



Plan

**Submission on the Statutes Amendment
(Child Marriage) Bill 2015**

Plan International

December 2015

1. Introduction

We thank you for the opportunity to provide feedback regarding the Statutes Amendment (Child Marriage) Bill 2015 (the Bill).

This submission addresses in turn:

- the definition of a child contained in the Bill;
- the necessity for legislative protection of children at risk of child marriage within the State; and
- the importance of non-legislative child marriage protection and prevention measures in Australia.

2. The definition of a child

We note that under the proposed sections 26C(3) and 33C of the Statutes Amendment (Child Marriage) Bill 2015 (the Bill) a child is defined as “a person under 16 years of age.” We respectfully submit that a child should be defined as a person under 18 years of age so that all children in Australia are afforded the protection of the Court and legal sanction from being removed from Australia to be married. We make this submission on the basis of international and domestic law which are discussed in turn below.

2.1 The definition of a child and child marriage under international law

Section 1 the *United Nations (UN) Convention on the Rights of the Child*, to which Australia is a party, defines a child as “every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier”. Further, the United Nations Committee on the Elimination of Discrimination Against Women has recognised that boys and girls aged under 18 almost always do not have the “full maturity and capacity” to consent to marriage.¹ As such, in our view the Bill’s definition of a child ought to be amended to reflect Australia’s obligations to protect children under international law.

2.2 The definition of a child and child marriage under domestic law

Turning to the domestic context in Australia, the *Marriage Act 1961* (Cth) specifies that consent to a marriage must be real consent² and the marriageable age is 18.³ However, the Act also provides that a court may authorise a person aged 16 or over to marry where the “circumstances of the case are so exceptional and unusual as to justify the making of the order.”⁴

However, many countries, to which children in Australia aged under 18 may be removed for marriage, lack commensurate legal safeguards – that is laws establishing a minimum legal age for marriage as 18 years or over (a recent study found 74 nations are yet to declare a minimum age for

¹ UN Committee on the Elimination of Discrimination Against Women, 'CEDAW General Recommendation No. 21: Equality in Marriage and Family Relations' (A/49/38, 1994)

² *Marriage Act 1961* (Cth), section 23B(1)(d).

³ *Marriage Act 1961* (Cth), section 11 provides that a person is of marriageable age if the person has attained the age of 18, subject to provisions in section 12.

⁴ Section 12.

marriage⁵) or, if they have established a minimum age, any form of judicial process for approving marriages under 18 years of age. Accordingly, it is reiterated that the Bill should define a child as any person under 18 years of age children so that the Court may exercise protection over children at risk of removal from Australia to marry in jurisdictions where local justice systems will not play any role in their protection from a marriage where they may be unable or unwilling to give their consent.

3. Protection of children at risk of marriage within the State

Reported cases of child marriage in Australia point not only to a pattern of Australian residents being taken overseas for marriage but also of children under the age of 18 in Australia undergoing a cultural or religious marriage that takes place outside the provisions of the *Marriage Act 1961* (Cth).⁶ The marriage of children in these circumstances, while not state sanctioned, similarly represents a risk to the health, wellbeing and dignity of the child. On this basis, it is submitted that further provisions should be included in the Bill which:

- vest the Court with the power to make orders for the protection of children at risk of undergoing a cultural or religious marriage in Australia; and
- criminalise a person who arranges for a child to undergo a cultural or religious marriage in Australia.

4. The importance of non-legislative child marriage protection and prevention measures in Australia

While Plan International Australia commends the Bill as a necessary expansion of the legislative protection of children at risk of child marriage in South Australia, we also note the importance of non-legislative measures to monitor, prevent and redress child marriage in Australia.

Such measures are outlined in the **attached** report, co-authored by Plan International Australia and Anti-Slavery Australia, *Just Married, Just a Child: Child marriage in the Indo-Pacific Region* (pages 30-31) and include:

- support services for children at-risk of or who have experienced child marriage (including counselling and free legal advice);
- front-line training for community workers who may come into contact with children at risk of child marriage such as child protection, law enforcement, domestic and family violence workers and health, education and community workers; and
- community leadership and engagement including providing accurate, culturally-appropriate and evaluated community awareness raising materials and referral pathways for children at risk.

⁵ Angela Melchiorre, 'At what Age? ... are school children employed, married and taken to court?' (Right to Education Project/ActionAid International, 2002).

⁶ *Essey & Elia* [2013] FCCA 1525.

5. About Plan International

Plan International is one of the world's oldest and largest child focused development agencies. Our approach to development is community-focused and rights-based. This means we work in local contexts with families and communities, as well as at the national and international level to advocate for policy and structural change to address the underlying causes of poverty and disadvantage. Plan International recognises that girls are most negatively affected by child marriage, which is reinforced by gender inequality. We work across the world to end child marriage, including in the Indo-Pacific region (for example, in Bangladesh, Pakistan, Indonesia and Cambodia).

With that in mind, we work with communities to:

- improve educational opportunities for girls through formal schooling and alternative or vocational training, and make educational institutions safe and empowering places for girls;
- reduce the social pressures which motivate families to favour child marriage by working with boys, girls, men and women to change and challenge attitudes, beliefs and behaviours about the practice;
- build girls' leadership skills through empowerment and improved socio-economic capabilities;
- facilitate social networks for girls and increase their participation in political and civic action;
- train and support community leaders and organisations to design and carry out advocacy and awareness activities which promote and protect the rights of girls; and
- work with governments to introduce improved systems and laws to end child marriage.

Thank you in advance for your consideration of this submission.

Plan International Australia.