



Coalition Against Trafficking in Women Australia

Senate Standing Committee on Legal and Constitutional Affairs
c/o Julie Dennett, Committee Secretary
PO Box 6100
Parliament House
Canberra ACT 2600

30 May 2012

To the Senate Standing Committee on Legal and Constitutional Affairs:

Marriage Visa Classes

Please find enclosed in this letter answers to questions on notice taken by the Coalition Against Trafficking in Women Australia (CATWA), at the public hearing on marriage visa classes held on 25 May 2012, in Canberra.

1. Question from Senator Cash, regarding research in other countries outlining the implications of raising the minimum age at which prospective marriage or fiancée visas can be granted (page 4 of transcript).

One context in which there have been increases in the age at which such marriage visas can be granted is the United Kingdom (UK). In 2003, the age of marriage to a person outside of the European Union (EU) was increased from 16 to 18 years old, and then to 21 years old in 2008.

A summary of the effects of this change can be found in the House of Commons Home Affairs Committee report on forced marriage (2011), on pages 8-9 (see reference list provided). The Committee noted that whilst some expressed concern about the implications of raising the minimum age of the visa, the rule change 'has undoubtedly helped a number of young people to resist forced marriage' (HAC 2011,

9). It also observed the conclusion drawn by previous committees that: ‘Survivors told us that raising the age of sponsorship for marriage visas from 18 to 21 could better equip victims to refuse an unwanted marriage’ (HAC 2011, 8).

Evidence of the deterrent or preventative effect that raising the minimum age of the visa has had in the UK is also provided by government agencies such as the Crown Prosecution Service and by organisations such as Karma Nirvana, a charity group based in Derby which assists victims of forced marriage. In 2009, Karma Nirvana received more than 5,000 phone calls related to forced marriage or other forms of ‘honour’-based violence (HAC 2011, Ev 8). On the subject of the age increase, the organisation states:

We at Karma Nirvana have received feedback from victims that they have been helped by the rule. On the helpline we receive a number of calls from potential victims (and professionals on their behalf) under the age of 21 years asking about their ‘legal’ position. Most, if not all, seem quite relieved to find that they have extra ‘breathing space’ in which to make up their minds (HAC 2011, 8).

Similarly, Nazir Afzal of the Crown Prosecution Service estimates that,

several hundred women have not been forced into marriage because they have been given the opportunity to wait until beyond 21, to access support services, or whatever else needs to be done, in order to be able to give informed consent to a relationship, so it has had an impact as far as they are concerned on forced marriage (*Hansard*, 9 March 2010).

Further research on the matter is provided by the UK Home Office and Border Agency. In a 2008 report it found that cases of forced marriage peak between the ages of 18 and 21 (Home Office and UK Border Agency 2008, 13); this was thought to warrant raising the age at which marriage visas can be granted from 18 to 21 years old (see reference list).

It should also be noted that there is research to show that younger victims are less likely than adults to approach organisations, such as the Forced Marriage Unit in the UK context, when faced with a forced marriage (DCSF 2008, 23). Raising the age at which marriage visas can be granted may therefore result in affording some victims

more time with which to consider their situation and increase the reporting of the practice.

2. Questions from Senator Cameron, regarding a legal definition of forced marriage that is robust, and best practice for dealing with forced marriage (page 5 of transcript).

CATWA can identify two examples of robust legal definitions of forced marriage. The first is from the Norwegian General Civil Penal Code, which states that: ‘Any person who by force, deprivation of liberty, improper pressure or any other unlawful conduct or by threats of such conduct forces anyone to enter into a marriage shall be guilty of causing a forced marriage’ (Section 222, second paragraph; see Norwegian Ministry of Children and Equality 2007, 6).

The second example comes from the UK Forced Marriage (Civil Protection) Act 2007. This legislation holds that ‘a person (“A”) is forced into a marriage if another person (“B”) forces A to enter into a marriage (whether with B or another person) without A's free and full consent’, where ‘force’ is understood to include ‘coerce by threats or other psychological means’ (paragraph 63A).

These definitions are considered robust by CATWA because they acknowledge means other than physical force that may be used to coerce a victim into consenting to an unwanted marriage (such as ‘improper pressure’ in the Norwegian law, and ‘psychological means’ in the British case).

CATWA views, as a most inclusive definition of forced marriage, the definition of the practice set out by the British Home Office in 2008, in its publication *Multi-agency practice guidelines: Handling cases of forced marriage*. This states that:

A forced marriage is a 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 involved. Duress can include physical, psychological, financial, sexual and emotional pressure (Home Office 2008, 8).

CATWA believes that this definition is most appropriate because it takes into account the full range of coercive measures that may be used to force a victim into an unwanted marriage, and therefore recommends that such considerations be integrated into Australian law.

On the subject of best practice, CATWA is of the view that a range of measures is required to meaningfully deal with the problem of forced marriage. This includes both criminal and civil legislation, as well as specialised training for professionals who will come into contact with individuals affected by the practice, funding and support for domestic violence shelters and refuges, and education campaigns in schools. Appropriate civil legislation includes the creation of forced marriage protection orders, similar to those established in the UK through the Forced Marriage (Civil Protection) Act 2007. However, such legislation on its own (and in the absence of criminal law on forced marriage) is seen by CATWA as insufficient because it places the burden of reporting the practice on victims, rather than on authorities, and 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.

CATWA welcomes the recent introduction of a bill by the Attorney-General to create a specific criminal offence of forced marriage. This is seen as a basic and fundamental measure in combating the problem of forced marriage in Australia, and as one that appropriately elevates forced marriage to the level of concern and condemnation afforded to other forms of violence against women, which are regarded as criminal offences. In Australia, however, a raft of additional or secondary measures, including training, funding and education campaigns, is also required to institute best practice.

In terms of such measures, CATWA views the example set by the UK and in particular, its Forced Marriage Unit (FMU) as 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 (HAC 2008, Ev446). Although the number of cases dealt with by the FMU has tended to increase since its inception (Macey 2009, 68), this can be considered to reflect greater awareness and reporting of the problem, rather than an increase in the incidence of

forced marriage itself. With regard to the issues of detection and reporting, the work of the FMU can therefore be considered an example of best practice.

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 (see FMU website, 2012). Such initiatives underline the importance of educative measures in developing best practice on forced marriage.

3. Question from Senator Kroger, regarding the number of women's refugees in Australia that deal with forced marriage (page 6 of transcript).

CATWA reaffirms its position, stated before the Committee at the public hearing, that at this point, it is difficult to estimate the number of women's refugees in Australia that have dealt or are currently dealing with forced marriage. This is due to the overall lack of research that is being conducted on the problem of forced marriage in Australia. CATWA notes, however, that the Australian Institute of Criminology (AIC), in its submission, reports some contact with support services for migrant women, and thus suggests that the AIC may be better equipped to provide the Committee with an idea of the numbers involved. CATWA also recommends that, as most evidence of forced marriage in Australia at this point in time is anecdotal and a result of investigative journalism, initial attempts to ascertain this information begin by following up on leads (and relevant organisations) revealed through this work.

There is good reason to believe that a number of women's refugees in Australia have encountered the problem of forced marriage. In other contexts, it has been shown that such organisations (in addition to schools and youth agencies) are preferred forums for reporting forced marriage by victims, over other options such as the police (DCSF 2008, 3). It is therefore likely that in Australia, women's refugees are a first point of contact for victims of forced marriage. This raises issues of funding, as many of these institutions are voluntary, and in other countries limitations on resources have been shown to produce inconsistencies in such organisations' handling of forced marriage

cases (DCSF 2008, 2). The lack of data on this point highlights the need for in-depth and co-ordinated research on the problem.

I thank you again for the opportunity to appear before the Committee, and would be most happy to provide further information if required.

Kind regards,

Kaye Quek

On behalf of the Coalition Against Trafficking in Women Australia

www.catwa.org.au

References

Department for Children, Schools and Families (2009) *Forced marriage: prevalence and service response*. London: National Centre for Social Research. Available at: <http://www.natcen.ac.uk/media/659806/c0f6680f-c723-4955-bf08-e64073fad61b.pdf> (last accessed 29 May 2012).

Forced Marriage Unit (FMU) (2012) 'Best practice examples'. London: Foreign and Commonwealth Office. Available at: <http://www.fco.gov.uk/en/travel-and-living-abroad/when-things-go-wrong/forced-marriage/case-studies/> (last accessed 29 May 2012).

HAC (Home Affairs Committee - Commons) (2008) *Domestic violence, forced marriage, and 'honour'-based violence. Sixth Report of Session 2007-8, Volume 2*. London: The Stationary Office. Available at: <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmhaff/263/263ii.pdf> (last accessed 30 May 2012).

HAC (Home Affairs Committee - Commons) (2011) *Forced marriage. Eighth Report of Session 2010-12*. London: The Stationary Office. Available at: <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmhaff/880/880.pdf> (last accessed 30 May 2012).

Home Office (2008) *Multi-agency practice guidelines: Handling cases of forced marriage*. London: Crown. Available at: <http://www.fco.gov.uk/resources/en/pdf/3849543/forced-marriage-guidelines09.pdf> (last accessed 29 May 2012).

Home Office and UK Border Agency (2008) *Marriage visas: the way forward*. London: UK Border Agency. Available at: <http://michaeljameshall.files.wordpress.com/2011/03/marriagevisasthewayforward.pdf> (last accessed 30 May 2012).

House of Commons (UK) (2010) *Hansard*. 9 March, Q2. Available at:

<http://www.publications.parliament.uk/pa/cm200910/cmselect/cmhaff/429/10030902.htm> (last accessed 29 May 2012).

Macey, Marie (2009) *Multiculturalism, Religion and Women: Doing Harm by Doing Good?* Basingstoke: Palgrave Macmillan.

Norwegian Ministry of Children and Equality (2007) *Action Plan Against Forced Marriage 2008-2011*. Oslo: Ministry of Children and Equality. Available at: http://www.regjeringen.no/upload/BLD/Planer/2007/Tvangsekteskap_engelsk2007.pdf (last accessed 30 May 2012).

UK Government (2007) *Forced Marriage (Civil Protection) Act*. Available at: <http://www.legislation.gov.uk/ukpga/2007/20/section/1> (last accessed 30 May 2012).