



**Australian Government**  
**Australian Institute of Criminology**



# Inquiry into Marriage Visa Classes

Submission by the Australian Institute of Criminology to the Senate Standing  
Committee on Legal and Constitutional Affairs

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# 1. Introduction

1. The Australian Institute of Criminology (AIC) is Australia's national research and knowledge centre on crime and justice. The AIC seeks to promote justice and reduce crime by undertaking and communicating evidence-based research to inform policy and practice
2. The AIC is recognised for its knowledge and research publications in the area of people trafficking, which are cited by authoritative researchers and agencies, and which inform a variety of key reports, forums and processes to combat this crime. For example, the AIC's work has been cited in the 2011 US Trafficking in Persons Global Report, and the UN Special Rapporteur recently commented on the importance of the AIC's research, especially in regard to trafficking issues in marriage, in the non-sex industry, its research with sex workers, and the project to develop an improved monitoring report for Australia and its region.
3. This submission presents the preliminary findings of the AIC's research into the role of marriage in trafficking and related exploitation in Australia. In particular, it focuses on situations where Partner and Prospective Marriage visas are involved in such exploitation.
4. It is the AIC position (and that of other research, support and advocacy groups) that addressing trafficking should not just involve prosecuting the most extreme cases but should also have a focus on preventing and reducing a broader spectrum of practices that create an environment that is tolerant, or even encouraging, of exploitation (David 2010). The project discussed in this Submission reflects earlier AIC research and a 'prevention' focus, by seeking information about marriages which appear to have some or all of the hallmarks of trafficking or the hallmarks of exploitation that might suggest heightened vulnerability to trafficking in persons.
5. This project largely focuses on scenarios where a woman consents to a marriage and is not forced into marriage, but the partner's behaviour after the marriage is entered into is such that there are concerns about recruitment, deception and/or coercion, for the purposes of serious exploitation, or concerns about servile marriage.
6. It is important to note that this research is exploratory; the number of migrant women interviewed for the study was very small ( $n = 8$ ) due to time and resource constraints and the difficulties associated with recruiting from this population of women. The preliminary findings from the study outlined below must therefore be interpreted with caution. A comprehensive report detailing the study and findings will be published in 2012.

## 2. What is trafficking in persons?

7. Under Article 3 of *The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, supplementing the *United Nations Convention against Transnational Organized Crime* (United Nations 2000) trafficking in persons is defined as:
  - the recruitment, transportation, transfer, harbouring or receipt of persons (*action*);
  - by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person (*means*);
  - for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs (*purpose*).
8. For child victims of trafficking, only an *action* and *exploitative purpose* is necessary, since the age of the child makes the *means*, such as threats, redundant to proving the crime (United Nations 2000).
9. With the ratification by Australia of the *United Nations Convention against Transnational Organised Crime* (UNTOC) in 2004 and its supplementary *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* (the Protocol) in 2005, Australia has taken action to combat the crime of trafficking in persons, including making legislative changes to criminalise trafficking in persons and by funding research by the AIC. Internationally and nationally the initial focus has been on law enforcement strategies to prosecute trafficking for sexual exploitation of women and children in the sex industry (David 2010, OSCE 2008, ICCLR 2011).

### 3. The relevance of marriage to trafficking in persons

10. Marriage is relevant to trafficking in persons in two ways. First, marriage can be used as a way of recruiting a person into a situation of serious exploitation, using deception and/or coercion as the means of achieving this (i.e. fraudulent or sham marriages). Second, 'servile marriage' is itself recognised in international law as a 'practice similar to slavery' under the United Nations' *Supplementary convention on the abolition of slavery, the slave trade, and institutions and practices similar to slavery* (United Nations 1956). Here, 'servile marriage' involves  

institutions or practices whereby a woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or the husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or a woman on the death of her husband is liable to be inherited by another person (David 2010: 8).
11. Internationally and in Australia there has been a focus on trafficking issues in the sex industry, with less focus on issues in regard to non-sex labour industries or the involvement of marriage in trafficking in persons crimes and related exploitative scenarios. However, the Australian Government recently released an Exposure draft to extend the laws relating to trafficking in persons to better prohibit 'forced marriage' (Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012), one type of marriage scenario that links to trafficking in persons. Forced marriage refers to marriages in which there is an absence of free and full consent.
12. There have been a number of legal proceedings that show that the partner visa system (consisting of visas available to enable spouses, de facto partners and fiancés to migrate to Australia) has been mis-used for the purpose of human trafficking or for related serious exploitation. Three of these proceedings are outlined below, the first of which (*R v Kovacs* [2008] QCA 417 (23 December 2008)) was prosecuted using the offences in Divisions 270 and 271 of the Criminal Code (Cth) relating to slavery and trafficking in persons.
13. A variety of marriage arrangements, including arranged marriages and marriages resulting from international and online marriage brokering services, have been identified in the international literature as increasing the vulnerability of migrant women to trafficking and related exploitative situations. While these types of marriage arrangements may be a risk factor in some circumstances, it must be noted that they are not in and of themselves trafficking or exploitative, and do not necessarily render women who enter into these arrangements more vulnerable. In fact, in other circumstances these types of marriage arrangements may have protective features that reduce vulnerability.
14. Further, serious exploitation of partners through marriage, especially involving migrant women, was raised as a common issue of concern at a series of information sessions conducted by the AIC in both metropolitan and rural locations around Australia in 2011. The AIC's research responds to this concern raised by stakeholders, which is also reflected in the literature.

## 4. Cases that raise issues about marriage visa classes and trafficking in Australia

15. The case of *R v Kovacs* [2008] QCA 417 (23 December 2008) is an example of a sham marriage being used to facilitate trafficking in persons, in which Zoltan and Melita Kovacs arranged and paid for an Australian citizen to travel to the Philippines to marry a woman with the intention of bringing her to Australia to work in their takeaway shop and in their residence as a child minder and domestic helper. Once in Australia, the woman worked in the shop for 12 hours each day for five and a half days per week. For this she received very little pay. When not working, she was required to provide child care for three small children and perform household duties (Anti-People Trafficking Interdepartmental Committee 2009). She tried to escape her situation, but was effectively enslaved by the Kovacs through 'a combination of unpaid labour, continuing sexual assaults, verbal threats and abuse, exploitation of her situation of vulnerability, control over her movement and confiscation of her passport' (David 2010). Following a retrial in the Supreme Court in 2010, Melita and Zoltan Kovacs were found guilty under section 270.3(1) of the Criminal Code (Cth) (Anti-People Trafficking Interdepartmental Committee 2011).
16. In the case of *R v FAS* [2008] NSWDC 53 (20 March 2008), 'an adult woman was brought to Australia, following an arranged marriage in her home country. It was alleged that once in Australia, the woman's husband forced her to work in a brothel. The victim, who could not speak English, continued to work in the brothel in response to physical threats her husband made against her, and her fear that she would be deported to her home country where she would face Islamic law. The woman's husband, in fact, took her back to her home country, where she sought assistance from the Australian Embassy. Her return to Australia was facilitated, and charges were laid against her husband' (David 2008: 26). The offender was convicted of procuring the victim, by threat, for the purposes of prostitution, but was acquitted of causing the victim to remain in sexual servitude and intending to cause, or was reckless as to causing, that sexual servitude (*R v Foad Ali Solaiman* [2008] NSWDC 53 (20 March 2008)).
17. Although the case of *Columbia & Columbia* [2009] FamCA 311 was dealt with as a custody matter in the Family Court, it raises concerns relevant to trafficking in persons. Mr Columbia travelled to Thailand where he met his sixth wife. Once in Australia, Ms Columbia was forced to carry out a 'tremendous amount of labouring work' in their market garden due to her husband's immense size and immobility (*Columbia & Columbia* [2009] FamCA 311). For this she was given \$40 to \$50 a month. Ms Columbia also carried out 'onerous, personal and perhaps somewhat disgusting tasks' relating to his physical care (*Columbia & Columbia* [2009] FamCA 311). There was also evidence of violence perpetrated upon their children by Mr Columbia, and of verbal violence towards Ms Columbia (*Columbia & Columbia* [2009] FamCA 311).

## 5. The AIC's research into the role of marriage in human trafficking and related exploitative scenarios in Australia

18. As noted above, marriage is relevant to human trafficking in two ways. Marriage can be used as a vehicle for bringing a person into a situation where they can be exploited; and servile marriage is itself recognised as a practice similar to slavery.

### 5.1 Method

The AIC researchers interviewed relevant stakeholders and a small number of persons who have case histories that raised issues related to trafficking in persons, in order to better understand the risks and protections related to the role of marriage in trafficking in persons. Stakeholders were selected from Government, NGOs and support services who have assisted migrant women where marriage has played a role in their exploitation. Migrant women were selected based on their status as potential victims of trafficking or related exploitation, where this involved marriage or the partner visa system. This qualitative research will be supplemented by quantitative analysis of relevant data related to visas and sponsorships. The project is subject to the usual ethical standards, and has received ethics approval from the AIC's Human Research Ethics Committee.

### 5.2 Preliminary findings from the research

19. The AIC's case analysis suggests that in the small number of cases used for this study, marriage visa classes have been used to facilitate trafficking-related exploitation or associated risky scenarios in two ways. First, marriages have been identified where there was no intention on the part of the husband for the marriage to be genuine (for example, where the 'husband' is already in a de facto relationship with another person. Another example is the *R v Kovacs* case mentioned above involving a sham marriage). Second, marriages have been identified where the marriage is genuine but the husband has the intention of seriously exploiting his wife in their relationship, for example by forcing her into domestic servitude.
20. Some broad preliminary findings from the research are presented below. The full report will be published in 2012.
  - The victims came from a variety of countries of origin, including from the Pacific, the Middle East, Asia and Eastern Europe;
  - The victims were from a variety of socio-economic and educational backgrounds;
  - Occurrences of trafficking-type scenarios were detected in metropolitan areas, demonstrating that cases are not confined to regional and remote areas;
  - Offenders were generally of the same cultural background as the victims (with husbands having dual Australian citizenship), except where relationships were formed via the internet where the husbands were Australian-born;
  - While arranged marriages and marriages that have been formed through online dating and introductory services are not in and of themselves trafficking or exploitative, many marriages of concern in the study are arranged marriages or marriages involving family connections, marriages that resulted from online introductory services, or marriages that resulted from the husbands travelling abroad to seek a wife;
  - The husbands sponsor their partner on a Partner Visa for spouses or de facto partners, or a Prospective Marriage Visa for fiancées;
  - Once in Australia, participants experienced a range of situations linked to domestic servitude (e.g. being used as domestic servants and/or being subject to sexual abuse and/or domestic violence). They were not forced or servile marriages in that the women fully and freely consented to the marriage, but the women were deceived as to the condition of their married lives in Australia;
  - Some of the women in the study appear to have been targeted by Australian men whose motivation for marriage was to gain financial benefit from them.
  - Participants experienced a range of indicators associated with trafficking-type situations (see ILO 2009), including:

- Domestic service/slavery
- Threat or use of domestic violence
- Sexual abuse
- Threats of deportation
- Restricted movement and freedom
- Denial of contact with family and friends
- Financial control
- Confiscation or control of personal documentation and passports
- Denial of medical assistance
- Offenders abused the women's position of vulnerability (which is an international indicator of human trafficking; see ILO 2009) including abusing their lack of knowledge about Australian/Western laws and customs, their language difficulties and social isolation;
- None of the migrant women in this study stated a specific desire to migrate to Australia. Most did not have a desire to migrate at all, and few women interviewed for this project had sought a foreign spouse;
- These cases suggest that while trafficking and related migration scenarios occur in a socioeconomic context, with women from developing nations migrating to Australia, economic factors were not always the sole or even the primary motivation for women to marry Western men; and
- Cases such as these, may present to services as domestic violence matters, and are likely to be treated as domestic violence and dealt with under state and territory family violence provisions, rather than being screened as the more serious trafficking crime.

21. A presentation of the preliminary findings presented at the 2011 Australian and New Zealand Society of Criminology's annual conference is attached.



## 6. References

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# Attachment A

Presentation of the preliminary findings presented at the 2011 Australian and New Zealand Society of Criminology's annual conference.





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