

# Tackling Forced Marriage in Western Australia

by Associate Professor Fiona McGaughey,  
University of Western Australia Law School



## Introduction

In 2023, UWA Law School researchers,<sup>1</sup> and Sexual Health Quarters (SHQ),<sup>2</sup> carried out a pilot project on tackling forced marriage in Western Australia.

This project responded to needs identified by SHQ who had conducted community education sessions with young women from culturally and linguistically diverse (CaLD) backgrounds. The young women identified a gap in knowledge on forced marriage and asked that more be done in this area.

Walk Free provided funding for the pilot project and following ethics approval from UWA, we carried out three workshops with a total of 30 women from CaLD backgrounds in partnership with community organisations. These sessions were part community education (sharing information about women's human rights and forced marriage) and part focus group. Participants' birth countries were varied and included: Afghanistan, Chile, Colombia, El Salvador, Eritrea, Ethiopia, Iran, Iraq, Korea, Liberia, Mauritius, Serbia, South Africa, Sudan, and Vietnam.

We also carried out three focus groups with 22 professionals and volunteers working in the area of forced marriage or in related fields where forced marriage may arise (e.g. family and domestic violence). Many participants were from the not-for-profit sector and some from government agencies and the vast majority were based in Perth.

Here, I discuss what forced marriage is and provide a brief summary of our key findings.

## What is forced marriage?

Forced marriage is a global problem affecting an estimated 22 million people around the world.<sup>3</sup> It occurs in Australia, including here in WA. In Perth, in 2020, 21-year-old Rucija Haidari was murdered by her husband. She reported to the Australian Federal Police two months before the marriage that she was being threatened and coerced into the marriage.<sup>4</sup> Her husband Mohammad Ali Halimi was subsequently convicted and sentenced to life imprisonment for her murder. In 2021, there were an estimated 41,000 people in 'modern slavery' in Australia.<sup>5</sup> Modern slavery is an umbrella term used to describe forced marriage, human trafficking, forced labour, sexual slavery, child labour and trafficking, domestic servitude, bonded labour, debt bondage, slavery, and slavery-like practices.<sup>6</sup>

Forced marriage is prohibited under the *Criminal Code Act 1995* (Cth) (the Code) as amended in 2013,<sup>7</sup> and as such, falls under the jurisdiction of the Australian Federal Police (AFP) rather than being dealt with as family or gender-based violence under the *Criminal Code Compilation Act 1913* (WA)<sup>8</sup> as amended by the *Family Violence Legislation Reform Act 2020* (WA).<sup>9</sup>

Section 270.7A(1) of the Code defines forced marriage as follows:

*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.*<sup>10</sup>

Consent cannot be given if the victim is incapable of understanding the effect and nature of marriage. This applies where free or full consent cannot be given either due to age or mental incapacity.<sup>11</sup> Persons under 16 are not considered capable of understanding the nature and effect of the marriage ceremony.<sup>12</sup> Section 270 applies to de-facto relationships, marriages, and marriage-like relationships, marriages recognised in Australian law, or the law of other countries, including cultural and customary marriages. Breach of section 270 of the Code carries a maximum penalty of 7 years' imprisonment, or 4 years' imprisonment for non-aggravated offences but prosecutions are rare. In the 2022-2023 financial year, there were 90 reports of forced marriage in Australia,<sup>13</sup> but it is well-established to be 'strikingly under-reported'.<sup>14</sup>

## Our Findings and Recommendations

Discussions in the women's workshops showed that 'arranged marriages' are common but in fact, are often de facto forced marriages. Women can be 'married off' by their family due to shame/perceived shame – for reasons such as socialising with a man or being sexually assaulted by a man, who they may then be forced to marry. There was broad awareness of women's rights among many participants and an awareness of various avenues for seeking help. However, there was a strong reluctance to act on this by asking for help or reporting forced marriage. As family members are typically involved, women felt they risked being ostracised by family and community if they speak to someone outside their community about these issues. A key recommendation from the women was to carry out community

education. The women who participated were engaged, resilient, and thirsty for knowledge and we endorse research that supports peer educators in tackling forced marriage and recommend consideration of this approach here.<sup>15</sup>

The key barriers to preventing forced marriage or enabling women to leave forced marriages are cultural, rather than relating to a lack of information. All focus groups and workshops identified opportunities to work with communities to address cultural barriers to change and the need for community education and leadership on forced marriage. A key challenge is to raise awareness of women's rights in the Australian context, to examine questions of consent to marriage and to sex (whether married or not); and to understand the difference between an arranged and a forced marriage. Faith leaders, community elders, and other influential adults within communities were all identified as key stakeholders. There is scope for community groups and government agencies such as the Department of Communities and the Office of Multicultural Interests to collaborate to tackle this issue.

The information available to service providers and other stakeholders is more lacking than we had anticipated and there is a need for training, information, cultural competence, and referral pathways. A range of service providers could be better equipped to identify and respond to risks of forced marriage, these include FDV workers, healthcare workers (including midwives), and educators and support staff in schools and vocational and tertiary education settings.<sup>16</sup> As part of our project, we developed a list of all stakeholders relevant to WA as this was not previously available.<sup>17</sup> The *WA Interagency Group on Human Trafficking and Modern Day Slavery* and the *Forced Marriage Network* – two networks of government agencies and not-for-profits – were identified by

focus group participants as very useful but require funding, for example, through contributions from the agencies to host a secretariat. Funding options for future capacity-building and awareness raising workshops could be investigated. Also, there are a number of government agencies or not-for-profits with experience of delivering training on forced marriage and there is scope for further collaboration. For example, although some professionals expressed concern about the AFP delivering training in a community setting, conversely, some community members expressed that the information coming from an authority figure might carry more weight. In our project, staff with connections to diverse communities and community-based organisations were key in delivering workshops for women and there is potential for a similar model to be used in partnership with the AFP and others – as appropriate to the context and community in question.

Finally, we raise the question whether forced marriage as a criminal offence should be in the Federal or State and Territory criminal codes and recommend considering how forced marriage can be brought within FDV frameworks. Here, we draw on the *Justice Legislation Amendment (Family Violence Protection and Other Matters) Act 2018* (Vic), which recognised forced marriage as a form of family violence in response to recommendations in the Victorian Royal Commission into Family Violence.<sup>18</sup> Victoria is the only state in Australia to have legislated forced marriage as a form of family violence and a recent report has noted stakeholders expressed consistent support for forced marriage within family violence legislation as it offers opportunities to increase identification of those at risk and improves access to pathways for community engagement and for supports.<sup>19</sup> In the interim, interagency networks and ongoing close collaboration

between the AFP and WA Police is critical, as is further education for both communities and professionals. ■

## Endnotes

1. Staff members Associate Professor Fiona McGaughey, Professor Natalie Skead, Associate Professor Jani McCutcheon, Ms Kate Offer and Ms Tsitsi Gotoru.
2. Staff members Ms Karen Molhuysen, Ms Diyane Dushime, and Mr Mick Pierce.
3. International Labour Organization (ILO), Walk Free, and International Organization for Migration (IOM), *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* ('Global Slavery Estimates') (2022) 2.
4. Marta Pascual Juanola, 'I don't want to do this': Forced into marriage, Ruqia Haidari was dead two months later. August 9, 2021. *WAtoday* (Online newspaper article). <<https://www.watoday.com.au/national/western-australia/i-don-t-want-to-do-this-forced-into-marriage-ruqia-haidari-was-dead-two-months-later-20210803-p58fed.html>>.
5. Walk Free, *Global Slavery Index 2023* (2023), 'Modern Slavery in Australia', <<https://www.walkfree.org/global-slavery-index/country-studies/australia/>>.
6. Parliament of the Commonwealth of Australia, Joint Standing Committee on Foreign Affairs, Defence and Trade, *Modern Slavery And Global Supply Chains: Interim Report of the Joint Standing Committee on Foreign Affairs, Defence and Trade's Inquiry Into Establishing a Modern Slavery Act in Australia* (Report, August 2017) 1.8.
7. *The Criminal Code Act 1995 (Cth)* amended by the *Crimes Legislation Amendment (Powers, Offences And Other Measures) Act 2015* ('Criminal Code').
8. *Criminal Code Compilation Act 1913* (WA).
9. *Family Violence Legislation Reform Act 2020* (WA).
10. *Criminal Code*, n 7.
11. *Ibid*, s 270A(b).
12. *Marriage Act 1961* (Cth) s 270.7(4).
13. Australian Federal Police, Human trafficking reports continue to increase in Australia (Media Release 8 December 2023) <<https://www.afp.gov.au/news-centre/media-release/human-trafficking-reports-continue-increase-australia>>.
14. Samantha Lyneham, Samantha Bricknell, 'When saying no is not an option: Forced marriage in Australia and New Zealand' (Australian Institute of Criminology, Research Report 11, 2018) 2.
15. See, eg, Maria Florencia Amigó and Sandeep Gurung, 'The transformational possibilities of a peer education program to address child marriage in Nepal' (2022) 32(7) *Development in practice* 890.
16. See, eg, Renate Klein, Nicola Taylor, 'Post-secondary Education Responses to Forced Marriage and Gendered Abuse Against Students' (2013) 38 (4) *Children Australia* 162.
17. Refer to final project report (forthcoming) to access this.
18. Shih Joo (Siru) Tan, Laura Vidal, *Forced Marriage as a Form of Family Violence in Victoria* (Monash Gender and Family Violence Prevention Centre, 2023) 6.
19. *Ibid*.

