez 2008 p. 149)

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