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Assistant Secretary  
Criminal Law and Law Enforcement Branch  
Attorney-General's Department  
3-5 National Circuit  
BARTON ACT 2600

and via email: [Criminal.Law@ag.gov.au](mailto:Criminal.Law@ag.gov.au)

Dear Sir/Madam

### **Australian Government's Discussion Paper on Forced and Servile Marriage**

I refer to the consultation on forced and servile marriage being conducted at the instigation of the Federal Attorney-General, the Honourable Robert McClelland MP, and the Minister for Justice, the Honourable Brendan Connor MP. The Society's Human Rights Committee has reviewed the Discussion Paper. Accordingly, we provide the following comments.

The Society considers that Australia must fulfil its international obligations under the *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery* 1956 ("the Supplementary Convention") to adequately prevent and address the practices of forced and servile marriage, as they are an abuse of human rights. However, of great concern to the Society is the fact that it also exposes victims (most particularly women) to further criminal conduct and breaches of their basic human rights.

We note that Australia is obliged, pursuant to Articles 1(c) and 6 of the Supplementary Convention, to criminalise the practice or attempted practices of forced and servile marriage, as well as the acts of being an accessory thereto, or being a party to a conspiracy to accomplish the practices.

The Society would support amendment of the *Criminal Code* to create a specific offence prohibiting forced and servile marriage. We believe that the existing legislative arrangements in relation to slavery and people trafficking offences do not adequately address this distinct and separate practice.

The practice of forced and servile marriage occurs within an entirely different social and cultural context to the current trafficking and slavery offences. These offences are concerned predominantly with the exploitation of people for commercial purposes, and in particular women trafficked for the commercial sex industry. We submit that it is neither useful nor appropriate to address the practices of forced and servile marriage through these quite different and distinct legislative avenues.

We would also suggest that the *Criminal Code* is the most appropriate legislative instrument in which to address the practices, given the serious nature of the offences, the importance of deterrence, and the

need for wide jurisdiction (to cover both offences committed within Australia and overseas). Such broad application would not be possible under, for example, the *Marriage Act 1961* (Cth) or by amendment to various pieces of State legislation.

We would also support an amendment to the definition of 'exploitation' in the *Criminal Code* to include the specific practices of forced and servile marriage, in order to align more closely with the international definition of trafficking in the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* ("the Trafficking Protocol").

However, we consider that significant further study and research is needed on the extent of the problem in Australia in order to determine the most appropriate response. There appears to be currently little information regarding the extent of forced and servile marriage in Australia. According to the Discussion Paper, only three separate reports of it were made to the Australian Federal Police in 2010. This would tend to suggest that the problem is under-reported.

We suggest involving existing agencies that are likely to come into contact with victims of forced and servile marriage (such as Police, domestic violence services, community legal centres, women's and multicultural organisations, and religious groups) in order to undertake the information gathering process. If under-reporting is an issue, as we suspect it is, we would support measures to increase reporting by victims, and promote further education and public awareness of the practices.

Subject to the outcomes and recommendations arising from further study and research, the Society would support appropriate non-legislative measures, as well as increased civil remedies through the Family Law Courts to supplement and support the new offence/s in the *Criminal Code*.

However, we recommend that the content of any proposed legislative and non-legislative measures should be shaped by significant further study and research on the issues, dynamics and extent of the problem in Australia. We suggest that further submissions be invited from interested bodies once that information gathering process is completed.

I trust this response is of assistance.

Yours sincerely



Ralph Böning  
**PRESIDENT**