Australian Government
Department of Immigration and Citizenship

Submission to the Legal and Constitutional Affairs Committee

Prospective Marriage Visas and Forced Marriage

people our business

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Executive Summary

The Prospective Marriage visa is a nine month temporary visa which allows the intended spouse of an Australia citizen, permanent resident or eligible New Zealand citizen to travel to Australia ahead of the couple's wedding.

It is expected that, after marrying, the holder of a Prospective Marriage visa will apply for permanent residence through the two-stage Partner visa process. In this way, the Prospective Marriage visa can be considered a first step to permanent residence and so grants in this category are counted in the Australian Government's annual Migration Program. Prospective Marriage visas comprise around four per cent of the Migration Program.

In order to be granted a Prospective Marriage the applicant must meet a number of criteria which are specified in the *Migration Regulations 1994*. These criteria include that the intended marriage must be lawful in Australia and that both parties to the relationship must have a genuine intent to live together as spouses. The same requirements apply to all marriages whether or not they are arranged.

The Department of Immigration and Citizenship has a number of measures in place to ensure the integrity of the Prospective Marriage visa program. These include risk matrices, document verification, interviews and home visits which can assist in assessing the genuineness of an application.

Around nine per cent of Prospective Marriage visa applications are refused. While this refusal rate covers all visa criteria a common reason for refusal is that the decision maker is not satisfied about the genuineness of the relationship. Once granted a Prospective Marriage visa, most applicants go on to be granted a temporary and then permanent Partner visa on the basis that the relationship with their spouse is genuine and continuing.

A defining feature of forced marriage is the absence of real consent from one of the parties. Such a marriage would not be valid under Australian law and would not be eligible for a Prospective Marriage visa. There are, however, challenges in identifying and responding to cases of forced marriage. Primarily these challenges stem from the fact that the coercion which characterises a forced marriage will in most circumstances also deter victims from reporting their situation to immigration or other officials.

While there is some anecdotal evidence of cases of forced marriage in Australia, there is insufficient information for the Department to make definitive statements about the scale of the problem either generally or in an immigration context. Based on the number of cases where concerns are raised, however, the Department's sense is that the number of cases is small.

Executive Summary

There are two parts to the Department's submission. The first provides some additional information about the Prospective Marriage visa. This includes discussion of the eligibility criteria for a Prospective Marriage visa, the relationship between Partner and Prospective Marriage visas and the way in which Prospective Marriage visas reflect Australian marriage law.

The second part then addresses the Committee's terms of reference. This part includes more detailed information about the way Prospective Marriage visa applications are assessed, the program integrity measures that are in place, possible measures of program integrity and some further discussion of arranged and forced marriages.

A detailed statistics pack is also attached to the submission.

The Department is grateful for the opportunity to provide this submission and trusts that it will assist the Committee with its inquiry. The Department would be happy to elaborate further on the contents of this submission at a hearing.

Part 1 – An introduction to Prospective Marriage visas

Prospective Marriage visas comprise four per cent of the annual Migration Program. Table A depicts where the Prospective Marriage visa program fits into the Partner category, Family Stream and the Migration Program as a whole[1].

Table A: Prospective Marriage visas and the total Migration Program

	2006-07	2007-08	2008-09	2009-10	2010-11	2011-31/12/2011	2006-31/12/2011
Prospective Marriage	**6309**	**5932**	**6354**	**6257**	**5926**	**3247**	**34 025**
Partner	40 435	39 931	42 098	44 755	41 994	23 041	232 254
Total Family	50 079	49 870	56 366	60 254	54 550	27 732	298 851
Total Skilled	97 922	108 540	114 777	107 868	113 850	63 788	606 745
Special eligibility	199	220	175	501	300	269	1664
Total Program	**148 200**	**158 630**	**171 318**	**168 623**	**168 700**	**91 789**	**907 260**

Between 1 July 2006 and 30 June 2011, 232 254 Partner category visas were granted. Partner category visas comprised 25 per cent of the total Migration Program during this period. Of the 232 254 Partner visas granted, 34 025 were Prospective Marriage visas, representing:

- 15 per cent of the Partner category;
- 11 per cent of the Family Stream; and
- 4 per cent of the total Migration Program.

[1] Unless otherwise specified, all statistics refer to principal applicants only. Statistics do not include any dependent family members of the principal applicant.

Part 1 – An introduction to Prospective Marriage visas

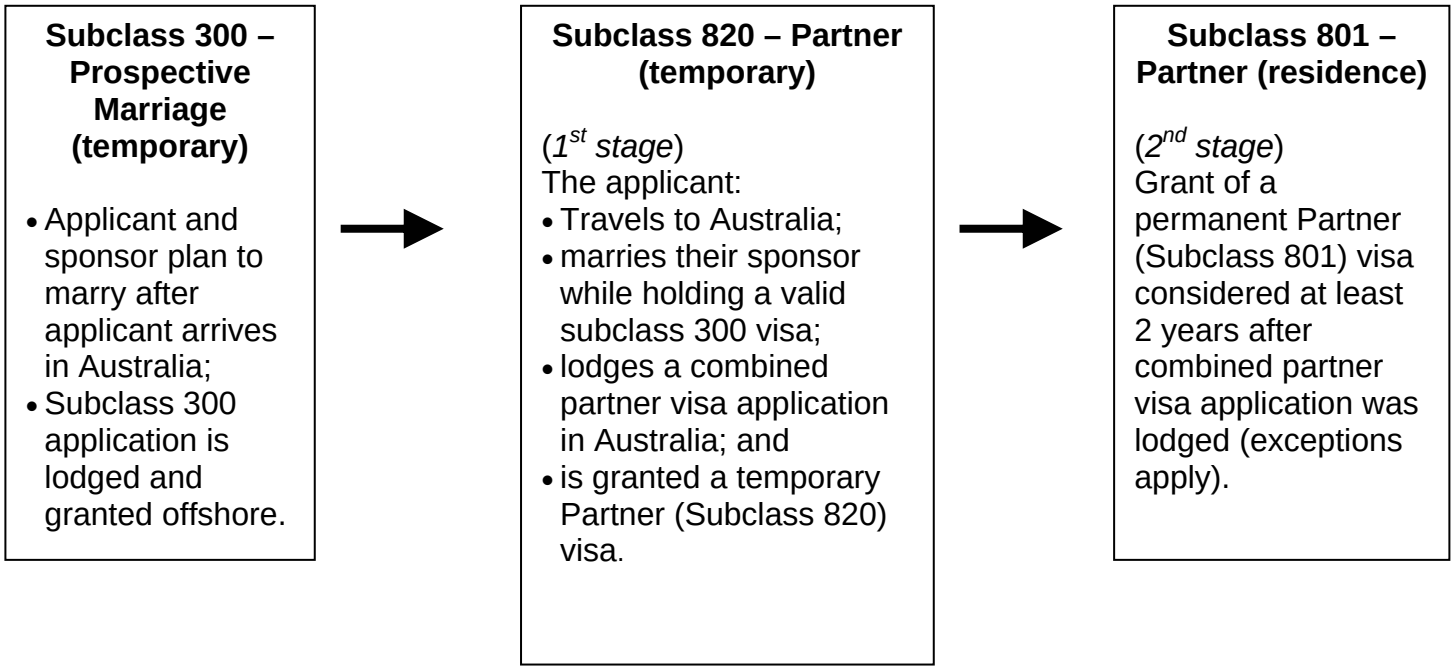
The Partner Category

The Partner category comprises the Prospective Marriage visa and both onshore & offshore Partner visas:

- Prospective Marriage (Subclass 300) visa;
- Onshore Partner migration:
  - Temporary Partner (Subclass 820) visa;
  - Permanent Partner (Subclass 801) visa;
- Offshore Partner migration:
  - Temporary Partner (Subclass 309) visa; and
  - Permanent Partner (Subclass 100) visa.

Prospective Marriage visas

The diagram below depicts the three stage Prospective Marriage visa application process which allows applicants to proceed along an Immigration pathway to permanent residency.



The Prospective Marriage (Subclass 300) visa allows Australian sponsors to sponsor their fiancé/e in migration to Australia. The Prospective Marriage visa is valid for nine months from the date of grant and is available to persons who intend to marry their Australian sponsor after they enter Australia.

Part 1 – An introduction to Prospective Marriage visas

The couple do not necessarily need to marry in Australia. However, the applicant *must* make first entry into Australia as the holder of a Prospective Marriage visa before marrying their sponsor.

Prospective Marriage visa applications must be lodged and decided outside Australia, usually in the applicant's country or region of residence. There is no provision for Prospective Marriage visa applications to be lodged or assessed in Australia.

Applicants and sponsors must be:

- 18 years of age or able to show that they will be 18 at the date of intended marriage, or have an Australian court order authorising the marriage;
- of the opposite sex to each other;
- known to each other personally and have met in person (as adults);
- in a genuine and mutually exclusive relationship;
- free to marry;
- genuine in their intent to marry and live together as husband and wife; and
- intending to enter into a marriage that is recognised under Australian law (the *Marriage Act 1961*).

The Department's policy is that the applicant and sponsor must have met as adults. The Migration Regulations, however, only require that they have met, and as a result the Migration Review Tribunal (MRT) will remit some cases where the couple claims to have met as children.

In addition, Prospective Marriage visa applicants must meet certain health and character requirements.

The relationship between applicants and sponsors is assessed via a range of measures including:

- requirement to provide evidence in support of their claims;
- scrutiny of evidence provided, including document verification and home visits;
- joint and/or separate interviews with sponsors and applicants;
- country/culture specific risk matrices developed by individual Posts to assist with visa application risk assessment.

In addition and as far as practicable, migration regulations require that the couple will live together as spouses with regard to the following four components:

- financial aspects;
- nature of the household;
- social context of the relationship; and
- nature of couple's commitment to each other.

If all criteria are met, the applicant is granted a Prospective Marriage visa which will be valid for 9 months from the date of grant, during which time the holder must travel to Australia, marry their sponsor and apply for a Partner visa in Australia.

If all criteria are *not* met, the application will be refused. The sponsor is able to lodge an appeal with the MRT for review of the Department's decision.

Once the applicant has arrived in Australia, it is expected that they will marry their sponsor and lodge, while they still hold a valid Prospective Marriage visa, a combined Partner visa (Subclass 820/801) application in Australia**.**

Former Prospective Marriage visa holders who lodge a combined Partner visa application after their Prospective Marriage visa has ceased will need to pay a higher visa application charge (VAC), and will not be able to apply for a Bridging Visa B (BVB) to travel overseas during the processing of their Temporary Partner visa.

Partner visas

Unlike the Prospective Marriage visa, Partner visa applications may be lodged in or outside Australia. The Partner visa program is a two stage process that allows spouses and de facto partners of Australian sponsors to migrate to or remain in Australia permanently.

Partner visa applicants lodge a combined application, on the one form, for both the temporary and permanent Partner visas, with the permanent visa application usually being considered at least two years after the initial lodgement date of the combined application. This two stage process allows the Department to test the partner relationship at different points in time to ensure a greater level of integrity and discourage abuse of the Partner visa provisions.

To be eligible for a Partner visa, the applicant and sponsor must demonstrate that they:

- have a genuine and continuing relationship;
- have a mutual commitment to a shared life to the exclusion of all others;
- are living together or not living separately and apart on a permanent basis (that is, any separation is only temporary); and
- are married and the marriage is valid under Australian law (the *Marriage Act 1961*); or
- have been in a de facto relationship for at least 12 months at the time of application or have registered their relationship under a state or territory scheme; and
- meet health and character requirements.

Once all criteria have been met, the first of the two stage process leads to grant of a temporary Partner visa (Subclass 309 for offshore applicants and 820 for applicants in Australia). This visa allows the holder to:

- travel to and from Australia (without limit);
- work in Australia;
- participate, where eligible, in the Adult Migrant English Program for free;
- receive certain social security benefits (determined by the relevant Government agencies); and
- enrol in Medicare;

until second stage processing when a decision is made on the permanent visa application.

Consideration for second stage processing and decision may occur at the same time as the temporary visa application if the couple has been in a long term relationship. A long term relationship is one which has existed for, at time of the combined application lodgement, at least three years or two years if there is child of that relationship.

Where couples reach the three year point in their relationship, or have a child, after the application is lodged, they will need to wait the full two years for the permanent visa application to be decided.
Generally, grant of the permanent Partner visa at second stage is dependent on the couple demonstrating that they have continued to be in a genuine relationship two years after lodgement of the combined visa application; however some exceptions apply. These include where the sponsor has died, the applicant has suffered family violence at the hands of the sponsor or the applicant has custody, joint custody of or access to a child with the sponsor.

Eligibility criteria for Partner visa category

To be eligible for a Prospective Marriage visa, an applicant must:

- be sponsored;
- be of Australian marriageable age or have a court order;
- be of opposite sex to intended spouse;
- have met intended spouse (even if marriage is arranged), meeting must have occurred in person and as adults;
- have no impediment to marry intended spouse;
- have genuine intention to marry intended spouse;
- have genuine intention to live as husband and wife; and
- meet health and character requirements.

Part 1 – An introduction to Prospective Marriage visas

To be eligible for a temporary Partner visa, an applicant must:

- be sponsored;
- be either opposite or same sex as spouse;
- be of Australian marriageable age or have a court order;
- be in a genuine and continuing relationship with their spouse;
- have a mutual commitment to a shared life to the exclusion of all others;
- be living together or not living separately and apart on a permanent basis (that is, any separation is only temporary);
- be married to the spouse, in a marriage that is recognised by Australian law; or
- be in a de facto relationship which is continuing for at least 12 months preceding the application lodgement, or registered under a state or territory scheme;
- meet health and character requirements; and
- be onshore, for a Subclass 820, or offshore, for a Subclass 309, at the time of application lodgement and visa grant.

To be eligible to sponsor for a Prospective Marriage or Partner visa, a sponsor must:

- be an Australian Citizen, Permanent Resident or eligible New Zealand Citizen;
- be 18 years of age, where the Australian party is under 18 years of age the sponsor can only be their parent or guardian;
- be the original sponsor for Prospective Marriage visa holders (where relevant);
- not have been granted a woman at risk visa within the 5 years preceding application lodgement, where the applicant is their former partner;
- not have sponsored more than one other person as their spouse, de facto partner or prospective spouse, unless compelling or compassionate circumstances exist;
- where they have sponsored one other person as their spouse, de facto partner or prospective spouse, not less than 5 years have passed since making the application for the previous sponsorship, unless compelling or compassionate circumstances exist; and
- not have been sponsored as a Partner or Prospective Spouse themselves in the past 5 years.

Australian Marriage Law and Prospective Marriage Visas

In order for a Prospective marriage visa to be granted, the intended marriage must always be lawful in Australia.

The Prospective Marriage visa can only be granted to a primary applicant aged under 18 years in two circumstances:

- the visa applicant will turn 18 within the 9 month visa validity and before the date of the intended marriage; or
- an Australian court has authorised the marriage.

Part 1 – An introduction to Prospective Marriage visas

It is important to note that the Migration Regulations for Prospective Marriage visa applicants mirror Australian law, i.e. in Australia, a 17 year old can lodge a notice of intent to marry, as can a Prospective Marriage visa applicant.

Age gaps – A comparison

Looking at marriage practices in Australia we can note several similarities in the distribution of age gaps of couples where both parties are Australian, compared with where one party is a migrant or even both parties are migrants.

Table B depicts Household, Income and Labour Dynamics in Australia Survey (HILDA) data from 2001-2009 in relation to the distribution of age gaps of couples as a percentage of the all people who were married during that period. Table C depicts HILDA data in relation to the overall mean of age gaps between couples during the same period.

Table B: Distribution of ager gaps of couples

Distribution of age gaps (%)	Aust couple	One migrant	Both migrants
Female older than male	17.1	18.0	17.5
Same age	13.5	12.6	10.8
Male older than female			
1-3 years	39.8	37.6	32.3
4-6 years	18.6	18.8	18.6
7-10 years	7.8	8.4	11.9
11 years up	3.3	4.7	9.0
Total	100.0	100.0	100.0

Table C: Mean of age gaps

Mean of age gaps (years)	
Australian couple	2.2
One migrant	2.5
Both migrants	3.2

The HILDA data refers to the Australian community in general, rather than the Prospective Marriage visa caseload specifically. Attachment A includes statistics in relation to age gaps that is specific to the Prospective Marriage visa category.

Over the past five years, 3.6% of Prospective Marriage visa holders were 19 years of age or under, with the majority of these being females. This compares with 2.3% of all females getting married in Australia in 2007 (the latest year for which Australian Bureau of Statistics data is available) being 19 years of age or under.

The Household, Income and Labour Dynamics in Australia Survey (HILDA) data from 2001-2009 reveals, in 4.7% of marriages which occurred in Australia between an Australian party and a migrant, men were more than 10 years older than their partner. This compares with 3.3% for marriages where both parties were Australian, indicating that this age gap is not solely represented by cross cultural marriages and occurs at a rate not significantly greater than that within the Australian context. However, there is a notable difference where there is an age gap of 11 years or more. This is believed to be representative of certain cultures where large age gaps are a cultural norm.

Similarly, HILDA data shows that where a couple was made up of one Australian and one migrant, 18% of women were older than their male partner, compared with 17.1% where both parties were Australian.

The evidence above goes to discredit claims that partner migration is facilitating the entry of child brides to Australia by older men on a large scale. The true picture is much more nuanced and complex with the Partner visa program catering for a range of different relationships.

International approaches to visas for fiancés

Australia is not alone in facilitating the entry of the intended spouses of its citizens and permanent residents.

The requirements for these visas are generally similar:

- the intended marriage must be lawful in the destination country
- the couple must have met
- there is a maximum period in which the parties must marry.

The United Kingdom (UK) does run a visa program for the intended spouses or civil partners of UK residents. The visa is generally valid for 6 months.

The visa applicant and sponsor must show that:

- they are both at least 18 years old on the date when they would arrive in the UK or be given permission to remain;
- they both intend to marry or register a civil partnership within a reasonable time (usually 6 months);
- they both intend to live together permanently as husband and wife or civil partners after they are married or have registered their civil partnership;
- they have met each other;
- the applicant meets the English language and maintenance requirements.

Part 1 – An introduction to Prospective Marriage visas

The United States of America (USA) provides a 3 month temporary visa for applicants who plan to marry their sponsors after arriving in the USA.

Canada provides visas for the spouse, common-law or conjugal partner of Canadian citizens or permanent residents but does not have a distinct program for prospective spouses.

New Zealand provides a 3 month temporary visa for applicants intending to marry through a culturally arranged marriage. There must be no legal impediment to the marriage and it must follow cultural tradition. For marriages which are not arranged along cultural lines, this visa is not an option.

A special visitor visa can be issued to the partners of NZ citizens or permanent residents if they can demonstrate that they are in a genuine and stable relationship.

Part 2 - Terms of Reference

(A) The number of Prospective Marriage (subclass 300) visa applications and grants by post, officer, nationality, age of applicant and sponsor

This section provides some high level statistical information about the Prospective Marriage visa program. A detailed package of statistics addressing this term of reference is provided at Attachment A.

A total of 34 025 Prospective Marriage visas were granted between 1 July 2006 and 31 December 2012. Table D provides the number of grants per year for this period.

Table D: Prospective Marriage Visa Grants by Year

2006-07	2007-08	2008-09	2009-10	2010-11	2011-12 to 31 Dec	**Total**
6309	5932	6354	6257	5926	3247	**34 025**

Prospective Marriage visas are processed at all the Department's offices outside Australia. The caseload is not evenly distributed around the world with 43 per cent of these visa grants occurring in five offices and 65 per cent in 10 offices. Table E sets out the number of Prospective Marriage visa grants across the top ten processing offices.

Table E: Prospective Marriage visa grants by Office

Office	**2006/07**	**2007/08**	**2008/09**	**2009/10**	**2010/11**	**2011/12 to 31 Dec**	**Total**
Manila	725	761	782	805	695	531	4299
Ho Chi Minh City	628	433	510	515	506	326	2918
Shanghai	527	527	619	366	305	181	2525
London	512	419	451	485	393	233	2493
Bangkok	417	404	525	497	435	190	2468
Beirut	445	523	370	362	317	205	2222
Berlin	265	254	235	240	261	112	1367
Moscow	238	213	232	237	273	127	1320
Washington	272	236	210	218	206	158	1300
New Delhi	209	209	219	169	137	92	1035
Total	**4238**	**3979**	**4153**	**3894**	**3528**	**2155**	**21 947**

The grant rate for Prospective Marriage visa applications during the period 1 July 2006 to 31 December 2011 was 87 per cent. Nine percent of applications were refused and four per cent were withdrawn or otherwise finalised.

Part 2 - Terms of Reference

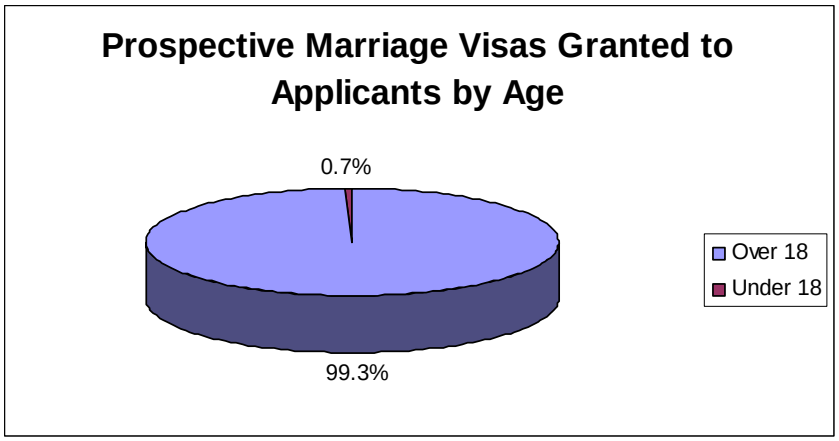
Grants of Prospective Marriage visas to people aged under 18

As outlined in the previous part of this submission, it is possible for someone aged under 18 to be granted a Prospective Marriage visa if their intended marriage will be lawful in Australia. This is usually the case where a 17 year old is applying for a visa in order to be married in Australia after their 18th birthday.

Grant of Prospective Marriage visas to people under 18 years of age was the subject of media reporting in November 2011 and subsequently Parliamentary questions. In addition, typically concern about forced marriage is focused around young people. For these reasons, it is worth considering some statistics about the visa grants to applicants aged under 18.

Between 1 July 2006 and 31 December 2011, 227 Prospective Marriage visas were granted to applicants aged under 18. As shown graphically in chart 1, this represents only a tiny proportion (0.7 per cent) of Prospective Marriage visa grants over the same period. Table F also provides a breakdown of these grants by processing office.

Chart 1:



The grant rate for Prospective Marriage visa applicants aged under 18, 90 per cent, is slightly higher than for the Prospective Marriage visa generally. The rate of refusals for this cohort, eight per cent, is even closer to the rate overall. The remaining two per cent of applicants were withdrawn or otherwise finalised.

Media reports also focused on the age gap between some of these young Prospective Marriage visa applicants and their Australian sponsor. In a very small number of cases there was a significant age gap between applicant and sponsor. In 69 per cent of cases, however, the sponsor is aged between 18 and 29. This is represented in chart 2 below.

Chart 2:

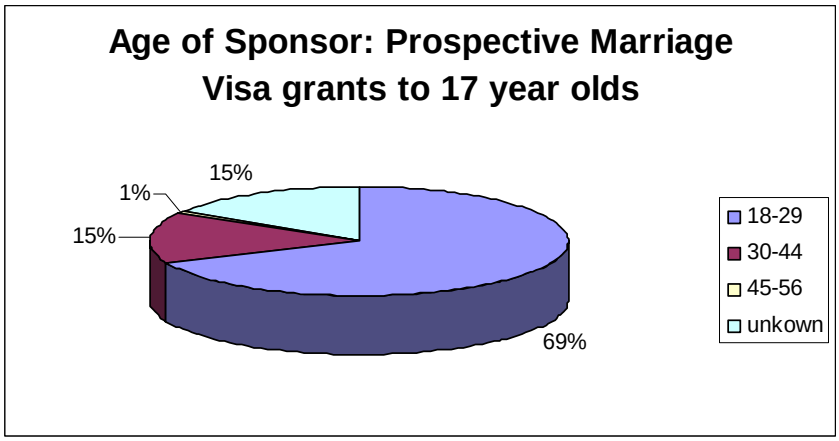


Table F: Prospective Marriage Visa Grants to Applicants Aged Under 18 by office

Name of Post	2006/2007	2007/2008	2008/2009	2009/2010	2010/2011	2011/2012	Grand Total
AMMAN	3	2	2	3	9	6	25
ANKARA	1	2	2	2	5	1	13
ATHENS		3	1	3			7
BANGKOK		1				1	2
BEIRUT	30	24	19	14	21	10	118
BELGRADE	4	8	9	5	4		30
BERLIN	1				1		2
CAIRO	1	1			1		3
COLOMBO	1		1				2
DUBAI				1	1	1	3
GUANGZHOU				1	1		2
HO CHI MINH CITY	1			1			2
ISLAMABAD	2		1				3
KUALA LUMPUR						1	1
MOSCOW	1			1	1		3
NAIROBI	1						1
NEW DELHI		1					1
PHNOM PENH			1				1
SHANGHAI	1						1
SUVA		1		2			3
TEL AVIV	1		2				3
WASHINGTON	1						1
Grand Total	49	43	38	33	44	20	227

Visa Decision Makers

There are approximately 221 decision makers in the overseas environment who make decisions on for Prospective Spouse Visas. The majority of these decision makers are Australian based employees (126) [2], with the remainder being locally engaged employees (95). The split between the numbers of Australian based versus locally engaged decision makers is largely driven by the level of risk a given caseload represents.

Table G sets out this division across the top ten processing officers for Prospective Marriage visas.

Table G: Australian-based and Locally Engaged Decision Makers

TOP 10 POSTS	Australian-based	Locally Engaged	Total
Manila	6	10	16
Ho Chi Minh City	4	2	6
Shanghai	6	3	9
London	5	9	14
Bangkok	8	1	9
Beirut	2	0	2
Berlin	3	7	10
Moscow	3	0	3
Washington	2	4	6
New Delhi	9	2	11
Total	48	38	86
	56%	**44%**	

(B) The risk and incidence of fraud under the Prospective Marriage visa program, including the incidence of cases where prospective marriages did not occur

It is difficult to quantify the level of fraud in the Prospective Marriage visa caseload without reference to individual cases files. This is because information about fraud is recorded on individual files but cannot be aggregated to provide caseload-wide reporting. There are, however, a number of alternative measures which can assist to provide a picture of the level of integrity in the Prospective Marriage visa program.

[2] Figures for Australian-based staff are for the total number of Australian-based staff at post because at any point in time (due to leave, sickness, work travel), an Australian-based officer may be asked to take carriage of this program although not part of their core duties. All Australian-based staff have delegation to make a decision on a Prospective Marriage visa.

Around nine per cent of Prospective Marriage visa applications are refused. This covers refusals against the full range of criteria and the number refused as a result of false or misleading information would be a subset of this figure. A major reason for refusal is that the relationship is not considered genuine but the reasons for this assessment can vary and it can be difficult to identify which refusals should be classified as fraud.

To illustrate this point, a common concern in the Prospective Marriage visa caseload is couples who have met over the internet or while the Australian sponsor was on holiday and become engaged very quickly after first meeting in person. Such cases usually receive close attention and a number will be refused. While some of these cases might represent relationships deliberately contrived to achieve a migration outcome, others may be genuine relationships which have not yet developed sufficiently for the decision maker to be satisfied that the visa criteria were met.

In other cases, there is concern that while the sponsor may be committed to the relationship the applicant may be more interested in a better life in Australia.

Another way of testing integrity is to look at what happens to Prospective Marriage visa holders once they arrive in Australia. Around 7 per cent (2237) of Prospective Marriage visas holders who were granted a visa since 1 July 2006 and whose visa has expired have not gone on to apply for a Temporary Partner visa (subclass 820) in Australia. Six of those 2237 cases involved people who were granted a visa when they were aged under 18.

Failure to apply for the Temporary Partner visa is not necessarily indicative of fraud. Reasons for not proceeding to a temporary Partner visa application could include genuine breakdown of a relationship or a change in the couple's plans about where they wish to live after marriage.

It is also possible to look at the Temporary and Permanent Partner visa application outcomes for former Prospective Marriage visa holders. Table H sets out the outcome of Temporary Partner visa applications and table I provides the outcome for the Permanent Partner visa application.

Table H: Temporary Partner visa (subclass 820) outcomes for Prospective Marriage visa holders

	Year of Prospective Marriage finalisation						
820 Outcome	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	Total[3]
Unfinalised	22	21	22	121	2312	431	2929
Granted	5677	5389	5769	5565	2517	15	**24932**
Refused	72	62	46	23	7		210
801 Direct	6	6	3	1	1		17
Withdrawn/Otherwise finalised	59	32	36	57	51	6	241

[3] These figures do not include the 2237 Prospective Marriage visa holders whose visa has expired and who have not applied for a Partner visa and the 3459 who have not yet applied for a Partner visa but are still within the nine month validity of their Prospective Marriage visa.

Table I: Permanent Partner visa (subclass 801) outcomes for Prospective Marriage visa holders

	Year of Prospective Marriage finalisation						
801 Outcome	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	Total
Unfinalised	42	112	1510	5209	2492	14	9379
Granted	5461	5149	4149	301	18	1	15079
Refused	117	76	67	38	2		300
Withdrawn/Otherwise finalised	57	52	43	17	5		174

These tables show that a very small proportion (less than one per cent) of Temporary Partner visa applications from Prospective Marriage visa holders are refused. The number of applications refused at the permanent stage is greater but still small (approximately two per cent).

Table H also shows that a small number of Prospective Marriage visa holders were granted a Permanent Partner visa without the usual two year waiting period (labelled "801 Direct"). In the context of former Prospective Marriage visa holders this would usually occur if, after the couple had married, the sponsor had died or the relationship had broken down and there was a child of the relationship or the applicant had suffered family violence.[4]

It is also possible for a visa to be cancelled if it is identified, after that visa is granted, that incorrect information or bogus documents were provided with the visa application. No Prospective Marriage visa granted since July 2006 has been cancelled on that basis.

(C) The incidence of Prospective Marriage visa applicants and sponsors who entered into an arranged marriage

Similar to incidence of fraud, because of the way information is recorded in our systems it is difficult to quantify the number of arranged marriages in the Prospective Marriage visa caseload without reference to individual files. Nevertheless, arranged marriages are a feature of normal cultural practice in a number of locations and arranged marriages do feature prominently in the caseload of some of the Department's offices overseas.

Arranged marriage is a significant feature of the caseload for two of the top 10 processing offices for Prospective Marriage visas: Beirut and New Delhi. Between them, these two offices have been responsible for ten per cent (3257) of all Prospective Marriage visas granted in the period 1 July 2006 to 31 December 2011.

More detailed discussion of how applications involving arranged marriages are processed is provided in the following sections.

[4] A permanent Partner visa can also be granted without the two year provisional period in the case of 'long-term' relationships. It is, however, unlikely that this definition would be met in the case of Prospective Marriage visa holders.

(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

How Prospective Marriage visa applications are assessed

The Department's assessment of Prospective Marriage and Partner visa cases is determined by the level of risk that application is deemed to present. Decision makers are usually guided by a risk matrix in determining the level of risk presented by application. These matrices are developed by individual offices taking into account the local environment in which they are operating. The process of developing a risk matrix includes, for example, an understanding of local cultural practices relating to marriage and the formation of partner relationships and push factors which might encourage fraud to achieve a migration outcome.

Typically, Prospective Marriage visa applications are considered higher risk than Partner visa applications. This is because the relationships in the Prospective Marriage visa cohort tend to be less well established.

Other factors which would also cause an application to be considered high risk include:

- the sponsor or the applicant was in a previous relationship which ended shortly before the visa application;
- the couple provide inconsistent information about their relationship;
- the applicant has an adverse immigration history;
- the sponsor has an adverse immigration history; or
- there are significant differences - such as age - between the couple.

An assessment of risk does not alter the legal requirements for grant of a visa but provides the decision maker with suggestions about the level of scrutiny that should be given to information provided by the visa applicant and sponsor. For example, in cases which are assessed as high risk both sponsor and applicant will be interviewed. These interviews allow the genuineness of the relationship, including the consent of the parties, to be tested.

In some overseas posts where there is considered to be a high risk of non-genuine relationships all couples are interviewed. Specifically, the Department's offices in Amman, Belgrade, Beirut, Guangzhou, Hanoi, Phnom Penh, and Shanghai interview all Prospective Marriage visa applicants. In addition, offices in Moscow, Nairobi, Tehran, Tel Aviv and Ho Chi Minh City will interview applicants except in rare or exceptional circumstances.

Part 2 - Terms of Reference

In order to be granted a Prospective Marriage visa, the following information needs to be provided to the decision maker:

- proof of the identity, age and residency status of both applicant and sponsor;
- if the applicant is aged between 16 and 18, proof that the marriage will occur after they turn 18 or a court order authorising the marriage;
- evidence that there is no impediment to the marriage;
- evidence of intent to marry within the visa validity period (9 months).
- satisfactory evidence that the couple has met in person and know each other; and
- written statements from both the applicant and sponsor detailing the history of the relationship and future plans to live as husband and wife.

Proof of the applicant's and sponsor's identity, age and residency status is required for several reasons. These include confirming that both the applicant and sponsor are over 18 or will turn 18 by the time the intended marriage is to take place and that the sponsor is eligible to be a sponsor.

Proof that the marriage will occur after the applicant and sponsor have turned 18, or a court order authorising the marriage is required to ensure the intended marriage will be lawful in Australia.

Evidence of no impediment to marry is required for a similar reason. Such evidence might include copies of divorce or death certificates if either party was married previously.

As a further link to Australian marriage law, where the intended marriage will take place in Australia, confirmation is required that a Notice of Intention to Marry has been lodged. This usually takes the form of a letter from the marriage celebrant, although cases officers can request a certified copy of the notice.

Evidence that the couple has met and know each other can include, for example, photos or evidence of cohabitation, travel or joint activities. This information, together with the written statements from the both applicant and sponsor detailing the history of their relationship and future plans to live as husband and wife, help assess the genuineness of the relationship.

In regard to this requirement the genuineness of the intent of both sponsor and applicant must be considered. The Department's Procedures Advice Manual directs officers to consider, to the extent possible, the definition of a spousal (married) relationship in the Migration Act and Regulations and the associated policy guidelines. This is the same definition which applies to married Partner visa applicants.

In regard to a Prospective Marriage visa application, however, it must be recognised that the level and type of evidence that will be provided is likely to be different to married couples. Similarly, the primary focus for Prospective Marriage visa applicants is on their *intent* to live together as spouses.

Program Integrity Measures

A number of integrity measures exist both in the requirements for grant of a visa and in processing arrangements to minimise potential abuse of the Prospective Marriage Visa program.

Regulation 1.20J provides that sponsors can sponsor a maximum of two partners for either a Partner or Prospective Marriage visa. These sponsorships must be at least five years apart. The sponsorship limitation prevents repeat sponsorships which are considered to be a risk factor for non-genuine and possibly abusive relationships.

The sponsorship limitation can be waived where there are compelling circumstances affecting the sponsor. Under policy compelling circumstances affecting the interests of the sponsor include, but are not limited to, instances where:

- the applicant and their sponsor have a dependent child who is dependent on each of them; or
- the death of the previous partner; or
- the previous spouse abandoning the sponsor and there are children dependent on the sponsor requiring care and support; or
- the new relationship is longstanding.

An additional sponsorship limitation designed to protect applicants under the age of 18 was introduced on 27 March 2010. This limitation is at Regulation 1.20KB. Where an application includes a person under the age of 18, the sponsor is required to provide police checks. If the sponsor has an unresolved charge or a conviction for a registrable offence (for example, a child sex offence) their sponsorship is refused except in limited circumstances. Where a sponsor has a serious criminal history that provides compelling reasons to believe that the grant of the visa would not be in the best interest of the minor, the visa application can also be refused under Public Interest Criteria 4016 and 4018 of the Migration Regulations which relate to the best interests of the child.

Prospective Marriage visas are also linked to two-stage processing of Partner visa applications. Once the applicant has arrived in Australia and married their sponsor, they are expected to lodge a combined application for Temporary and Permanent Partner visas (subclasses 820 and 801) in Australia. Permanent Partner visa applications are usually assessed at least two years after the combined application was lodged. Two-stage processing is an important integrity tool in the Partner visa program because it allows the genuineness of a relationship to be tested at multiple points in time.

There is also a range of options to further investigate claims presented by applicants and sponsors. These include document verification, interviews with sponsors and applicants (either separately or together) and home visits.

Where there are doubts, the Department is able to verify documents either with the issuing authority or through expert document examiners. Verification of this sort can assist in managing program integrity risks. For example, verification of identity documents can assist if there are suspicions that an applicant's age has been inflated to meet the visa requirements.

As discussed earlier in this section, interviews are used frequently in the Prospective Marriage visa caseload: typically in higher risk cases. Separate interviews are useful where there are concerns about the degree of consent or commitment to an intended marriage as they give the applicant an opportunity to speak freely. Separate interviews also provide an opportunity to confirm that both applicant and sponsor have the same understanding of their future and provide consistent information about the nature of their relationship. Interviews also allow for adverse information, such as third party allegations, to be tested.

Home visits can also be conducted either at the applicant's or the sponsor's place of residence. Home visits are among the strongest integrity measures available to decision makers. Given that a couple applying for a Prospective Marriage visa are not required to be cohabitating they are also rarely used in this caseload. Typically, home visits in the Prospective Marriage visa caseload are reserved for cases where there is strong concern that the visa applicant or sponsor may be living in a relationship with another person and these concerns cannot be resolved by other means.

There have been seven referrals to bona fides units in Australia for home visits in relation to Prospective Marriage visa since January 2011. Consolidated statistical information on the number of home visits undertaken outside Australia is not available.

(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

Measures to protect against fraud

The previous section outlined a number of measures which are designed to ensure the integrity of the Prospective Marriage visa program in the context of assessing individual applications. The Department also has in place a number of overarching measures to ensure program integrity and address fraud.

As part of the Department's transformation, an Operational Integrity Network was created with a Global Manager providing a single point of oversight. This has resulted in improvements to the way the Department records and reports on integrity issues, including improving the quality of alerts to officers processing visa applications, both on and offshore. Centralising fraud related visa cancellations in operational integrity units has also enabled the Department to monitor trends and put further input into fraud risk profiles.

Offshore, the Department is supported by a network of Australian Based Migration Integrity Officers and locally engaged integrity officers, responsible for ensuring there is a strategic approach to addressing all integrity concerns, including those in the Prospective Marriage visa caseload. These officers coordinate local integrity resources, collect immigration intelligence, investigate caseload fraud, coordinate capacity building initiatives and engage with strategic partners, including other diplomatic missions, to combat human trafficking and people smuggling. The information generated by this network can also be used to update the local risk profiles which are used in assessing visa applications.

The Department also undertakes ongoing monitoring of risks affecting its programs. This monitoring can identify new risks and suggest additional risk treatments which may assist in managing known risks.

Cases involving one off instances of fraud, such as a contrived relationship, are investigated and where adverse outcomes are identified, the application may be refused or the visa cancelled. Departmental systems are updated to reflect this information and offshore Local Warning Record and Safeguards alerts may be created to alert officers for future reference.

Where fraud is detected after the visa grant, legislation allows for a visa to be cancelled where it is found that incorrect information or bogus documents were provided as part of the visa application. No Prospective Marriage visas granted after 1 July 2006 have been cancelled on these grounds.

Instances involving organised and systemic fraud, for example where a facilitator may be involved, are recorded on departmental systems and analysed further by integrity officers and/or referred to National Investigations for potential prosecution. Integrity officers may also formally report to the program area on their findings and make recommendations as appropriate, such as shifting policy settings, introducing standard checks for profiles of clients or documents.

Under section 245 of the *Migration Act*, it is a criminal offence to provide false and misleading information or bogus documents in relation to a marriage or de facto relationship.

The *Migration Act* 1958 (the Act) contains a number of offence provisions relating to non genuine relationships. Sections 240 and 241 of the Act focus on organisers who seek to arrange a marriage or de facto relationship in support of a visa application.

Section 243 prohibits a party to a marriage or de facto relationship from lodging a visa for permanent stay in Australia when the applicant does not intend to live permanently with the other party in that relationship.

Section 245 of the Act prohibits third parties from intentionally providing false or misleading statements and information to the department concerning whether or not other persons are in a de facto or married relationship.
The above provisions are underpinned by the general prohibition in section 234 of the Act with respect to the provision of false or misleading information and documents to the department.

While the department has previously referred briefs of evidence which have resulted in the successful prosecution of parties to non genuine relationships this category of fraud has not been the subject of significant criminal prosecution on behalf of the department in recent years. The reasons for this are threefold:

- The department has focused on a range of administrative integrity measures to manage the issue of non-genuine relationships.

- The investigation and subsequent prosecution of offenders for conduct of this kind entails a significant investment in resources by both the department and prosecution authorities, and also results in additional pressure on the judicial system.

- Offences relating to non-genuine de facto or marriage relationships can be difficult to prove to the required criminal standard of beyond reasonable doubt. The nature of a non genuine relationship is that it often requires at least acquiescence if not active involvement by parties to the relationship in question. A subsequent criminal proceeding based on the evidence of one of the parties associated with the relationship is likely to encounter difficulties in relation to the credibility of witnesses who have been complicit in participating or providing supporting statements with respect to a non genuine relationship.

Assessing consent in cases of arranged marriages

There is a distinction between arranged and forced marriages. Arranged marriages which have the consent of both parties are generally accepted as culturally appropriate, and unless there is information to suggest that the marriage had been contrived or that one or both parties had been forced to enter into it, the visa application is processed in the same manner as any other Prospective Marriage visa application. This includes assessing whether the relationship is genuine and whether the intended marriage is one that will be recognised as valid under the Australian Marriage Act.

Like all other Prospective Marriage visa applications, those involving arranged marriages are assessed according to the level of risk they are deemed to present. Arranged marriages are not always considered high risk. For example, in India, where arranged marriages are the norm, arranged marriages which are the first marriage for both applicant and sponsor, where the couple come from similar backgrounds and have post-secondary qualifications and where there is no adverse information may be considered lower risk.

The Department's Procedures Advice Manual in relation to the Prospective Marriage visa provides guidance to decision makers on assessing arranged marriages cases where it appears that one of the parties may not have fully consented to the intended marriage. This guidance is replicated below. As indicated both in this guidance and the discussion of forced marriages in the next section of this submission, assessing consent can be challenging.

"10 Arranged marriages

10.1 "Real consent"

Background

Cases may arise where the intended marriage has been arranged by relatives, friends or brokers.

Such arranged marriages often arise from commitments given before one or both of the parties to the marriage reached marriageable age. Often in such cases the marriage commitments (contracts) are often given when the parties are infants and are characterised by an initial absence of informed and voluntary consent to the marriage by the prospective spouses.

While, by the time of visa application, the applicant and their prospective spouse may have given real consent (as described in the corresponding section in PAM3: Act - Act-defined terms - s5F - Spouse), cases may arise where one of the parties (usually the prospective spouse) indicates, either directly or through a third party, that:

- arrangements for the marriage are proceeding solely because of familial duress or cultural pressure; and/or
- the party concerned prefers that the marriage not proceed.

(Officers are reminded, of course, that visa 300 criteria cannot be satisfied if the parties have not met or are not personally known to each other.)

10.2 Assessing real consent

In either case, because 300.216 provision 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 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."

(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

While there is anecdotal evidence of cases of forced marriage involving Australians there is a shortage of empirical information about the extent to which it occurs either generally or in an immigration context. While any case of forced marriage is extremely serious it is difficult to determine the appropriate response without a sense of the scale of the problem.

The Department's sense is that forced marriage is not a frequent occurrence in the immigration context. Only a small number of the Department's overseas offices report having come across cases where possible forced marriage was a concern. The small number of offices which indicated some concern were either aware of isolated incidents or indicated that they came across possible forced marriages only occasionally.

It is unlikely that the issue of forced marriage would be confined to the applicant for a Prospective Marriage Visa. There is no evidence to suggest it would be any less likely for a sponsor, or Australian party to the relationship, to be a victim of forced marriage.

One of the main challenges that faces the Department in identifying forced marriage is that victims may remain silent about their situation for fear of retribution. Many other jurisdictions have observed that this is a challenge when dealing with forced marriage. It would not be impossible in such circumstances for a forced marriage to go undetected.

Another challenge in identifying and processing applications involving forced marriage is that most of the documents presented in support of a Prospective Marriage application will be genuine even if a degree of coercion is present. This is consistent with anecdotal reports of forced marriage in the media which indicate that marriages which have involved force may not be legally registered. This means that it can be difficult to identify forced marriage unless someone is willing to speak out about what is occurring.

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. Balancing protection for genuine victims with accountable decision making remains an open question. This is a challenge which is shared by other jurisdictions, including the UK's Forced Marriage Unit.

The most frequent concern in the context of Prospective Marriage visas is that family pressure may have played a role in an applicant's decision to accept an arranged marriage. Although rare, the Department might be alerted to such concerns if a sponsor or applicant seeks to withdraw confidentially or through allegations from third parties.

Allegations on their own do not mean that a forced marriage has or will occur. In most cases when these allegations are put to the applicant or sponsor they are strenuously denied. There have also been cases where it appears that an allegation has originated from someone who was interested in a relationship with a visa applicant who has freely agreed to an arranged marriage with someone else.

Our offices overseas also note that 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.

(G) International comparisons (policies and practices to strengthen protections against forced marriage)

The United Kingdom's Forced Marriage Unit (FMU) is a joint initiative between the Foreign and Commonwealth Office and the Home Office. This appears to be the most advanced government response to forced marriage. In 2010, the FMU gave support or advice in relation to 1735 possible instances of forced marriage.

Within the UK, the FMU assists actual and potential victims of forced marriage, as well as professionals working in the social, educational and health sectors: for example through the provision of guidelines and advice. The FMU works with other agencies to develop appropriate policy responses to forced marriage.

The FMU also works outside the UK with embassy staff to rescue victims who may have been held captive, raped, forced into a marriage or into having an abortion. The FMU notes, however, that this is not possible in every situation.

The FMU can assist in having the visa application of a victim's spouse refused but, as is the case in Australia, this requires the victim to be willing to make a public statement that they were forced into the marriage.

A forced marriage protection order is among the legal measures available to protect potential victims of forced marriage in the UK. In October 2011, the British Prime Minister announced that he intended to criminalise breaches of forced marriage protection orders and that he had asked the Home Secretary to consult on criminalising forcing someone to marry in its own right.

Based on the experiences of the UK's FMU, when considering policies and procedures to strengthen protections against forced marriage, a wider focus than the Prospective Marriage visa category may be necessary.

There are three reasons for this:

- There is no reason that forced marriage would be confined to the Prospective Marriage visa category, and could potentially be present across the Migration Program.
- Forced marriage could, theoretically, also be practiced by the Australian party being made to travel overseas to marry or through applications for other types of visas. In some of the anecdotal evidence around forced marriage in Australia it is suggested that the overseas party may remain outside Australia for an extended period.
- Victims of forced marriage require support that goes beyond the Immigration and Citizenship portfolio, especially given the possible repercussions for relationships with their family and community if they resist the marriage.

One step to address forced marriage which the Department has begun to take, in conjunction with the Attorney-General's Department, is to develop a training package for visa decision makers. 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.

International examples, such as the inter-agency guidelines produced by the UK's FMU, are being considered in the development of these guidelines. The work of the Legal and Constitutional Affairs Committee, in exploring forced marriage in Australia, may also inform these guidelines.