



**CATWA Submission to the Senate Inquiry (Legal  
and Constitutional Affairs Committees) on marriage  
visa classes.**

**February 2012**

**Coalition Against Trafficking in Women Australia**  
**[www.catwa.org.au](http://www.catwa.org.au)**

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## **Who are we?**

The Coalition Against Trafficking in Women Australia (CATWA) is the Australian branch of CATW International, a Non Governmental Organisation that has Category II consultative status with the United Nations Economic and Social Council. It works locally and internationally to end all forms of sexual exploitation of women, especially in relation to issues of prostitution and trafficking in women.

One member of CATWA's executive committee, Kaye Quek, is currently conducting PhD research on the issue of forced/arranged marriage in Western, multicultural societies like Australia. CATWA's founding member, Professor Sheila Jeffreys, has also written and published on practices of forced and servile marriage. CATWA therefore has particular knowledge and expertise in this area.

## **Our Position**

CATWA is concerned that the Australian marriage visa program is being used to enable harmful types of marriage, such as forced marriage, to occur in Australia. This amounts to a form of trafficking in women, and is being aided by the Commonwealth Government through a lack of meaningful oversight.

## **Key Recommendations**

CATWA recommends several measures to assist the Government in both the detection and deterrence of such marriages, and to better protect victims. These include:

- Raising the minimum age at which Prospective Marriage visas can be granted to 18 years old
- Interviews for all women entering Australia through such visas, separate from their sponsor, and in particular, for women under the age of 18
- Research into the problem of trafficking for marriage in Australia
- A review of the criteria used to assess proof of a genuine relationship, prior to the granting of Prospective Spouse visas
- Recognition of women who have been brought to Australia for forced marriages as victims of trafficking in persons, and not as illegal immigrants

- In suspected cases of forced marriage, the provision of alternative options (such as, access to refuges) so that victims are aware that they do not have to go through with the marriage
- Specialist training for immigration officers, to improve their capacity to detect forced marriages, and other harmful marriage practices
- A Commonwealth Government public commitment to a whole-of-government, co-ordinated policy response to the problem of marriage trafficking

## **Submission Outline**

This submission is divided into two parts. Part I outlines, from a human rights perspective, why there is an urgent need for the Commonwealth Government to review the current Prospective Marriage visa program, and its potential to facilitate a particular type of trafficking in women. Part II of the submission provides responses to the terms of the Inquiry outlined by the Senate, in particular, to sections (e), (f), and (g).

## **PART I. Human rights abuse through the use of Prospective Marriage visas**

CATWA believes that there is an urgent need for the Commonwealth Government to undertake an immediate review of the Prospective Marriage visa program. The use of these visas to enable the marriage of young women from overseas to much older Australian men, revealed by the Department of Immigration and Citizenship in November of last year, suggests that trafficking for marriage is occurring in Australia, and is being aided by the Commonwealth Government through a lack of meaningful oversight.

### ***Not just a violation of choice***

CATWA would like to emphasise, in particular, the ongoing and long-term nature of the abuse suffered by women who are trafficked for marriage, as a key reason underpinning the need for an urgent review of government policy in this area. In forced marriage, which is occurring in Australia according to the data released by the Department last year, the abuses of women's human rights are substantial, and go far beyond a violation of choice in selecting one's spouse, which is often thought of as the primary offence of the practice. In addition to this denial of choice, victims of forced marriage can be subjected to many other human rights abuses, including: rape, forced pregnancy, lack of control of the number and spacing of children, interruption to or denial of education, physical violence and beatings, kidnapping or imprisonment (sometimes abroad), murder, lack of freedom of sexuality (if a victim is gay or lesbian), and psychological stress which can result in threatened suicide, mental breakdowns, eating disorders and self-harm (Ouattara et al 1998; Beckett and Macey 2001; Brandon and Hafez 2008; HAC 2008; Macey 2009 Sanghera 2009). It is, in effect, a practice that condemns its victims to a lifetime of abuse.

### ***Harm beyond the age of 18***

CATWA views as troubling the comments made by the Department of Immigration and Citizenship and the Minister in November 2011 regarding the use of Prospective Marriage visas for the purposes of forced marriage, which sought to emphasise the apparently small number of cases in which such visas were granted to women under the age of 18. This suggests the problem is seen as relatively insignificant (for instance, see Change.org 2011).

It is important to understand that the circumstances faced by women who are trafficked for forced marriage, are often the same whether or not they are above or below the age of 18 years old. Such circumstances can include: women having their passports or travel documents withheld; financial dependence on their husbands; a lack of knowledge of the local language and laws, which hinders women's ability to access authorities or assistance in harmful situations; a precarious legal or immigration status, which renders them vulnerable to threats of deportation and under the control of their husbands; and restrictions on their physical movement, often in combination with physical and sexual violence, in order to ensure their compliance (Brandon and Hafez 2008; HAC 2008, 2011; Huda 2007; Stepnitz 2009). It should also be noted that, in countries such as the United States, rates of abuse in marriages involving US citizens and foreign women are up to three times higher than in the general US population (Tahirih Justice Centre 2007, 2; also see Stepnitz 2009, 24).

CATWA, therefore, calls on the Commonwealth Government to publicly recognise the seriousness of the problem of trafficking for marriage, and to undertake an immediate review of the Prospective Marriage visa program in order to assess its role in facilitating such abuses of women's human rights.

## **PART II. Response to the terms set out by the Senate**

This section of the submission responds to items (e), (f) and (g), of the terms of the Inquiry set out by the Senate.

### **(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.**

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. This was illustrated by the Department's approval of Prospective Marriage visas for girls who, it is now known, were being threatened with death by their families on their reluctance to consent to a family-arranged marriage, and who were being married to men several decades their senior (Murphy 2011; Lauder 2011).

In terms of accounting for why such procedures are insufficient, CATWA is concerned that the primary focus of the Department of Immigration and Citizenship, to detect and prevent fraudulent use of the visa program, does not adequately allow for processes that prioritise the human rights of women. The Department identifies, as first among its key outcomes, 'the lawful and orderly entry and stay of people' in Australia, and ensuring the 'integrity' of its migration programs (DIAC 2011, n.p). It is questionable, therefore, whether this purview allows for procedures that place the human rights of migrant women at the forefront, or whether procedures will be aimed at assessing whether or not an abuse of human rights is taking place. CATWA therefore recommends the involvement of the Minister for the Status of Women in the development of new procedures that are aimed at more suitably integrating concerns regarding the human rights of migrant women. This would ideally suit both the aims of preventing forced marriage and detecting relationships that are not genuine, as any marriage carried out under duress or coercion should not be considered a genuine one.

CATWA would also like to express caution regarding the use of 'consent', by itself, as a measure by which to determine whether or not a forced marriage, or violation of

human rights, has occurred. There is much research to illustrate that although a victim may publicly voice consent to a family-arranged marriage, in many cases, what is actually taking place is a forced marriage, when the various forms of pressure exerted on a victim are taken into account. Women may experience threats of social and financial ostracism, emotional and psychological abuse, physical and sexual violence, and threats to their life, which may be used to achieve their acquiescence to an unwanted marriage (Brandon and Hafez 2008; HAC 2008, 2011; Sanghera 2009).

In such cases, a focus purely on ascertaining the reliability of an applicant's 'consent' to marriage in current procedures is clearly inadequate. Instead, processes need to be developed that go beyond simplistic conceptions of consent, to 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. CATWA is of the view that in suspected cases of forced marriage, in which an applicant publicly voices consent, alternative options (such as, access to refuges and information about their legal rights) must be offered, as a way of assisting women who may otherwise be reluctant to speak out about the abuse they are experiencing.

**(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.**

There are several aspects of current policy and practice relating to the Prospective Marriage visa program that CATWA considers significant in facilitating the occurrence of forced marriages in Australia. Most significantly, CATWA identifies as problematic the failure of the Department of Immigration and Citizenship to interview *all* women under the age of 18 who are being sponsored for such a visa. For women above the age of 18, CATWA remains concerned that interviews are not being conducted in all cases in which the age of the sponsor is substantially higher than that of the applicant. Although the Department is said to conduct interviews in situations that are deemed 'high risk', it is unclear as to whether its framework for assessing risk is concerned with capturing circumstances in which there are potential violations of human rights, as opposed to only detecting cases of fraud. As such, the



current policy to interview only in cases that the Department deems 'high risk', in the absence of a clearly defined human rights framework is deficient.

The criteria used to assess proof of a genuine relationship between the applicant and the sponsor is another area of current policy that may not be suited to detecting the occurrence of forced marriages in Australia. In public comments in November last year, the Department of Immigration and Citizenship asserted that a strict range of criteria is in place to ensure that applicants and sponsors are in a genuine relationship, and that abuse is not occurring (Murphy 2011; Lauder 2011). However, its approval of Prospective Marriage visas for young women, who, for instance, were being threatened with death by their families for refusing to engage in a marriage (Murphy 2011), indicates that such practices are inadequate, and as a result, allowing forced marriages to take place.

Lastly, CATWA is concerned about the requirement that applicants must marry their sponsor within 9 months of being granted a Prospective Marriage visa. This suggests that failure to do so puts at risk an applicant's ability to remain in Australia. This may be contributing to the occurrence of forced marriages in Australia due to the fact that it creates conditions of dependency for women on their prospective spouse. In other Western countries, it has been shown that women's tenuous immigration status in their new country can give rise to conditions ripe for their abuse, and effectively, without options but to consent to what appears likely to be an abusive marriage (Huda 2007; Lindee 2007). Women are often without knowledge of the laws or language of the country to which they have migrated, and in the absence of family and friends, are reliant on their future husbands for the most basic of needs (Belleau 2003; Clark 2004; Vergara 2000).

CATWA is concerned that in circumstances in which there is abuse occurring prior to marriage, the 9 month rule may create for victims, the fear that they have no choice but to proceed with the marriage, or otherwise face deportation. CATWA maintains that in such situations, applicants of the Prospective Marriage visa should be viewed and dealt with by the Commonwealth Government as victims of trafficking in persons, rather than as illegal immigrants, in accordance with Australia's obligations

as a signatory to the 2000 UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

**(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.**

CATWA recommends a number of measures that can be used to strengthen protections against the occurrence of forced marriage in Australia, through the Prospective Marriage visa program.

*(i). Raising the minimum age at which Prospective Marriage visas can be granted to 18.*

CATWA recommends raising the minimum age at which a Prospective Marriage visa can be granted to 18 years old. Although the Minister for Immigration and Citizenship has sought to point out that applicants of such visas must be 18 years old before their marriage can take place (see Change.org 2011), raising 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. In the UK, raising the age at which similar visas can be granted has, in some cases, been identified as preventing forced marriages from occurring. In a 2011 report produced by the House of Commons Home Affairs Committee, it was found that raising the age requirement for such visas afforded some victims ‘breathing space’, and therefore, may ‘better equip victims to refuse an unwanted marriage’ (HAC 2011, 8-9). There is thus a strong case for increasing the age at which a Prospective Marriage visa can be granted to an applicant, from 17 years to 18 years old.

*(ii). Interviews for all women entering Australia through such visas, separate from their sponsor, and in particular, for women under the age of 18; and in suspected cases of forced marriage, the provision of alternative options (such as, access to refuges) so that victims are aware that they do not have to go through with the marriage.*

CATWA believes that undertaking interviews with all women entering Australia through a Prospective Marriage visa, and in particular those under the age of 18, conducted separately from their family and sponsor, is fundamental and a necessary measure to prevent and protect women against the occurrence of forced marriage in Australia through the marriage visa program. In many cases, women who are faced with forced marriage feel unable to speak out in front of their families or prospective spouse, due to the concern that to do so may result in their social and financial ostracism, emotional and psychological abuse, physical and sexual violence, or even threats to their life (Brandon and Hafez 2008; HAC 2008, 2011; Sanghera 2009).

In these contexts, the provision of a separate interview for female applicants, apart from their sponsor and other family members, is critical, because it provides victims with the opportunity to notify authorities of any abuse that may be taking place or of any threats that have been made against them. In suspected cases of forced marriage, CATWA maintains that it is the responsibility of the Government to make known to victims alternatives other than going through with the marriage, such as access to women's refuges and legal assistance, that may empower victims to speak out about abuse or force. CATWA urges the Department of Immigration and Citizenship to review its existing processes to ensure that its assessment of 'risk' more fully takes into account the potential for such violations of women's human rights.

A related concern is the matter of interpreters, and other professionals, that may be involved in uncovering and assisting victims of forced marriage. In the UK context, there have been cases in which professionals involved in dealing with cases of forced marriage have (sometimes inadvertently) informed a victim's family of their intention to escape or leave a marriage (HAC 2011; Sanghera 2009). This can cause great harm to victims, and may place them in physical danger, and as such, CATWA urges the Department of Immigration and Citizenship to review its policies to ensure that the safety of victims is at the forefront of concern.

*(iii). Training for immigration officers, to improve their capacity to detect forced marriages, or other harmful marriage practices; and a review of the criteria used to assess proof of a genuine relationship, prior to the granting of Prospective Spouse visas.*

On the basis of the information that was made available to the media in November 2011, 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. It is also clear that the existing criteria used to assess proof of a genuine relationship between an applicant and a sponsor, is inadequate and is allowing some cases of forced marriage to occur in Australia. CATWA recommends that such training be developed, and reviews conducted, in accordance with advice from such government agencies as the Forced Marriage Unit, and organisations such as Karma Nirvana, both in the UK, where forced marriage has been the subject of public policy and debate for more than a decade (see HAC 2008, 2011).

*(iv). Research into the problem of trafficking for marriage in Australia.*

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 (Harris 2005). 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 (Schloenhardt 2009). In the UK and Western Europe, there is an increasing recognition of the problem of trafficking for marriage and consequently increasing funding for research (for example, Kazimirski et al 2009; Samad and Eade 2002). CATWA, therefore, urges the Commonwealth Government to provide funding for new research into the problem of marriage trafficking in Australia.

*(v). A Commonwealth Government public commitment to a whole-of-government, co-ordinated policy response to the problem of marriage trafficking.*

The Commonwealth Government has expressed commitment to a ‘whole-of-government’ approach to trafficking (Attorney-General’s Department 2012), and the Commonwealth Attorney General has proposed an amendment to the Crimes Act to

include forced marriage within trafficking provisions. CATWA recommends the Government appoint a special advisor on trafficking (including forced marriage) similar to the position held by the current Ambassador for People Smuggling Issues for Australia. CATWA suggests this person could be responsible for liaising with government agencies on the issue, as well as reporting on Australia's progress in stopping trafficking over the course of each year. There is a need for whole-of-government accountability for reducing trafficking rates, and increasing convictions for the crime.

CATWA believes that an Ambassador should be appointed to take charge in coordinating government departments and agencies to respond to this issue. Forced marriage would be usefully included in the portfolio of the Ambassador, given its central concern for migrant agencies and organisations in Australia. The issue has the potential to mobilise these interested parties, and direct their focus to tackling the problem of trafficking from the perspective of migrant communities and the need to protect the human rights of community members, as per the Government's policy on multiculturalism, announced in 2011 (DIAC 2011a).

### **Conclusion**

CATWA believes that far greater recognition of the various forms and degrees of coercion involved in forced marriage, and of the long-term harms that these involve for women, must take place if Australia is to meaningfully combat the practice, and its occurrence through the Prospective Marriage visa program. This must be integrated into the training of immigration officers and other professionals working in the area, and in existing procedures and policies relating to the processing of such visas, in order for Australia to fulfil its obligations as a signatory to the 2000 UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

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