

CHAPTER 1

Introduction

Referral of the inquiry

1.1 On 24 November 2011, the Senate referred the following matters to the Legal and Constitutional Affairs References Committee (committee) for inquiry and report by 3 May 2012:

- (a) the number of Prospective Marriage (subclass 300) visa applications and grants by post, officer, nationality, age of applicant and sponsor;
- (b) the risk and incidence of fraud under the Prospective Marriage (subclass 300) visa program, including the incidence of cases where prospective marriages did not occur;
- (c) the incidence of Prospective Marriage (subclass 300) visa applicants and sponsors who entered into an arranged marriage;
- (d) the administration, application and effectiveness of eligibility criteria in relation to the Prospective Marriage (subclass 300) visa program, with a special focus on, but not limited to, protections against fraud, age differences, regard for cultural practices and relationship criteria;
- (e) the sufficiency and suitability of assessment procedures to protect against fraud and to ascertain the reliability of consent of an applicant for a Prospective Marriage (subclass 300) visa, where it is believed the applicant will be entering into an arranged marriage;
- (f) whether current policies and practices of the Australian Government with regard to the Prospective Marriage (subclass 300) visa or other visa categories are facilitating forced marriages;
- (g) the policies and practices that could strengthen protections against fraud and for women in other countries applying for a Prospective Marriage (subclass 300) visa, from entering into a forced marriage; and
- (h) any other related matters.¹

1.2 On 13 March 2012, the Senate extended the reporting date to 7 June 2012,² and, on that date, the committee presented an interim report, advising the Senate that the committee intended to table its final report by 25 June 2012.³

1 Journals of the Senate, No. 71-24 November 2011, pp 1938-1939.

2 Journals of the Senate, No. 80-13 March 2012, p. 2210.

3 Senate Legal and Constitutional Affairs References Committee, *Interim report for the inquiry into Marriage Visa Classes*, 7 June 2012.

Prospective Marriage (subclass 300) visa

1.3 The Prospective Marriage (subclass 300) visa (Prospective Marriage visa) is a temporary, nine-month visa which enables the visa holder to travel to Australia to marry an intended spouse.⁴ An applicant must be at least 17 years and three months old, so that the applicant will be able to legally marry in Australia upon reaching 18 years of age before the visa expires.⁵ Applicants must be sponsored by a fiancé(e) over the age of 18 years,⁶ and that sponsor must be an Australian citizen, Australian permanent resident or eligible New Zealand citizen.⁷

1.4 In 2006-07, 6,309 Prospective Marriage visas were granted. During the period 2010-11, the number of visa grants slightly decreased to 5,926.⁸ From 1 July 2011 to 22 May 2012, 5,734 visas have been granted.⁹

1.5 After marrying the intended spouse, a Prospective Marriage visa holder is expected to apply for permanent residence in Australia through a two-stage Partner visa process: first, the temporary Partner (subclass 820) visa; and, second, the permanent Partner (subclass 801) visa.¹⁰

1.6 If a Prospective Marriage visa holder does not marry the intended spouse, the visa expires after nine months and, unless an application is made for another type of visa, the visa holder would be required to return to their country of origin.¹¹

Statistics on applications and grants of Prospective Marriage visas

1.7 Statistical information relating to the number of Prospective Marriage visa applications and grants by Australian mission (post), officer, nationality, age of applicant and sponsor is set out below.

4 Department of Immigration and Citizenship, *Partner Migration* (1127), p. 30. The visa holder may also marry the intended spouse overseas, provided there has been at least one entry to Australia on the visa: see p. 32.

5 Dr Wendy Southern PSM, Department of Immigration and Citizenship, *Estimates Hansard*, 13 February 2012, p. 44.

6 If the fiancé(e) is under the age of 18 years, the visa applicant must be sponsored by the fiancé(e)'s parent or guardian. Statistics on the number of cases in which this has occurred do not appear to be available: see Department of Immigration and Citizenship, answer to question on notice, received 7 June 2012, p. 6.

7 Migration Regulations 1994, Schedule 2, Part 300, clause 300.213.

8 Department of Immigration and Citizenship, *Submission 2*, Attachment 1, p. 3.

9 Mr Kruno Kukoc, Department of Immigration and Citizenship, *Estimates Hansard*, 22 May 2012, p. 61.

10 If the visa holder applies offshore for permanent residence in Australia, the relevant visa process is the temporary Partner (subclass 309) visa and permanent Partner (subclass 100) visa.

11 Dr Wendy Southern PSM, Department of Immigration and Citizenship, *Committee Hansard*, 25 May 2012, p. 22.

By post

1.8 A Prospective Marriage visa application can only be made from outside Australia at the applicant's nearest post.¹² The application itself is a prescribed form (currently, *Form 47SP: Application for migration to Australia by a partner*),¹³ together with all necessary supporting documentation. There is a non-refundable application fee, which varies from time to time.¹⁴

1.9 From 1 July 2006 to 22 May 2012, 36,512 Prospective Marriage visas have been granted at 49 posts.¹⁵ The number of visa grants has fluctuated marginally from year to year, peaking at 6,354 in 2008-09 and falling to 5,926 in 2010-11.¹⁶

1.10 From 1 July 2006 to 31 December 2011, the following 10 posts have granted the highest number of Prospective Marriage visas: Manila; Ho Chi Minh City; Shanghai; London; Bangkok; Beirut; Berlin; Moscow; Washington; and New Delhi (the top 10 posts). More than 64% of all Prospective Marriage visas were granted at these posts.¹⁷

1.11 Not all Prospective Marriage visa applications have resulted in the grant of a visa. For the period 1 July 2006 to 31 December 2011, 3,635 applications (9.3%) have been refused and 1,450 applications (3.7%) have been withdrawn or otherwise finalised.¹⁸ Included in these figures are 2,990 visa applications lodged at a top 10 post (58.9% of all unsuccessful applications).¹⁹

12 The Department of Immigration and Citizenship's website provides an up-to-date list of all immigration offices outside Australia: see <http://www.immi.gov.au/contacts/overseas/> (accessed 15 June 2012).

13 The form is available online at: <http://www.immi.gov.au/allforms/pdf/47sp.pdf> (accessed 15 June 2012).

14 Current Partner Category Visa Charges are advised online at: <http://www.immi.gov.au/allforms/990i/partner.htm> (accessed 15 June 2012). The current application fee is AUD\$1,995.00.

15 Department of Immigration and Citizenship, *Submission 2*, Attachment 1, p. 3; Mr Kruno Kukoc, Department of Immigration and Citizenship, *Estimates Hansard*, 22 May 2012, p. 61. The 49 posts are identified in Attachment 1 of the submission.

16 Department of Immigration and Citizenship, *Submission 2*, p. 14.

17 Department of Immigration and Citizenship, *Submission 2*, Attachment 1, p. 3. Precise numbers for each of the top 10 posts are provided in Attachment 1.

18 Department of Immigration and Citizenship, *Submission 2*, Attachment 1, p. 10. Also see Mr Kruno Kukoc, Department of Immigration and Citizenship, *Estimates Hansard*, 22 May 2012, p. 61 regarding statistics for the financial year 2011-2012.

19 Department of Immigration and Citizenship, *Submission 2*, Attachment 1, pp 2-35 (percentage calculated by the committee).

By officer

1.12 Approximately 221 departmental employees decide Prospective Marriage visa applications: the majority (126) are Australian-based employees, with the remaining 95 employees engaged at overseas posts. This division is largely driven by the level of risk associated with any particular caseload.²⁰

Table 1.1 – Decision-makers at the top 10 posts

	Australian-based	Locally engaged	Total number of decision-makers	Total number of staff at the post
Manila	6	10	16	54
Ho Chi Minh City	4	2	6	42
Shanghai	6	3	9	90
London	5	9	14	76
Bangkok	8	1	9	42
Beirut	2	0	2	18
Berlin	3	7	10	41
Moscow	3	0	3	18
Washington	2	4	6	20
New Delhi	9	2	11	144
Total	48	38	86	545
Percentage of staff at the post	9%	7%	16%	100%

Source: Department of Immigration and Citizenship, Submission 2, p. 17; Department of Immigration and Citizenship, answer to question on notice, received 7 June 2012, p. 8.

20 Department of Immigration and Citizenship, *Submission 2*, p. 17. Also see Mr Stephen Allen, Department of Immigration and Citizenship, *Committee Hansard*, 25 May 2012, pp 23-24 for a further description of the allocation of decision-makers to a post.

By nationality

1.13 Prospective Marriage visa applications have been made by the citizens of 175 countries from 1 July 2006 to 31 December 2011. A small number of applicants (88) have presented themselves as stateless persons in their applications.²¹

1.14 The top 10 countries from which Prospective Marriage visa holders claim citizenship are: the Philippines; Vietnam; the People's Republic of China; Lebanon; Thailand; the United Kingdom; the United States of America; India; Indonesia; and the Kingdom of Cambodia (the top 10 countries). In total, citizens of these countries account for 61.9% of all Prospective Marriage visa holders.²²

By age of applicant and sponsor

1.15 From 1 July 2006 to 31 December 2011, approximately 39,100 Prospective Marriage visa applications have been lodged at an Australian post. The vast majority of applicants have been over the age of 18 years (99.4%), with 253 applications (0.6%) received from persons under the age of 18 years.²³

Applicants over the age of 18 years

1.16 Prospective Marriage visa applicants' ages vary widely. For applicants over the age of 18 years, the range extends to the 84 years age bracket, with certain age categories – such as the 25-29 year age bracket – showing the highest numbers of applications.²⁴

1.17 At the lower end of the scale, in the 18-24 year age bracket, Prospective Marriage visa grants were made to 5,224 applicants at the top 10 posts from 1 July 2006 to 31 December 2011. A breakdown of these grants is shown in Table 1.2 below.

21 Department of Immigration and Citizenship, *Submission 2*, Attachment 1, pp 4-7. Attachment 1 of the submission details visa holders' nationalities and the years in which applications were received.

22 Department of Immigration and Citizenship, *Submission 2*, Attachment 1, p. 4 (percentage calculated by the committee).

23 Department of Immigration and Citizenship, *Submission 2*, Attachment 1, p. 10. There are, however, some cases in which age is indeterminate for applicants and/or sponsors: see Dr Wendy Southern PSM and Mr Stephen Allen, Department of Immigration and Citizenship, *Committee Hansard*, 25 May 2012, p. 24.

24 Department of Immigration and Citizenship, *Submission 2*, Attachment 1, pp 11-35.

Table 1.2 – Visa holders aged 18-24 years at the top 10 posts, 1 July 2006 to 31 December 2011

Post	18 years	19 years	20-24 years
Manila	27	70	897
Ho Chi Minh City	28	62	737
Shanghai	9	28	462
London	-	6	282
Bangkok	14	28	369
Beirut	195	126	793
Berlin	6	21	223
Moscow	5	8	206
Washington	5	8	250
New Delhi	5	11	343

Source: Department of Immigration and Citizenship, Submission 2, Attachment 1, pp 11-35.

Applicants under the age of 18 years

1.18 From 1 July 2006 to 31 December 2011, 227 Prospective Marriage visas have been granted to applicants under the age of 18 years. Twenty-one applications (8.3%) have been refused and five applications (2%) have been withdrawn or otherwise finalised.²⁵

1.19 At the top 10 posts:

- Manila and London did not grant, refuse or finalise any Prospective Marriage visa applications for applicants under the age of 18 years;²⁶
- Ho Chi Minh City, Shanghai, Bangkok, Berlin, Moscow, Washington and New Delhi each granted fewer than three Prospective Marriage visas to applicants under the age of 18 years, with one application refused in Ho Chi Minh City;²⁷ and
- Beirut granted 118 Prospective Marriage visas to applicants under the age of 18 years, with 14 applications refused, withdrawn or otherwise finalised.²⁸

1.20 At other posts, the Former Yugoslavian Republic of Macedonia (23), Iraq (16), Turkey (13) and Syria (9) accounted for the highest number of Prospective Marriage visa grants to applicants under the age of 18 years for the period from 1 July 2006 to 31 December 2011.²⁹

Age of sponsors

1.21 From 1 July 2006 to 31 December 2011, 192 Prospective Marriage visas were granted to applicants aged between 17 years and three months and 18 years, where the sponsors' ages ranged from 18 to 64 years.³⁰

25 Department of Immigration and Citizenship, *Submission 2*, Attachment 1, p. 10. These rates are slightly lower than those for all Prospective Marriage visa applications – see paragraph 1.11.

26 Department of Immigration and Citizenship, *Submission 2*, Attachment 1, pp 11 and 15-18.

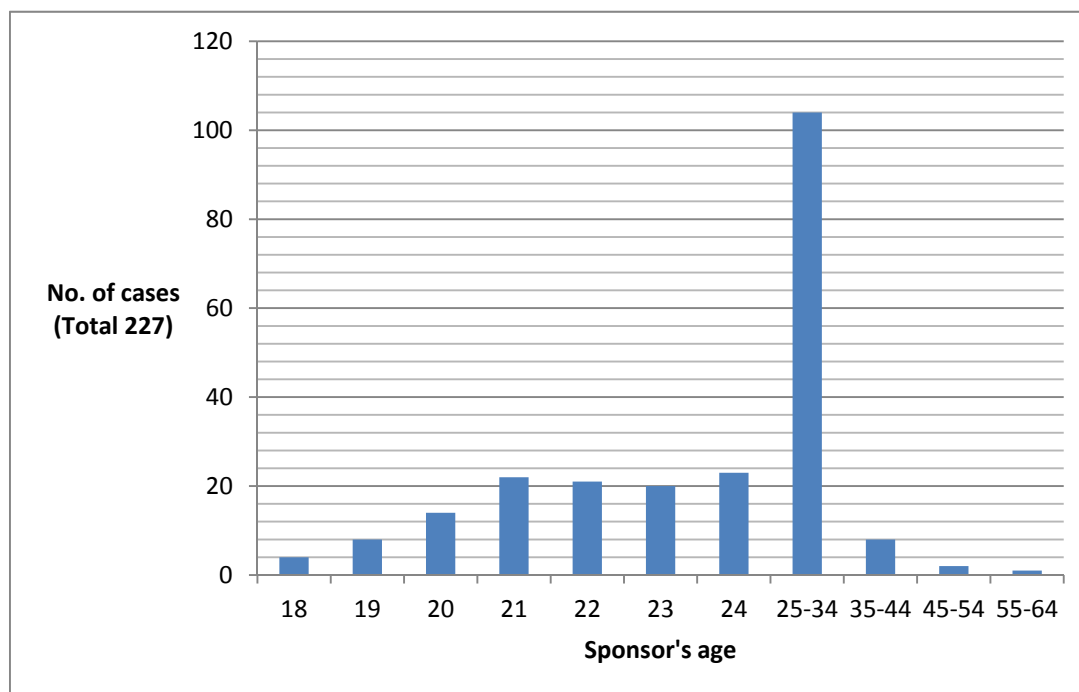
27 Department of Immigration and Citizenship, *Submission 2*, Attachment 1, pp 12-14, pp 19-20 and pp 28-35.

28 Department of Immigration and Citizenship, *Submission 2*, Attachment 1, pp 21-22.

29 Department of Immigration and Citizenship, *Submission 2*, Attachment 1, p. 8.

30 Department of Immigration and Citizenship, *Submission 2*, Attachment 1, p. 8; Department of Immigration and Citizenship, answer to question on notice, received 7 June 2012, p. 6.

Graph 1.1 – Visa holders aged between 17 years and three months and 18 years of age, and sponsors over 18 years of age, 1 July 2006 to 31 December 2011



Source: Based on figures supplied by Department of Immigration and Citizenship, Submission 2, Attachment 1, p. 8; Department of Immigration and Citizenship, answer to question on notice, received 7 June 2012, p. 6.

1.22 As shown in Graph 1.1, the majority of sponsors for Prospective Marriage visa applicants who are aged 17 years or less were less than 34 years of age in the period 1 July 2006 to 31 December 2011.³¹ However, sponsors more than eight years older than a 17 year-old applicant comprised at least 50% of sponsors, with 11 sponsors being more than twice the age of the applicant. For these 11 sponsors:

- in the 35-44 years age range – four applicants were from Lebanon and there was one applicant each from the People's Republic of China; the Arab Republic of Egypt; and the Palestinian Authority, with one unknown;
- in the 45-54 years age range – there was one applicant each from Iraq and Vietnam;
- in the 55-64 years age range – there was one applicant from Thailand.³²

1.23 In relation to Prospective Marriage visa applicants aged 18 years or more, from 1 July 2006 to 31 December 2011, sponsors' ages varied widely from

³¹ A large proportion of these persons sponsored applicants from Lebanon: see Department of Immigration and Citizenship, Submission 2, Attachment 1, p. 8.

³² Department of Immigration and Citizenship, Submission 2, Attachment 1, p. 8.

18 to 95 years at the top 10 posts.³³ For applicants in the 18 to 24 years age bracket, nine of the top 10 posts granted visas where sponsors were aged upward of 45 years (potentially more than twice the age of the applicant):

Table 1.3 – Visa holders aged 18-24 years and sponsors over 45 years at the top 10 posts, 1 July 2006 to 31 December 2011

Sponsors' age ranges:	45-54	55-64	65-74	75-84
Manila	147	82	10	3
Ho Chi Minh City	48	5	1	1
Shanghai	15	3	1	-
London	-	-	-	-
Bangkok	48	7	-	-
Beirut	2	1	-	-
Berlin	1	-	-	-
Moscow	5	1	1	-
Washington	4	-	-	-
New Delhi	4	-	-	-
Total				390

Source: Department of Immigration and Citizenship, *Submission 2, Attachment 1*, pp 11-13, 19, 21, 23, 29, 31 and 35.

Conduct of the inquiry

1.24 The committee advertised the inquiry in *The Australian* newspaper on 7 December 2011, 1 February 2012, 15 February 2012 and 29 February 2012. The committee also wrote to 73 organisations and individuals, inviting submissions by 2 March 2012. The closing date for submissions was subsequently extended to 5 April 2012 and submissions continued to be accepted after the official closing date. Details of the inquiry were also placed on the committee's website at www.aph.gov.au/senate/legal.

³³ Department of Immigration and Citizenship, *Submission 2, Attachment 1*, pp 11-13, 15, 19, 21, 23, 29, 31 and 35.

1.25 The committee received nine submissions, and these are listed at Appendix 1. All submissions were published on the committee's website. The committee held a public hearing in Canberra on 25 May 2012. A list of witnesses who appeared at the hearing is at Appendix 2, and copies of the *Hansard* transcript are available through the committee's website.

Acknowledgement

1.26 The committee thanks those organisations and individuals who made submissions and gave evidence at the public hearing.

Structure of the report

1.27 The committee's report is structured in the following way:

- chapter 2 discusses the eligibility criteria of the Prospective Marriage visa program, including the issues of administration, application and effectiveness of the criteria;
- chapter 3 examines the topic of fraud within the Prospective Marriage visa program;
- chapter 4 discusses the topics of arranged and forced marriages within the Prospective Marriage visa program; and
- chapter 5 sets out the committee's views in relation to the key issues raised during the course of the inquiry, as well as the committee's recommendations.

Note on references

1.28 References to the committee *Hansard* are to the proof *Hansard*: page numbers may vary between the proof and the official *Hansard* transcript.