

CHAPTER 4

Arranged and forced marriages

4.1 This chapter discusses the topics of arranged and forced marriages within the Prospective Marriage visa program, including :

- the incidence of arranged marriages, including the sufficiency and suitability of assessment procedures to ascertain the reliability of consent in potential cases of arranged marriages;
- the incidence of forced marriages;
- whether current policies and practices are facilitating forced marriages; and
- policies and practices that could provide stronger protections against forced marriages.

4.2 An arranged marriage is one in which the families of both spouses play a dominant role in arranging the marriage but the spouses have the right to accept or reject the arrangement.¹ It is distinguishable from a forced marriage in which one or both spouses do not (or, in the case of some adults with learning or physical disabilities, cannot) consent to the marriage, and duress is a factor. The duress can be physical, emotional, psychological, or financial.²

Incidence of arranged marriages

4.3 As with cases of fraud, the Department's electronic database does not store information regarding the incidence of arranged marriages within the Prospective Marriage visa program in such a fashion as to allow for statistical reporting.³ It is not possible therefore to accurately gauge how many visa holders have actually entered into an arranged marriage after arrival in Australia.

4.4 Nevertheless, the Department acknowledges that arranged marriages are a part of normal cultural practice in a number of countries and feature prominently in the caseload of some Australian posts. Two of these posts – Beirut and New Delhi – are

1 Attorney-General's Department, *Discussion Paper – Forced and Servile Marriage*, 2010, p. 4. The committee acknowledges that this definition does not take into account the pressure that can be placed upon a party to accept the arrangements: see Coalition Against Trafficking in Women Australia, *Submission 4*, pp 7-8; NSW Legal Aid, *Submission 7*, Attachment, p. 2.

2 UK Government, Forced Marriage Unit, *What is a Forced Marriage?*, February 2011, p. 1. Also see Coalition Against Trafficking in Women Australia, answer to question on notice, received 31 May 2012, p. 3.

3 *Submission 2*, p. 19.

top 10 posts,⁴ which have granted 9.57% of all Prospective Marriage visas from 1 July 2006 to 31 December 2011.⁵

Ascertaining the reliability of consent

4.5 The Department advised that it generally accepts arranged marriages which have the consent of both parties as 'culturally appropriate'. Unless there is information to suggest that a marriage has been contrived (a sham marriage), or at least one of the parties has been forced to enter into the marriage (a forced marriage), a Prospective Marriage visa application involving an arranged marriage is processed in the same manner as any other application.⁶

4.6 NSW Legal Aid agreed that it is appropriate to respect migrants' cultural practices (such as arranged marriages), provided these practices do not breach Australian laws. Its submission cited the case of *Kreet v Sampir*⁷ in which the Family Court of Australia held:

Cultural practices are sensitive issues but...the law to be applied is that of Australia. If a cultural practice relating to a marriage gives rise to the overbearing of a mind and will so that it is not a true consent, the cultural practice must give way. Arranged marriages...must not carry with them lack of consent.⁸

Procedures Advice Manual

4.7 Where it appears that at least one of the parties in an arranged marriage might not have fully consented to an intended marriage, the Department's Procedures Advice Manual (PAM) provides guidance to decision-makers on how to assess the Prospective Marriage visa application:

10.2 Assessing real consent

...because [the] 300.216 [criterion] requires officers to be satisfied that 'the parties genuinely intend to live together as spouses', officers are in effect obliged to be satisfied that 'real consent' has been given by both parties to the impending marriage.

Officers should, however, exercise care and sensitivity if there are indications that real consent has not been given. There may be serious implications for the safety and well being of the prospective spouse should

4 *Submission 2*, p. 19.

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

6 *Submission 2*, p. 25.

7 [2011] FamCa 22 (18 January 2011).

8 [2011] FamCa 22 (18 January 2011) at 41 per Cronin J. Also see NSW Legal Aid, *Submission 7*, p. 4.

that person's unwillingness to marry become known to persons other than the decision maker, or be disclosed within a decision record.

Officers may consider confining the decision record to an appropriate 'time of application' criterion. As examples:

- 300.214 (met and known) – applicant and the prospective spouse might have met as children but are unable to demonstrate that their relationship has developed to a point where the decision to marry was mutual or
- 300.215 (genuine intent to marry within visa period) – applicant and the prospective spouse might be unable to satisfy the decision maker that they have made firm plans to marry or
- 300.216 (genuine intent to live together as spouses) – applicant and the prospective spouse may not be able to demonstrate that they have formed or will form a lasting relationship consistent with the requirements of regulation 1.15A.

Care should also be taken to ensure that potentially sensitive material on file is properly labelled to ensure that the information provided by the applicant or the prospective spouse is not released.⁹

4.8 On the issue of whether there should be a specific requirement for decision-makers to assess the 'real consent' of a Prospective Marriage visa applicant, representatives from the Department responded that the *Migration Act 1958* (Migration Act), the Migration Regulations 1994 (Migration Regulations) and the PAM collectively provide decision-makers with advice and information 'about what might constitute duress or lack of real consent that they take into account'.¹⁰

4.9 Some submissions commented directly on the sufficiency and suitability of the Department's 'real consent' assessment procedures. For example, Ms Schillaci from Hall & Wilcox Lawyers, NSW Legal Aid, and the Immigration Advice and Rights Centre submitted that the current procedures are adequate.¹¹

4.10 In contrast, the Coalition Against Trafficking in Women Australia (CATWA) argued that the procedures are not sufficient and suitable. CATWA referred to recent media articles in which girls who reported being threatened by their families unless they consented to a 'family-arranged marriage' were granted Prospective Marriage visas,¹² and concluded:

9 Department of Immigration and Citizenship, *Submission 2*, pp 26-27. Also see Migration Regulations 1994, Schedule 2, Part 300, clauses 300.214-300.216.

10 Dr Wendy Southern PSM and Mr Robert Day, Department of Immigration and Citizenship, *Committee Hansard*, 25 May 2012, p. 27.

11 *Submission 3*, p. 3, *Submission 7*, p. 4 and *Submission 9*, p. 2, respectively.

12 See Padraic Murphy, 'Child bride shame prompts call for inquiry', *The Advertiser*, 7 November 2011; Simon Lauder, 'Hundreds of girls brought to Australia by older men', *ABC News*, 8 November 2011.

There is enough evidence to suggest, from the limited information made available to the media by the Department of Immigration and Citizenship in November 2011, that current procedures used to assess the reliability of the consent of an applicant are vastly inadequate.¹³

4.11 CATWA identified two primary concerns:

- first, the primary focus on the detection and prevention of fraud does not adequately allow for processes that prioritise human rights of women; and
- second, a focus purely on ascertaining the reliability of an applicant's 'consent' to a marriage disregards research illustrating that, although a victim may publicly agree to an arranged marriage, in reality a forced marriage is occurring.¹⁴

4.12 As a solution, CATWA recommended:

- involving the Minister for the Status of Women in the development of new procedures that aim to integrate concerns regarding the human rights of migrant women;
- developing processes that meaningfully take into account the different types of coercion that victims of forced marriage experience, and the violation of their human rights that this involves; and
- in suspected cases of forced marriage, offering alternative options as a means of assisting women who may otherwise be reluctant to speak out about the abuse they are experiencing.¹⁵

Incidence of forced marriages

4.13 In general, submitters and witnesses agreed that the incidence of forced marriages in Australia is an unknown factor. In particular, the Department submitted that there is a shortage of empirical information, both generally and in an immigration context.¹⁶ According to the Department, this is partly due to the difficulty in identifying cases of forced marriage:

...the coercion which characterises a forced marriage will in most circumstances also deter victims from reporting their situation to immigration or other officials.¹⁷

13 *Submission 4*, p. 7.

14 *Submission 4*, pp 7-8.

15 *Submission 4*, pp 7-8.

16 *Submission 2*, pp 3 and 27. See Attorney-General's Department, *Discussion Paper – Forced and Servile Marriage*, 2010, p. 6 for similar comments.

17 *Submission 2*, p. 3.

4.14 However, there are anecdotal reports of forced marriages occurring in Australia, as well as instances of young Australians being forced into marriages while overseas.¹⁸ The committee notes that there have been two recent prosecutions in relation to forced marriage in Australia – the Family Court of Australia cases of the *Department of Human Services & Brouker and Anor*¹⁹ and *Kandal & Khyatt & Ors.*²⁰

4.15 In relation to Australia's Migration Program, the Department advised that cases of forced marriage are not a frequent occurrence, with only a small number of posts having reported either isolated incidents or the occasional case involving forced marriage.²¹

Facilitation of forced marriages

4.16 Some submitters and witnesses addressed the issue of whether the current policies and practices of the Prospective Marriage visa program are facilitating forced marriages. NSW Legal Aid, for example, was not aware of any evidence of such facilitation,²² whereas CATWA considered that several aspects of current policies and practices are facilitating forced marriages in Australia.

4.17 Referring to statistics released by the Department in November 2011, CATWA argued that there is an urgent need for the Australian Government to immediately review the Prospective Marriage visa program:

The use of these visas to enable the marriage of young women from overseas to much older Australian men...suggests that trafficking for marriage is occurring in Australia, and is being aided by the Commonwealth Government through a lack of meaningful oversight.²³

4.18 CATWA called on the Australian Government to fund new research into the problem of marriage trafficking in Australia:

18 See, for example, Rev. Peter Curtis, *Submission 6*; Ms Emma Davidson, *Submission 8*; ABC Four Corners, 'Without Consent', 29 March 2012; Padraic Murphy, 'Hundreds of teens flown in to marry older Australians', *Herald Sun*, 7 November 2011; Dr Adam Tomison, Australian Institute of Criminology, *Committee Hansard*, 25 May 2012, p. 11; Ms Louisa McKimm, Immigration Advice and Rights Centre, *Committee Hansard*, 25 May 2012, p. 15.

19 [2010] FamCA 742 (24 August 2010).

20 [2010] FMCAfam 508 (6 May 2010).

21 *Submission 2*, p. 27. Also see Mr Bill Gerogiannis, NSW Legal Aid, *Committee Hansard*, 25 May 2012, p. 15 regarding the incidence of forced marriage encountered by NSW Legal Aid.

22 *Submission 7*, p. 5. Also see Ms Jannaha Schillaci, Hall & Wilcox Lawyers who submitted that the eligibility criteria can effectively distinguish between legitimate applications and those based on forced marriages, provided decision-makers focus on the parties' intentions: *Submission 3*, p. 3.

23 *Submission 4*, p. 5.

It is likely that the use of the Prospective Marriage visa program to facilitate forced marriages forms only one part of a larger problem of trafficking for the purposes of marriage that is taking place in Australia. In the last ten years, there have been reports not only of women being brought into Australia for forced marriage, but also of girls being taken out of the country and to overseas destinations...There is also a long history in Australia of the abuse of migrant women who have entered the country as 'mail-order' brides, through similar fiancée visas.²⁴

4.19 The Australian Institute of Criminology (AIC) informed the committee that it is currently researching the role of marriage in trafficking and related exploitation in Australia, with a comprehensive report detailing its study and findings to be published in 2012.²⁵ However, preliminary results suggest that, in the eight cases examined for the purposes of its study:

...marriage visa classes have been used to facilitate trafficking-related exploitation or associated risky scenarios in two ways. First, marriages have been identified where there was no intention on the part of the husband for the marriage to be genuine (for example, where the 'husband' is already in a de facto relationship with another person)...Second, marriages have been identified where the marriage is genuine but the husband has the intention of seriously exploiting his wife in their relationship, for example by forcing her into domestic servitude.²⁶

4.20 In its submission, the AIC also referred to the Australian case of *R v Kovacs*,²⁷ as well as to the cases of *R v FAS*,²⁸ and *Columbia & Columbia*,²⁹ to illustrate the problem that:

...the partner visa system (consisting of visas available to enable spouses, de facto partners and fiancés to migrate to Australia) has been misused for the purpose of human trafficking or for related serious exploitation.³⁰

Identification of cases

4.21 The Department informed the committee that the identification of Prospective Marriage visa applications involving forced marriages presents a challenge to departmental officers. This is primarily due to victims remaining silent

24 *Submission 4*, p. 12.

25 *Submission 5*, p. 3.

26 *Submission 5*, p. 7.

27 [2008] QCA 417 (23 December 2008).

28 [2008] NSWDC 53 (20 March 2008).

29 [2009] FamCA 311.

30 *Submission 5*, p. 5. The three cases cited are briefly discussed in Australian Institute of Criminology, *Submission 5*, p. 6.

about their situation for fear of retribution, and the simple fact that most supporting documentation is found to be genuine even if a degree of coercion is present.³¹

4.22 In addition, the Department advised:

Fear of retribution against the victim also presents challenges in deciding visa applications where one of the parties indicates they do not consent to the relationship but are afraid to make such a statement publicly. It is very difficult for the Department to refuse a visa application without specifying the reason. This is especially the case when decision-making is subject to merits and judicial review.³²

4.23 The most frequent concern for decision-makers determining Prospective Marriage visa applications is that family pressure may have played a role in an applicant's decision to accept an arranged marriage. As the Department noted in its submission:

...this can be a grey area given that it can be difficult to determine the point at which family or cultural expectations become coercive rather than influencing factors in a person's decision to marry.³³

Creating opportunities for disclosure

4.24 Some witnesses indicated that, while often reluctant to report their circumstances, victims of forced marriages need to be given the opportunity to do so. For example, Dr Adam Tomison, Director of the AIC, suggested compulsory attendance and completion of English courses as an opportunity for victims to seek informal help:

In [our] study, women were denied access to English courses or community centres by their spouse because they were prevented from leaving their homes or only allowed to leave if they were escorted by other family members. If there was a requirement to attend such courses and for agencies to report back to immigration or to provide evidence that the women had attended and completed their course, this might provide a greater opportunity for women in an exploitative situation to have contact with people that could assist them.³⁴

4.25 Dr Tomison emphasised that the focus should be on presenting forced marriage victims with opportunities to acquire information and assistance:

It is creating that opportunity that is the vital element. The English classes were one vehicle that was mentioned in the study...A broader issue is just

31 *Submission 2*, p. 28.

32 *Submission 2*, p. 28.

33 *Submission 2*, p. 28.

34 *Committee Hansard*, 25 May 2012, p. 8. Also see Ms Kaye Quek, Coalition Against Trafficking in Women Australia, *Committee Hansard*, 25 May 2012, pp 2-3 in relation to separate interviews as a means of encouraging voluntary disclosure.

around having some community based organisation of some sort having access to a person without the spouse and other family members present to see how they are settling in and to make sure that they are okay and do not need to be provided with information to assist them to escape exploitative situations.³⁵

4.26 On the other hand, CATWA argued that it is the responsibility of the Australian Government to advise victims of alternatives apart from going through with the marriage (for example, access to women's refuges and legal assistance), which might empower victims to reveal the existence of a forced marriage before it occurs.³⁶

Strengthening protections against forced marriages

4.27 Some submitters and witnesses indicated that there are current policies and practices that could be revised to provide stronger protections for potential victims of forced marriages in the Prospective Marriage visa program.³⁷ These measures include: the program's 18-years age requirement; enhanced scrutiny of sponsors; special training for decision-makers; an enhanced legislative response; and further research, education and support measures.

18-years age requirement

4.28 CATWA submitted that the 18-years age requirement is not effective in preventing forced marriages in Australia, as evidenced by cases reported in the media of young women coerced into marrying much older men.³⁸ CATWA therefore recommended raising the minimum age at which a Prospective Marriage visa can be granted to at least 18 years old, rather than the minimum of 17 years and three months:

[R]aising the age at which the visa is granted may afford some victims of forced marriage extra time in which to make decisions about their future.³⁹

4.29 A departmental officer informed the committee that the 18-years age requirement is consistent with the *Marriage Act 1961*:

35 *Committee Hansard*, 25 May 2012, p. 10.

36 *Submission 4*, p. 11.

37 Although evidence to the committee mainly referred to female victims, and the language of the report reflects this evidence, the committee acknowledges that forced marriage is gender neutral and may also affect male victims. In relation to male victims, see, for example, Ms Louisa McKimm, Immigration Advice and Rights Centre, *Committee Hansard*, 25 May 2012, p. 15.

38 *Submission 4*, pp 9 and 12.

39 *Submission 4*, p. 10. Also see Ms Kaye Quek, Coalition Against Trafficking in Women Australia, *Committee Hansard*, 25 May 2012, p. 5; Coalition Against Trafficking in Women Australia, answer to question on notice, received 31 May 2012, pp 1-3.

It would therefore be unreasonable to [impose age restrictions] for the purpose of a visa that enables a person to enter Australia and marry lawfully...[M]ost applicants under the age of 18 were sponsored by people aged 29 or younger, and it is incorrect to infer that the Prospective Marriage Visa program is used by older men to prey on young women.⁴⁰

Experience in the United Kingdom

4.30 In this context, the committee notes that in November 2008 the UK Government increased the minimum age for partner visa applicants and their sponsors in the United Kingdom from 18 to 21 years, by amending the Immigration Rules 1994 (UK).⁴¹ The policy objective was to tackle the problem of forced marriage in light of evidence suggesting that those in the age group 17-20 are most affected by forced marriage.⁴²

4.31 In its *Eighth Report of Session 2010-2012 on Forced Marriage*, the United Kingdom's House of Commons Home Affairs Select Committee concluded that the amended age requirement 'undoubtedly helped a number of young people to resist forced marriage'. However, that committee also received evidence from the Crime Prosecution Service that the amendment resulted in an increase in birth certificate fraud, with some individuals trying to pretend that they met the new criterion.⁴³

4.32 In 2011, the legality of the new age requirement was successfully challenged in the British Supreme Court, which found that the changes breached Article 8 of the European Convention on Human Rights and Fundamental Freedoms 1950 (providing the right to respect for private and family life).⁴⁴

4.33 Accordingly, the Immigration Rules 1994 (UK) were amended to reinstate a minimum age of 18 years for a spouse, civil partner, fiancé(e), proposed civil partner,

40 Dr Wendy Southern PSM, Department of Immigration and Citizenship, *Committee Hansard*, 25 May 2012, p. 17.

41 UK Immigration Rules 1994 (HC395), Rule 277 (spouse or civil partner), Rule 289AA (fiancé(e) or proposed civil partner), and Rule 295AA (unmarried or same-sex partner), available at: <http://www.official-documents.gov.uk/document/hc9394/hc03/0395/0395.pdf> (accessed 15 June 2012).

42 UK Government, Explanatory Memorandum to The Statement of Changes In Immigration Rules Presented to Parliament on 7 November 2011, p. 2. Also see UK Government, Home Office and UK Border Agency, *Marriage visas: the way forward*, July 2008, p. 13, available at: <http://michaeljameshall.files.wordpress.com/2011/03/marriagevisasthewayforward.pdf> (accessed 15 June 2012).

43 UK House of Commons, Home Affairs Select Committee, *Eighth Report of Session 2010-2012 on Forced Marriage*, May 2011, paras 17-18.

44 *R (on the application of Quila and another) (FC) v Secretary of State for the Home Department* and *R (on the application of Bibi and another) (FC) v Secretary of State for the Home Department* [2011] UKSC 45. The judgment is available at: http://www.supremecourt.gov.uk/decided-cases/docs/UKSC_2011_0024_Judgment.pdf (accessed 15 June 2012).

unmarried partner or same-sex partner, and sponsor to qualify for entry clearance, leave to enter, leave to remain or variation of leave on the basis of the applicant's relationship.⁴⁵ The committee also notes that Norway requires persons applying for a fiancé permit (a residence permit for six months to get married in Norway) to be of lawful marriageable age (18 years).⁴⁶

Enhanced scrutiny of sponsors

4.34 Dr Tomison from the AIC informed the committee that, in the AIC's exploratory research, 'the partner's behaviour was such that there were concerns about the use of deception and the recruitment of the woman for the purposes of serious exploitation'.⁴⁷ Dr Tomison suggested that it might be beneficial for there to be more intensive scrutiny of a Prospective Marriage visa sponsor, however:

...criminal checks alone are [not] going to be the answer. Perhaps, a more detailed assessment of the sponsor, rather than just a strong focus on the overseas partner, or would-be partner coming in, may go some way to reduce risk by identifying potentially risky situations...You might want to look at, obviously, the marriage history and other relationships and get referee reports from other members of the community.⁴⁸

4.35 The Immigration Advice and Rights Centre (IARC) supported a proposal for Prospective Marriage visa sponsors to be interviewed and questioned about their intentions.⁴⁹ At the public hearing, Ms Louisa McKimm from the IARC expressed particular concern with those cases in which the sponsor does not freely consent to an intended marriage:

The discussion about [forced marriage] seems to focus on the applicant. ...[T]he sponsor's consent to the marriage is also relevant. They can also experience duress and be subject to a family situation that they have no control over that may result in them being a party to a marriage that they are not entirely happy with.⁵⁰

45 UK Government, *Statement of Changes in Immigration Rules*, 7 November 2011, p. 4. Also see UK Home Office, UK Border Agency, *Fiancé or proposed civil partner of a British citizen or settled person*, available at: <http://www.ukba.homeoffice.gov.uk/visas-immigration/partners-families/citizens-settled/fiancee-proposed-cp/> (accessed 15 June 2012).

46 Department of Immigration and Citizenship, Additional Information, received 7 June 2012.

47 *Committee Hansard*, 25 May 2012, p. 7.

48 *Committee Hansard*, 25 May 2012, p. 9. Also see Ms Andrea Christie-David, Immigration Advice and Rights Centre, *Committee Hansard*, 25 May 2012, p. 16 for similar comments.

49 Ms Andrea Christie-David, Immigration Advice and Rights Centre, *Committee Hansard*, 25 May 2012, p. 13.

50 *Committee Hansard*, 25 May 2012, p. 15.

Special training for decision-makers

4.36 In the United Kingdom, the issue of forced marriages has been the subject of considerable attention, including by the Home Office and the Foreign and Commonwealth Office which formed the Forced Marriage Unit (FMU) in 2005. The policy role of the FMU is to work with other government departments, statutory agencies and voluntary organisations to develop effective policy for tackling forced marriages.⁵¹

4.37 In January 2010, the FMU published statutory guidelines, outlining the responsibilities of certain chief executives, directors and senior managers to develop and maintain local procedures and practice arrangements to enable front-line workers to handle cases of forced marriage effectively. The guidelines also set out how cases of forced marriage should be responded to using existing frameworks.⁵²

4.38 The FMU has also published practice guidelines for front-line workers in government departments and agencies. The practice guidelines provide advice and support, including a description of the potential indicators of a forced marriage.⁵³

4.39 CATWA recommended that the Australian Government consider the work of government agencies and organisations based in the United Kingdom:

...it is clear that specialist training is required for the relevant immigration officers to improve their capacity to detect prospective forced marriages, and other marriage practices that may be harmful to women.⁵⁴

4.40 In response to such a suggestion, a representative from the Department advised:

We do provide a level of general training, particularly to integrity officers, in terms of interview techniques, analysis, and document examination—so that they can go behind the documents—and they do receive training in terms of the particular countries and cultures they will be dealing with. But

51 Forced Marriage Unit, *Multi-agency practice guidelines: Handling cases of Forced Marriage*, June 2009, p. 18. Also see subsection 63Q(1) of the *Forced Marriage (Civil Protection) Act 2007* (UK) allowing the UK Secretary of State to prepare and publish guidance, available at: <http://www.legislation.gov.uk/ukpga/2007/20/contents> (accessed 15 June 2012).

52 UK Government, Forced Marriage Unit, *The Right to Choose: Multi-agency statutory guidance for dealing with forced marriage*, January 2010, pp 6-7. The statutory guidance covers a wide range of issues – for example: staff training and awareness-raising; effective inter-agency working and information-sharing; monitoring and evaluation; and risk assessment.

53 UK Government, Forced Marriage Unit, *Multi-agency practice guidelines: Handling cases of Forced Marriage*, June 2009, p. 15.

54 *Submission 4*, p. 12.

we have identified that there is a need for more specific training in this area.⁵⁵

4.41 The Department's submission referred to the current development of a training package for Prospective Marriage visa decision-makers, which draws on the work of the FMU:

It is hoped that this training package will assist decision makers in identifying risk factors of forced marriage and appropriate steps which they should take where there are concerns that a forced marriage may be occurring.⁵⁶

An enhanced legislative response

4.42 In its submission, the Department stated that the FMU 'appears to be the most advanced' response to forced marriage.⁵⁷ The UK Government has also responded to the issue of forced marriages in the United Kingdom by introducing civil legislation, and has foreshadowed the introduction of legislation to criminalise forced marriages.⁵⁸

Civil legislation

4.43 In 2007, the UK Government enacted the *Forced Marriage (Civil Protection) Act 2007* (UK) to protect potential and actual victims of forced marriage. This legislation provides for the High Court and designated county courts to make Forced Marriage Protection Orders to prevent an apprehended forced marriage, or provide practical assistance to the victim of a forced marriage.⁵⁹

4.44 According to the British Home Office, the rising number of applications for Forced Marriage Protection Orders and reported cases reflects:

55 Mr Stephen Allen, Department of Immigration and Citizenship, *Committee Hansard*, 25 May 2012, p. 22.

56 *Submission 2*, p. 29.

57 *Submission 2*, p. 28.

58 PM David Cameron, *Forced Marriage to become a criminal offence*, Number 10 Downing Street Press Release, 8 June 2012, available at: <http://www.number10.gov.uk/news/forced-marriage-to-become-criminal-offence/> (accessed 15 June 2012); Alan Travis, 'Forced marriage to become criminal offence: David Cameron confirms', *The Guardian*, 8 June 2012.

59 The *Forced Marriage (Civil Protection) Act 2007* (UK) is available at: <http://www.legislation.gov.uk/ukpga/2007/20/contents> (accessed 15 June 2012). It now comprises Part 4A of the *Family Law Act 1996* (UK).

...the continued efforts of the [FMU] to raise awareness among victims and potential victims that forced marriage is unacceptable and help is available.⁶⁰

4.45 During this inquiry, only two participants commented on the United Kingdom's civil legislation. CATWA supported the introduction of similar legislation in Australia but argued that such legislation should not comprise the sole legislative response to the problem of forced marriage:

[Such an approach] requires victims to take responsibility for the crime that is being committed against them. It places the burden on the victim to seek out a protection order, whereas the criminal law would put the responsibility on authorities.⁶¹

4.46 Further:

[Civil legislation] is likely to be ineffectual and inaccessible to victims if, as is often the case, they are only made aware at the last minute of the impending marriage.⁶²

4.47 The Department's submission described the FMU's casework – at home, abroad and in the immigration context – as well as the *Forced Marriage (Civil Protection) Act 2007* (UK). However, the submission did not indicate whether the Australian Government is, or would be, exploring the possible introduction of similar legislation in Australia.⁶³

Criminalising forced marriage

4.48 In 2005, the FMU consulted the British public on whether forced marriage should be criminalised in the United Kingdom. The majority of respondents in the consultation did not support criminalising forced marriage (37%),⁶⁴ considering that the disadvantages of any such legislation would outweigh the advantages (for

60 UK Home Office, Forced Marriage Consultation, December 2011, p. 5. Also see Ministry of Justice, Court Statistics Quarterly, October to December 2011, Ministry of Justice Statistics Bulletin, 29 March 2012, p. 42, available at: <http://www.justice.gov.uk/downloads/statistics/courts-and-sentencing/court-stats-quarterly-q4-2011.pdf> (accessed 15 June 2012).

61 Ms Kaye Quek, Coalition Against Trafficking in Women Australia, *Committee Hansard*, 25 May 2012, p. 5.

62 Coalition Against Trafficking in Women Australia, answer to question on notice, received 31 May 2012, p. 4.

63 See Department of Immigration and Citizenship, *Submission 2*, pp 28-29.

64 The FMU received 157 responses from across the United Kingdom, with 34% of respondents supporting the criminalisation of forced marriage: see Foreign & Commonwealth Office and Home Office, *Forced Marriage: A wrong not a right, Summary of responses to the consultation on the criminalisation of forced marriage*, 7 June 2006, p. 11, available at: <http://www.scotland.gov.uk/Resource/Doc/1137/0079812.pdf> (accessed 15 June 2012).

example, potentially driving forced marriage underground, preventing reconciliation and isolating victims).⁶⁵

4.49 The UK Government decided not to proceed with the creation of a criminal offence but instead enacted the *Forced Marriage (Civil Protection) Act 2007* (UK), which came into force on 25 November 2008.⁶⁶

4.50 In May 2011, the United Kingdom's Home Affairs Select Committee questioned the effectiveness of the *Forced Marriage (Civil Protection) Act 2007* (UK), based on 'inadequacies in the monitoring of compliance with [a protection] order...and a lack of effective action in cases of breach'. While it considered that the civil legislation should continue to be used, that committee also stated:

...it would send out a very clear and positive message to communities within the UK and internationally if it becomes a criminal act to force – or to participate in forcing – an individual to enter into a marriage against their will.⁶⁷

4.51 The UK Government responded as follows:

While the Committee's Report states that criminalisation would send out a 'very clear and positive message', it does not define how this would be achieved above and beyond what is already achieved by the general criminal offences (assault, kidnap, people trafficking etc) that might apply in circumstances of forced marriage. However, if the Committee can provide evidence that a criminal offence and sanction would be more effective in encouraging the reporting of cases, or that it would deter perpetrators, we would be happy to consider it.⁶⁸

4.52 In December 2011, the British Home Office released a Discussion Paper seeking views on whether a specific criminal offence would help combat forced marriage and, if so, how the offence should be formulated.⁶⁹ The closing date for responses to that inquiry was 30 March 2012 and, on 8 June 2012,

65 Foreign & Commonwealth Office and Home Office, *Forced Marriage: A wrong not a right, Summary of responses to the consultation on the criminalisation of forced marriage*, 7 June 2006, p. 11, available at: <http://www.scotland.gov.uk/Resource/Doc/1137/0079812.pdf> (accessed 15 June 2012).

66 UK Government, Forced Marriage Unit, *The Right to Choose: Multi-agency statutory guidance for dealing with forced marriage*, January 2010, p. 5.

67 UK House of Commons, Home Affairs Select Committee, *Eighth Report of Session 2010-2012 on Forced Marriage*, May 2011, para 12.

68 UK Government, *The Government's response to the Eighth Report from the Home Affairs Committee, Session 2012-12 HC 880*, p. 3, available at: <http://www.official-documents.gov.uk/document/cm81/8151/8151.pdf> (accessed 15 June 2012).

69 UK Government, Home Office, *Forced Marriage Consultation*, December 2011, p. 4. The consultation also covers the issue of how the Government might approach the criminalisation of breaches of the *Forced Marriage (Civil Protection) Act 2007* (UK).

UK Prime Minister David Cameron announced the outcome of the consultation process: namely, that forcing someone to marry will become a criminal offence in England and Wales.⁷⁰

4.53 The committee notes, in this context, the response to the Home Office's inquiry from the Ashiana Network, the only dedicated refuge network for British victims of forced marriages:

In our consultation with residents across our three refuges (two specifically for women at risk of forced marriage) all 20 women responded. 7 out of 20 women said that criminalisation may help in raising the issue with communities and therefore may deter families from engaging in this practice. Further exploration of this indicated that this perception is misguided as there is an assumption that this will act as a deterrent and their parents would not go ahead with it. This may in fact put the woman at greater risk, as she feels a false sense of security and fails to take any protective measures e.g. failing to tell someone about the possibility, not contacting agencies, not having a safety plan.

19 of the 20 said that if forced marriage were to be a criminal offence they would not report it. They cited feelings of guilt, not wanting to see parents going through the courts or imprisoned, being ostracised from the family/community, being disowned from the family, fear of reprisals, that they still loved their parents and would not be able to deal with the emotional heartache. Women were also more inclined to say that rather than go through a prosecution, they would get married and later seek divorce. This is worrying, as women may be vulnerable to other abuses, including rape.⁷¹

4.54 Submitters and witnesses to the current inquiry did not refer to developments in the United Kingdom, apart from a brief reference in the Department's submission.⁷²

Proposed legislation on slavery and people trafficking

4.55 On 30 May 2012, the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012 (bill) was introduced into the House of Representatives by the Attorney-General.⁷³

70 PM David Cameron, *Forced Marriage to become a criminal offence*, Number 10 Downing Street Press Release, 8 June 2012, available at: <http://www.number10.gov.uk/news/forced-marriage-to-become-criminal-offence/> (accessed 15 June 2012).

71 Ashiana Network, *Response to Forced Marriage Consultation*, March 2012, pp 9-10 (emphasis in the original), available at: <http://www.ashiana.org.uk/attachments/article/5/Ashiana%20Network%20Response%20to%20Forced%20Marriage%20Consultation%202012.pdf> (accessed 15 June 2012).

72 *Submission 2*, p. 29.

73 House of Representatives, *Votes and Proceedings*, No. 111- 30 May 2012, p. 1521.

4.56 The bill proposes to better combat slavery and people trafficking by capturing and criminalising a broad range of exploitative behaviour.⁷⁴ Some of the proposed amendments include amending the *Criminal Code Act 1995* to: legally define the meaning of forced marriage (proposed new section 270.7A); create two new offences of forced marriage (proposed new section 270.7B); and broaden the definition of 'exploitation' (proposed new section 271.1A).

4.57 As explained by the AIC in its submission, marriage is related to people trafficking and slavery in two ways:

First, marriage can be used as a way of recruiting a person into a situation of serious exploitation, using deception and/or coercion as the means of achieving this (i.e. fraudulent or sham marriages). Second, 'servile marriage' is itself recognised in international law as a 'practice similar to slavery' under the United Nations' *Supplementary convention on the abolition of slavery, the slave trade, and institutions and practices similar to slavery*.⁷⁵

4.58 According to a representative from the Attorney-General's Department, the results of consultation on an exposure draft of the bill were 'overwhelmingly supportive' of the criminalisation of forced marriage.⁷⁶

4.59 A Department of Immigration and Citizenship representative advised:

[T]he [D]epartment has genuine concern regarding forced marriage practices and the consequences for victims of forced marriage. We therefore welcome the recent announcement by the Attorney-General on the criminalisation of forced marriage[.]⁷⁷

4.60 However, in evidence to the committee, Mr Bill Gerogiannis from NSW Legal Aid did not agree with the introduction of a criminal offence in this area:

...the annexure to our submission included the National Legal Aid discussion paper on forced and servile marriages...The sorts of issues that were addressed there were non-legal avenues such as greater community legal education and greater access for women, in particular, who are having difficulties in this area and should be supported. [In] that submission, under the heading 'Non-Legislative Measures', we think that those sorts of measures that are mentioned in that earlier National Legal Aid submission ought to be looked at. Also in the National Legal Aid submission there was concern about further criminalising these areas. National Legal Aid's

74 Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012, Explanatory Memorandum, p. 1.

75 *Submission 5*, p. 5.

76 Ms Sarah Chidgey, Attorney-General's Department, *Committee Hansard*, 25 May 2012, p. 23. The committee notes that the responses to the consultation process were not published.

77 Dr Wendy Southern PSM, Department of Immigration and Citizenship, *Committee Hansard*, 25 May 2012, p. 18.

position, which we support, is that the introduction of new criminal offences should again be resisted.⁷⁸

4.61 Other submitters and witnesses did not comment specifically on this proposed legislation. However, in answer to a question on notice, CATWA expressed its support for the bill.⁷⁹

Research, education and support measures

4.62 The committee heard from a number of submitters and witnesses that addressing forced marriage in Australia will require a broad response. The Department's view was that it might be necessary to adopt a wider focus than the Prospective Marriage visa program because:

- forced marriage could be present across Australia's Migration Program;
- forced marriage could also occur where an Australian party is made to travel overseas for the purpose of entering into a marriage; and
- victims of forced marriage would require support that goes well beyond the Department's portfolio responsibilities.⁸⁰

4.63 In general, submitters and witnesses agreed that there is a need for further research, education and support for prospective or actual victims of forced marriage in Australia.

Need for further research

4.64 At the public hearing, CATWA referred to the United Kingdom's Forced Marriage Working Group (Working Group).⁸¹ The Working Group was appointed in August 1999 to determine the extent of forced marriages in the United Kingdom,⁸² and its recommendations ultimately led to the establishment of the FMU.

4.65 Ms Kaye Quek advised that CATWA would support the establishment of a similar working group aimed at providing quantitative and qualitative research into the extent of forced marriage in Australia:

We would like to see this type of quantitative and qualitative research conducted where [women's shelters and refuges] are asked to give evidence of their experience of forced marriage and then, based on that, expanding it

78 *Committee Hansard*, 25 May 2012, p. 14. Also see NSW Legal Aid, *Submission 7*, Attachment, p. 6.

79 Answer to question on notice, received 31 May 2012, p. 4.

80 *Submission 2*, p. 29.

81 Ms Kaye Quek, Coalition Against Trafficking in Women Australia, *Committee Hansard*, 25 May 2012, p. 3.

82 UK Home Office, Report of the working group on forced marriage, *A choice by right*, June 2000, pp 11 and 28.

out to schools and religious organisations to begin to put together a mapping exercise of where the practice is occurring. That would be a good first step in terms of getting some hard evidence.⁸³

4.66 The AIC advised that its current research program began four years ago when it perceived a need to further investigate the role of marriage in people trafficking. The program is one in a series of projects exploring a wide range of elements of human trafficking into Australia. The committee understands that, as at 2011, the research is funded by an ongoing appropriation and, in future, the AIC intends to further examine the connection between marriage and people trafficking in Australia.⁸⁴

4.67 With reference to CATWA's call for further research, Dr Tomison told the committee:

...it reminds me a bit of the consciousness-raising era of the seventies around sexual assault and domestic violence against women in Australia and other Western countries. It started slowly and it built. We learned a lot more over the last 30 years around what happens in terms of violence towards women, children and others in this society...

In my view, human trafficking research in this country is in a similar infancy stage and we will be looking at doing more work to actually expand on what we do not know and improving our knowledge over the next few years. A number of agencies are starting to explore this issue...I do not think that human trafficking and the issue of human trafficking for Australia will ever rival the nature of community based violence that we have in this country. But it is an important issue, and if people are being exploited and trafficked into this country we need to make sure we are on top of it and that we know as much as we can about it.⁸⁵

Education and support measures

4.68 In a personal submission, Ms Emma Davidson argued that the community, public servants, teachers and health care professionals all need to be better educated on the distinction between an arranged marriage and a forced marriage. Further:

We also need to know what to do if someone does talk about being in a forced marriage – who can they be referred to for support that best meets their needs?⁸⁶

83 *Committee Hansard*, 25 May 2012, p. 6.

84 Dr Adam Tomison and Ms Laura Beacroft, Australian Institute of Criminology, *Committee Hansard*, 25 May 2012, pp 7, 10 and 11-12.

85 *Committee Hansard*, 25 May 2012, p. 11.

86 *Submission 8*, p. 2.

4.69 Dr Tomison from the AIC agreed:

With regard to help-seeking behaviour, both mainstream and migrant community centres play a critical role in assisting women to leave exploitative or violent situations. It is these less formal sources that often provide a first point of contact for seeking help. The women in our study did not seek formal help from the police or through immigration channels, but they reached out to people in the community. How the community responds is therefore really important.⁸⁷

4.70 NSW Legal Aid and CATWA emphasised the importance of providing information to migrants and the community more generally, to assist in the understanding of what constitutes a forced marriage, the rights of victims, and available services to assist in cases of family violence or sexual assault. For example, Ms Quek from CATWA noted:

Legislation was brought in in America in the mid-2000s to try to target the international marriage broker or mail order bride industry which provided women who entered the country through such fiancée visas with basically an information pack explaining to them that domestic violence is illegal in the United States, with access to refuges, telephone numbers and those types of things.⁸⁸

4.71 CATWA also submitted that, in its view, the way in which the FMU in the United Kingdom has addressed, or sought to address, the issue of forced marriage exemplifies best practice:

Through the FMU, information and guidance is provided to individual victims, professional, voluntary and statutory agencies, and schools about the problem of forced marriage...In addition, the FMU itself provides examples of what it considers best practice in relation to forced marriage. These include measures such as the establishing of dedicated regional helplines to provide advice to victims of the practice, and the appointing of specially trained police officers to schools to educate and raise awareness amongst teachers and students of the problem of forced marriage.⁸⁹

87 *Committee Hansard*, 25 May 2012, p. 8. Also see Ms Laura Beacroft, Australian Institute of Criminology, *Committee Hansard*, 25 May 2012, p. 10.

88 *Committee Hansard*, 25 May 2012, p. 4. Also see NSW Legal Aid, *Submission 7*, p. 5.

89 Answer to question on notice, received 31 May 2012, pp 4-5.

