



Submission No 56

**Inquiry into Slavery, Slavery-like conditions and People
Trafficking**

Organisation: Department of Immigration and Citizenship

Questions on Notice - Public Hearing for the inquiry into Slavery, Slavery like conditions and People Trafficking

1. *Mrs Wright: The AFP have to be responsible in that they make an undertaking, for their costs here in Australia, but I am not sure if they pay for their fares to Australia. I would have to find out for you. (p. 22)*

Answer

As part of the consideration in issuing a certificate, the Attorney-General has to be satisfied that arrangements have been made to cover the cost of bringing the non-citizen to, keeping the non-citizen in, and removing the non-citizen from Australia. This will usually take the form of a cost undertaking from the requesting agency.

The requesting agency is responsible for ensuring suitable arrangements have been made for the safety and welfare of the any family members accompanying the suspected victim to Australia.

Where a victim of an alleged people trafficking offence is required to be brought to Australia to give evidence at a trial of the offence, the Commonwealth Director of Public Prosecutions (CDPP) pays the travel, accommodation, meal and incidental expenses of the victim. This is consistent with the CDPP's approach to victims and witnesses required to give evidence in relation to other Commonwealth prosecutions.

If a person under the *Support for Trafficked Persons Program (Support Program)* leaves Australia prior to the conclusion of a criminal justice investigation but subsequently is requested to return to Australia they will be provided with support similar to Assessment Stream support (details of support provided are at Attachment A) for the duration of stay to participate in the legal proceedings, provided they have a valid visa.

2. CHAIR: *It involves NGOs and other groups involved in this area. I understand that there is a proposal to distribute information to high-risk arrivals entering Australia, advising them of the risks of trafficking exploitation and forced labour. Is that correct, to your knowledge?*

Mr Casey: *Are you aware of that?*

Mrs Wright: *No; I am not aware of that.*

CHAIR: *If you are not aware of it, does that mean that it is not happening, or is it just that you are not aware of it?*

Mrs Wright: *Was it an Immigration initiative?*

CHAIR: *I do not know, but it surely should be something that would involve Immigration if it was happening.*

Mrs Wright: *It is not something that we have had involvement in so we would not be able to comment on it.*

CHAIR: *Is it something that you could find out?*

Mrs Wright: *Yes. (p. 23)*

Answer

The Government, through the Attorney-General's Department, has provided funding for numerous initiatives that aim to raise awareness of slavery, slavery-like conditions and people trafficking amongst vulnerable groups. These initiatives include:

- The Australian Red Cross project to identify and combat labour trafficking and exploitation among Indian community groups in New South Wales and Victoria. The project will include the development of training materials and translation of an information flyer into the major Indian languages;
- Scarlet Alliance's Migration Project, which aims to provide migrant sex workers with reliable information on migration to Australia, anti-trafficking initiatives and visa matters to reduce their vulnerability to trafficking;
- The Australian Council of Trade Union's 'Labour trafficking is a crime – Spot it, report it' campaign, which will, *inter alia*, include the distribution of workplace materials such as posters and brochures to ensure workers in vulnerable sectors, including agriculture and manufacturing, will have access to the messages of the campaign even if they have limited internet access;
- The Construction, Forestry, Mining and Energy Union's production of multi-lingual pamphlets in the industries it sees as high priorities for anti-labour exploitation efforts, including construction, mining, forestry and parts of manufacturing; and

- Asian Women at Work's outreach on work rights and other awareness raising, education and social support to migrant women in low-paid and precarious employment across Sydney, including clothing outwork, factories, cleaning, nail and beauty salons, restaurants, aged care and child care.

Separately, in 2008, a working group established by the National Roundtable on People Trafficking prepared factsheets to provide employers and employees with a practical guide to the steps they can take to combat forced labour and people trafficking. The factsheets have been translated into six community languages and are available on the Attorney-General's Department website.

3. CHAIR: *Would there need to be legislation, or could it just be something that they require of migration agents?*

Mr Casey: I think we can certainly take it back to them to seek a view about whether there are issues that MARA think are not being covered across the range of regulatory rules they try to put in place to ensure that migration agents in Australia are operating lawfully and not exploiting their clients or defrauding the immigration system.

CHAIR: That would be very helpful, thank you. And I refer you specifically to the Law Council of Australia submission. (p. 24)

Answer

Allegations relating to forced labour, sexual servitude or slavery are criminal in nature and are outside the jurisdiction of the Migration Agents Registration Authority (the Authority). Any such allegations made to the Authority in the context of a complaint against a migration agent would be referred to the Australian Federal Police. General complaints about employment conditions would be referred to the competent authority, for example, the Fair Work Ombudsman.

Once such investigations are finalised by the appropriate agency, the Authority may then take the findings resulting from those investigations into account when deciding registration applications or deciding whether to take sanction action against an agent (for example, by refusing a registration application or cancelling an agent's registration).

The collection from migration agents of the information proposed by the Immigration Lawyers Association of Australia (ILAA) would serve little purpose in terms of the functions of the Authority. The Authority's powers relate to monitoring agent's conduct and investigating complaints in the context of the provision of immigration assistance. The Authority has no power to investigate complaints about unrelated business activities in which a registered migration agent may engage.

The Migration Agents Code of Conduct currently requires agents to act in the legitimate interest of their clients (see clauses 2.1A and 2.1B of Schedule 2 to the regulations (the Code of Conduct) at Attachment B). Where there is evidence that an agent has not done so, the agent may be sanctioned. However, the Code does not prevent an agent from having a business interest in an enterprise in which temporary entrants to Australia may find lawful employment.

Information Privacy Principle 1 at s. 14 of the *Privacy Act 1988* (Cth)), prevents the Authority from collecting personal information for inclusion in a record unless that information is collected for a lawful purpose directly related to a function or activity of the Authority and that information is necessary or directly related to that purpose (see Attachment C).

The question of whether an agent has an interest in a business that is unrelated to immigration assistance, but may employ temporary visa holders, says little about that agent's integrity or fitness to give immigration assistance. Without a specific complaint in relation to the agent's operation of that business, the information is of little relevance to the exercise of the Authority's powers or performance of its functions.

Where a specific complaint has been made, those with a financial interest in the business can be identified through documentation available from ASIC. The names of the business owners may then be checked against the register to determine if any are registered migration agents. As such, it is likely that a legislative change would be needed to enable the collection of such information. However, as the Authority would have little use for such information, the Authority would not support the proposal.

Registered migration agents operating outside Australia are subject to the same requirements for entry to the profession (qualifications, English, character etc) as those operating inside Australia. They are also bound by the same Code of Conduct and subject to the same sanction regime as their onshore agents. However, while an offshore agent may have their registration cancelled in the same way as an onshore agent, offshore registration is not compulsory and such an agent may continue to give immigration assistance while outside Australia.

4. *Mr RUDDOCK: I would appreciate it if you could get that material over a much longer period—*

Mr Casey: Yes, certainly.

Mr RUDDOCK: so that I can look at it and disaggregate it in a way which enables me to look at whether or not we are dealing with multiple visas.

Mr Casey: If we went back over the last four years, would that—

Mr RUDDOCK: No; I am looking back at about a decade.

Mr Casey: We can go back to 2004-05, when they first started.

Mr RUDDOCK: That is the sort of period I would be interested in.

Mr Casey: I have the rough information here, but we can see if we can break it down to primary applicants in that period, rather than just a count of visa grants, because some of them may reflect a person being granted a visa class more than once. (p. 25)

Answer

Departmental statistics, breakdown by gender, nationality, and visas held on arrival are available since 2009. Prior to that time data was only collected for nationality. Statistics are provided at Attachment D.

5. *Mr RUDDOCK: My suggestion is that they are not adequately covered and that is why we should adopt the international charter on student rights, based upon the international protocols and migrant workers conventions.*

Mr Casey: That would be a matter for government. I would not have an opinion on that.

Mr RUDDOCK: But your department would not have a view?

Mr Casey: At this stage, we would not have formed a view on that, but if we were being asked to look at it then we would certainly seek—

Mr RUDDOCK: I am asking you to look at it. (p. 26)

Answer

Australia recognises the importance of providing legal protections to migrant workers. The human rights of migrants and temporary entrants to Australia are protected under domestic and international law, including the human rights conventions to which Australia is a party.

Australia has passed domestic laws to better protect temporary overseas workers in Australia: the *Migration Legislation Amendment (Worker Protection) Act 2008*. The laws enable specially trained officers with investigative powers to monitor workplaces and conduct site visits to determine whether employers are complying with their temporary overseas worker sponsorship obligations.

Temporary overseas workers must also be engaged in accordance with Australian workplace law (including awards, agreements, superannuation, workers' compensation and workplace safety) and receive the same protection as Australian citizens and permanent residents. For workers covered by the Fair Work Act 2009, this includes the investigation of claims of underpayment and exploitation by the Office of the Fair Work Ombudsman or (if applicable) the Fair Work Building and Construction.

Australia views existing protections in place for migrant workers as adequate and does not intend to become a party to the International Convention on the Rights of Migrant Workers.

With its limited number of signatories, the convention has not been accepted as an international standard. The Government has considered if any action should be taken in relation to the Convention and has decided to maintain its position not to become a party.

The decision not to become party to the Convention was made on the basis of concerns about the incompatibility of the Convention with domestic migration policies. For example, at times the Convention does not distinguish between those who are working lawfully and those working unlawfully. Becoming party to the Convention would also require Australia to treat migrant workers and their families more favourably than other migrants in visa application processes.

6. *Mr RUDDOCK: Could I get a copy of the briefing for the Bali conference which might help me understand how the participants were informed as to the nature and scope of the problem in the other countries they were dealing with?*

Mr Casey: I think that would be a matter that my colleagues in the Attorney-General's Department may have a greater view on. I can certainly provide you with a copy of some of the things that are being done. (p. 27)

Answer

People trafficking has been a central focus of the *Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime* (the Bali Process) since its establishment in 2002. As co-chair with Indonesia, Australia works with regional partners to combat people trafficking, including through workshops and seminars aimed at strengthening members' capacity in the areas of prevention, prosecution and victim protection.

In the lead-up to the Fourth Bali Process Ministerial Conference in March 2011, Australia advocated strongly, including at a ministerial level, for reinvigorated cooperation on people trafficking through the Bali Process. Mr Rudd co-chaired the Ministerial Conference and led a robust discussion by ministers on people trafficking issues, covering the importance of:

- addressing people trafficking domestically and regionally;
- addressing root causes that lead individuals to be vulnerable to exploitation and trafficking;
- ensuring effective assistance to victims of trafficking;
- and implementing comprehensive anti-people trafficking laws to enable effective prosecution of people traffickers.

Under Australia's leadership, Bali Process Ministers agreed to enhance practical cooperative measures and activities aimed at increasing the capacity of Bali Process members to address people trafficking, with particular consideration to issues related to the assistance and protection of victims.

In January 2012, Malaysia and the International Organisation for Migration (IOM) co-hosted a Bali Process workshop on protection for victims of trafficking. The workshop focussed on the importance of victim protection in the overall effort to combat trafficking in persons and addressed issues of victim identification; the provision of specialised victim support services; inter-agency coordination at the national level and bilateral, regional and international coordination.

In May 2012, Australia and Indonesia co-hosted a Bali Process workshop on people trafficking. Participants considered the role of policy in implementing international standards, explored ways to strengthen a coordinated approach to prevent and address people trafficking, and considered how the Bali Process could assist in efforts to combat people trafficking. Participants agreed that the Bali Process had a valuable role to play in advancing regional cooperation on trafficking in persons.

The recently launched Bali Process Regional Support Office will promote greater information sharing and practical cooperation on people trafficking, including through projects that: support the harmonisation of national legislation on people trafficking; support the design and implementation of information campaigns; and provide technical training and assistance on victim protection, as well as law enforcement cooperation.

In November 2012, Australia and Indonesia co-hosted a Bali Process Trafficking in Persons Forum, at which Bali Process members and chairs of other Regional Consultative Processes on Migration shared lessons learnt on regional cooperation to combat trafficking. The forum examined trafficking trends and anti-trafficking initiatives from around the world and explored how all Regional Consultative Processes on Migration could work together to address trafficking issues into the future.

Australia is committed to continuing to work in partnership with Bali Process members to combat people trafficking.

7. CHAIR: *But surely you are not suggesting the only reason we are looking at trafficking is the smuggling issue? It is quite a separate problem.*

Mr Casey: No, I am not saying that. I am saying that if you can have strategies that are directed to more than one issue then that is a good strategy to have.

CHAIR: I agree with the deputy chair that we need some more information on this; we have not really received it yet. (p. 28)

Answer

The appointment of an Ambassador for Trafficking Issues is a decision for government.

Australia's international and regional diplomacy, including through the work of Australia's Ambassador for People Smuggling Issues and through the *Bali Process on People smuggling, Trafficking in Persons and Related Transnational Crime* (the Bali Process) is focussed on ensuring that the concepts of people smuggling and people trafficking remain distinct and are addressed effectively and in parallel. The Government's policy approach internationally aims to crystallise the important and necessary distinction between the two spheres.

As official-level co-chair of the Bali Process, the Ambassador for People Smuggling Issues plays a key role in advocating Australia's interest in promoting effective and practical international cooperation to combat people trafficking, particularly in the Asia-Pacific region.

The appointment of the Global Ambassador for Women and Girls in September 2011 has also provided a new avenue through which Australia can pursue its work, domestically and within the region, to combat trafficking in women and girls. The Ambassador is responsible for advocacy to promote policies and activity regarding gender equality and the social, political and economic empowerment of women and girls, particularly in the Asia-Pacific region. The Ambassador works closely with regional partners to support measures to eradicate violence against, and trafficking of, women and girls. For example, the Ambassador moderated a senior-level panel on violence and trafficking at the US and Cambodian co-hosted Lower Mekong Initiative Gender Equality and Women's Empowerment Dialogue in Cambodia in July 2012.

8. *Mr RUDDOCK: Thailand. I do not know whether that is the case or not. I do not know what objective evidence the government might have that the problem is larger in one country than in others. But surely when you go into discussions about where you might put your resources you would have some idea about where you think the priority ought to be for the commitment of those resources?*

Mr Casey: I can certainly make some inquiries for you to find out if there is anything. We will get you this information. (p. 28)

Answer

There is difficulty in providing definitive numbers on the scale of people trafficking in Australia and throughout the region. This is due to differing reporting practices and technical capacity in East Asia. Regionally, differing methodology between countries and the lack of a standard and internationally accepted definition of people trafficking, make it difficult to precisely define the scope of the problem using the available data.

However, we know that the most recent estimates from the International Labour Organization (ILO) show that nearly 21 million people are victims of forced labour worldwide (ILO, 2012, Global Estimate on Forced Labour) and that this estimate suggests that approximately 11.7 million forced labourers, or 56% of the global estimate, are from the Asia-Pacific region. The United Nations Inter-Agency Project on Human Trafficking (UNIAP) runs several programs to facilitate a stronger and more coordinated response to trafficking in persons in the Greater Mekong Sub-region (GMS) and that have noted variously (UNIAP 2009, 2010, 2012: SIREN Mekong Country Datasheets) that, in 2009:

- In Cambodia, 114 Cambodian victims of trafficking were repatriated from Thailand, 773 from Vietnam and 4 from Malaysia
- In Lao PDR, The Lao Government recorded 50 trafficking cases and 103 victims of trafficking
- In Myanmar, there were 431 victims of trafficking officially returned by destination countries to Myanmar. 293 were returned from China, 132 from Thailand, and 6 from other destinations
- In Thailand, there were 530 foreign trafficked victims in government shelters in Thailand. 260 of them are from Myanmar, 195 from Lao PDR and 57 from Cambodia. In 2009, there were 103 Thai victims of trafficking returned by destination countries.

Human trafficking in Thailand is a complex issue. Thailand is a source, destination, and transit country for trafficking victims and Thais are trafficked to various destinations, including Australia, the United States, South Africa and the Middle East. Thailand is also home to a large and mobile migrant workforce, who are vulnerable to trafficking and labour exploitation. The 2012 United States Trafficking in Persons Report placed Thailand on the Tier 2 Watch List, for the third consecutive year. The

Report recommends Thailand tackle forced labour, debt bondage, the confiscation of workers' documents and extortion by the police.

The issue of people trafficking is a serious one and is a national priority for both the Australian and Thai governments. Thailand introduced a new Trafficking in Persons law in 2008. The legislation included men as victims for the first time, provided for victim compensation, and included tougher penalties for offenders. In order to increase successful prosecutions of traffickers, Thailand is interested in establishing a specialist trafficking court and expedited criminal justice process for trafficking cases. Thailand is moving towards becoming a party to the United Nations Convention against Transnational Organized Crime (UNTOC) and its two protocols.

Regionally, Australia works to combat people trafficking including through the provision of development assistance. AusAID, which has worked for more than a decade to combat people trafficking in South East Asia, will provide more than \$100 million (2006-2017) in support of targeted anti-trafficking programs. The support provided through AusAID's programs assists in reducing the vulnerability of individuals and communities to trafficking and other forms of labour exploitation, and strengthens the criminal justice response to trafficking in persons.

9. *Mr RUDDOCK: Perhaps when you get this information out for me, you might also list the countries.*

Mr Casey: Yes, we can certainly provide that. (p. 29)

Answer

Visa statistics are provided at Attachment D.

10. Senator MOORE: *Can we put on notice the issue about holiday visas? One of the witnesses yesterday made a particular point about their concern that holiday visas were being used for illicit purposes.*

Mr RUDDOCK: *From Thailand.*

Senator MOORE: *Yes, from Thailand in particular. I had not heard that before.*

Mr RUDDOCK: *And I asked whether or not we have a working holiday visa with Thailand.*

Mr Casey: *I will take that on notice—I will just check whether Thailand is one of the countries we have a working holiday visa for. (p. 29)*

Answer

Visa statistics are provided at [Attachment D](#).

Thailand - Work and Holiday Visa Arrangement

Australia signed a Memorandum of Understanding (MOU) agreement with the Thai Government for a reciprocal Work and Holiday (Subclass 462) visa arrangement in July 2004. The arrangement came into effect in August 2005.

The Work and Holiday visa program is a youth exchange program which allows young adults, who satisfy criteria aged 18-30, from partner countries to enjoy a 12 month holiday in each other's country, during which they can supplement their stay with short term employment, or engage in a period of short term study.

Work and Holiday visa arrangements are capped, reciprocal programs. There is currently a cap of 500 places per program year, for Thai nationals, increased in September 2008 from an initial cap of 200 places.

In the 2011/12 program year, 346 Thailand nationals visited Australia on Work and Holiday visas. This represented a 30.7% decrease on the same period in the previous program year.

The Work and Holiday visa program requires applicants to have:

- functional English
- tertiary qualifications
- a letter of home government support

Australia's Work and Holiday visa program, including the arrangement with Thailand, has a very high overall compliance rate. Compliance rate in this instance refers to visa overstay rate and adherence to visa conditions rate.

11. *What is the definition of trafficking in persons in the context of the trafficking visa framework?*

Answer

In 2005 Australia ratified the United Nations Convention against Transnational Organized Crime and its supplementary protocol, the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol)*. Australia's response to people trafficking reflects our obligations as a party to the protocol. The protocol defines trafficking as:

Article 3

(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, 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, 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.

(b) the consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) "Child" shall mean any person under eighteen years of age.

Australia's definition of 'people trafficking' is consistent with the international definition of 'trafficking in persons', set out in Article 3 of the Trafficking Protocol (see above). The elements of the other offences contained within Divisions 270 and 271 of the Criminal Code (i.e. those that criminalise slavery, slavery-like practices and people trafficking) implement the Trafficking Protocol definition, Australia's obligations under the *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*, as well as a number of other international instruments.

While the offences for slavery, slavery-like practices and people trafficking are distinct, for ease of reference, Australian Government policies and programs use the term 'people trafficking' to encompass a range of exploitative crimes. These crimes include those where a person is moved for the purposes of exploitation, as well as those where a person is subjected to slavery or slavery-like practices such as servitude, deceptive recruiting and debt bondage (whether that exploitation occurs

after trafficking, or entirely separately, such as may be the case where a person who was already in Australia is exploited).

The link between these crimes is that the victim loses their freedom, whether that is because of the use of force, threats, deception or coercion, or because the powers of ownership have been exercised over them. As noted above, Australian Government initiatives and processes, including the AFP Human Trafficking Teams, the Support for Trafficked People Program, the People Trafficking Visa Framework and the Roundtable, focus equally on people trafficking, slavery and slavery-like practices.

12. How many programs administered by the Department focus on trafficking?

When was the last time those programs were reviewed?

What are the outcomes of those programs?

Answer

How many programs administered by the Department focus on trafficking?

The Department manages one program specifically focused on the issue of people trafficking, the People Trafficking Visa Framework (PTVF), which is a key feature of the whole-of-government Anti-people Trafficking Strategy. The framework enables suspected victims of trafficking to remain lawfully in Australia, regardless of their gender or the purpose for which they were trafficked.

Under the framework the Department has a people trafficking team, in National Office, dedicated to processing visas under the PTVF. Further, there are People Trafficking Contact Officers in each State and Territory (PTCOs). The PTCOs are specially trained compliance team members who serve as the primary point of contact for departmental officers who suspect they may have come across a victim of people trafficking. The PTCOs refer any suspected cases of people trafficking to the AFP in accordance with the interagency People Trafficking Referral Protocol (referral protocol). A copy of the protocol is at [Attachment E](#).

In addition other areas of the Department indirectly strengthen Australia's efforts to combat people trafficking. The work of three Senior Migration Officers (Integrity) (Trafficking) (SMOIT) positions at overseas posts in the Asia-Pacific (Bangkok, Manila, and Guangzhou), that are focused on preventing people trafficking at its source. These positions are part of DIAC's overseas compliance network and provide regional coverage.

The SMOITs vet visa applications for evidence of fraud that may indicate potential trafficking and analyse trends in visa processing, including:

- applicants' travel patterns
- the use of migration agents, and
- the visa classes being targeted by trafficking organisations.

In addition, the SMOITs analyse data relating to non-compliance with visa conditions for use in screening for immigration fraud, as well as to identify possible people trafficking cases. The SMOITs work closely with the AFP liaison officer at post to identify trafficking links with Australia and liaise with local government and non-government agencies to identify ways to prevent trafficking.

SMOITs are part of a larger network of compliance officers attached to key overseas posts to identify, respond to and counter immigration fraud and malpractice. They also work closely with local police and immigration officials to combat people smuggling, people trafficking and irregular migration.

When was the last time those programs were reviewed?

The PTVF was reviewed in 2008. This review resulted in the changes to the framework implemented in July 2009. These changes simplified the framework and, importantly, provided victims and their immediate family members with greater certainty about their immigration status. The changes included:

- the provision to include immediate family members who are outside Australia in Witness Protection (Trafficking) (WPTV) visa applications.
- de-linking access the Support for Victims of Trafficking Program and visas issued under the PTVF. Currently suspected victims are only granted a visa under the framework if they are unlawful, otherwise remaining on their valid, possibly more advantageous visa.
- the removal of the Witness Protection (Trafficking) (Temporary) visa reducing the Witness Protection (Trafficking) visa process from two stages to one.

The people trafficking visa program is currently undergoing an internal review.

What are the outcomes of those programs?

Between 1 July 2011 and 30 June 2012 DIAC granted 12 Bridging F visas and 17 Criminal Justice Stay visas to suspected victims and immediate family members. A total of 26 Witness Protection (Trafficking) (Permanent) visas were granted, 16 to suspected victims of people trafficking and 10 to their immediate family members.

Visa statistics are provided at [Attachment D](#).

13. What programs administered by the Department provide support for the victims of trafficking?

Answer

The Department is responsible for the administration of the People Trafficking Visa Framework (PTVF), supporting victims by regularising their visa status. The Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) administers the Support for Trafficked People Program (Support Program). All people identified as suspected victims are able to access this program if in need. For details of the support under the Support Program see Attachment A.

14. How does the Department investigate suspected exploitation of visa holders?

What steps does it take to refer criminal activities to the police?

Answer

The Department does not investigate any cases of suspected trafficking or exploitation. Allegations of suspected exploitation of visa holders are referred directly to the AFP. Departmental officers must refer all matters that may potentially fall within the boundaries of the UN Trafficking Protocol to the AFP for preliminary assessment. The AFP will assess the allegations and refer information back to the Department if not appropriate for investigation by the AFP.

DIAC and the AFP jointly developed the People Trafficking Referral Protocol in March 2012 (see Attachment E). This document reflects the agreed procedures for the referral of people trafficking information between the two agencies.

15. *Do you agree with the view that migrant workers need equitable access to Australian justice mechanisms, arbitration processes and industrial rights protections, akin to Australian citizens, without fear of arrest or deportation?*

Answer

All overseas workers must be engaged in accordance with Australian workplace law (including awards, agreements, superannuation, occupational health and safety, workers compensation and taxation) and receive the same protection as Australian workers (in terms of investigation of underpayment and exploitation claims). Overseas workers are eligible to join Australian trade unions and may participate in enterprise bargaining arrangements. More information is available at www.fairwork.gov.au.

To ensure overseas workers aware of their salary, employment conditions and the protections available under the *Fair Work Act 2009* and the *Worker Protection Act 2008*, the Department of Immigration and Citizenship (DIAC) in consultation with the Fair Work Ombudsman and the Australian Council of Trade Unions, have produced a “your rights and obligations” video and DVD for distribution on the DIAC YouTube channel and through DIAC outreach and monitoring officers. This DVD will be available early 2013.

16. What steps does the Department take to monitor labour conditions and identify incidents of forced labour?

Answer

The Department is not responsible for monitoring labour conditions or incidents of forced labour. The Fair Work Ombudsman investigates workplace complaints and enforces compliance with Australia's workplace laws. Forced labour is a criminal offence and as such is a matter for law enforcement.

The Department has a team of trained monitoring officers and inspectors whose role is to ensure that sponsors who employ 457 visa holders comply with the sponsorship obligations. The sponsorship obligations were introduced by the *Migration Legislation Amendment (Worker Protection) Act 2008* (the Worker Protection Act) in September 2009 to protect vulnerable visa holders from exploitation and abuse. The obligations that 457 sponsors are required to satisfy are:

- Cooperate with inspectors
- Ensuring the visa holder is provided at least equivalent terms and conditions of employment as an equivalent Australian citizen employee in that workplace
- Paying return travel costs if requested by the visa holder
- Paying for the costs of removing a former 457 visa holder from Australia where they have become an unlawful non-citizen
- Keeping appropriate records (such as records relating to pay and conditions)
- Providing records to the Department when requested
- Notifying the Department when certain events occur (such as the cessation of employment of a sponsored person)
- Ensuring the sponsor employs the person in the correct occupation
- Preventing the sponsor from recovering certain costs from the visa holder.

Monitoring officers and inspectors conduct audits each year to ensure that sponsors are satisfying their obligations. In the 2011/12 program year, 1754 sponsors were audited and of those, 856 received a site visit. During site visits, visa holders, sponsors and other employees are interviewed by trained officers for the purpose of determining the sponsor's compliance with the obligations.

Monitoring officers and inspectors receive training on identifying possible indicators of servitude and/or trafficking and where such activity is suspected, protocols are in place to refer these matters to the AFP.

In the 2011/12 program year the Department applied 125 administrative sanctions (barring or cancelling the sponsor from the 457 program), issued 49 infringement notices and successfully prosecuted a sponsor, with the court imposing a civil penalty of \$35 000.

Compliance staff gather information from employers and workers during the course of field operations aimed at illegal work. At times the information suggests the workers may be employed in conditions that contravene the provision of the Fair Work Act 2009. In such cases compliance staff refer the information to the office of the Fair Work Ombudsman to deal with as appropriate.

Departmental inspectors monitor working conditions and obligations of sponsors for skilled workers from outside Australia who have been sponsored and nominated by a business to work in Australia on a temporary basis. Inspectors also monitor the conditions and sponsor obligations of other programs such as the Pacific Seasonal Worker Scheme.

Departmental industry and union outreach officers regularly engage industry and union representatives and at times receive and also refer information of cases of adverse working conditions.

As part of compliance field training departmental staff are trained in recognising indicators of people trafficking.

17. *The Committee has received a recommendation that government formulate and publicise a set of criteria employers would need to meet in order to have their enterprises approved as venues to which state funded employment and education agencies can direct international students seeking employment. Do you have any views on this recommendation?*

Answer

In June 2012 the Government released, *Strengthening Your Business through Diversity*, a guide for employers on the business and financial support available for them to diversify their workforce. The Guide encourages employers to open up existing possibilities in the community by equally considering all people with the skills and willingness to work, culturally and linguistically diverse Australians

DEEWR also provides a range of general information outlining how Job Services Australia (JSA) can assist employers with their recruitment needs. The information is general in nature and does not specifically address employment of CALD job seekers. An overview of this is available at

www.deewr.gov.au/Employment/JSA/BusinessSupport/Pages/default.aspx.

JSA providers are able to produce their own brochures aimed at employers and/or job seekers, outlining the services they can provide.

Student visa holders who are permitted to work under their visa conditions are eligible for Stream 1 (Limited) through JSA which includes:

- a face to face interview (as necessary with an interpreter), assistance to prepare a résumé and local labour market advice; and
- reasonable access to on-site job search facilities.

Fair Work Building & Construction (FWBC), who sit under the Education, Employment and Workplace Relations Portfolio, recently launched a package of resources to raise awareness of workplace rights and responsibilities among culturally and linguistically diverse (CALD) workers in the building and construction industry. This information is translated into eight languages - Mandarin, Cantonese, Vietnamese, Spanish, Serbian, Korean, Arabic and Tagalog. Each language has its own page on the FWBC website (www.fwbc.gov.au).

18. Another recommendation is the establishment of a network involving Federal and State departments, education suppliers, unions and employers to generate relevant information and data to enable workplace agencies to investigate injuries and injustices suffered by international student-workers, the number employed, where they work, and their conditions of employment. Do you have any views on this recommendation?

Answer

The Department does not have a view on this recommendation at this time.

19. Is there a working visa available for migrant sex workers?

Answer

No. There is no specific visa that allows entry into Australia for the sole purpose of working in the sex industry. However, people who come to Australia under a range of visas can, where their visa allows them to work without specific employer restrictions, work in the sex industry. The commercial sex industry is legal in Australia but is subject to regulation by State and Territory Governments.

20. What support services are available to people on a bridging F visa, Criminal Justice visa or Witness Protection visa?

Answer

The Australian Government through FaHCSIA provides support for victims of people trafficking through the Support for Trafficked People Program (Support Program).

The Support Program is demand driven and is available to all victims of trafficking who meet the eligibility criteria, regardless of their gender, the purpose for which they were trafficked, their visa status and, initially, whether they are willing and/or able to assist with an investigation and prosecution.

Entry to the Support Program is by referral from the Australian Federal Police (AFP) as being, or suspected of being, a victim of people trafficking and holding a valid visa. Suspected victims of trafficking are usually detected by the AFP, the Department of Immigration and Citizenship, or by self-identification.

The Support Program is delivered through case management services provided by the Australian Red Cross. The support is tailored to meet the needs of individual clients. The Support Program seeks to ensure that clients have access to accommodation, income support, counselling, medical treatment, legal and migration advice, skills development training and interpreter services as required (see Summary of Support Program allowances/other services at Attachment A).

21. Is there a reason why individuals on a Criminal Justice visa are ineligible to apply for other visas such as the Witness Protection Visa?

Answer

If they meet eligibility criteria and are not subject to any application bars the holder of a CJV is able to apply for other visas.

If the requirements of Regulation 2.07AK are met there is no requirement that the person be the holder of any specific type of visa to be eligible for a WPTV.

An application for the Witness Protection (Trafficking) Visa (WPTV) is taken to have been validly made if the requirements set out under Regulation 2.07AK of the Regulations are met. The Regulations specifies, among other requirements, that the Attorney-General issues a certificate outlining the contribution and cooperation of the individual with an investigation or prosecution. This cooperation does not need to lead to a successful prosecution. An offer of stay is then made to the person by an authorised officer.

22. At what stage can a person be granted a witness protection visa? Are individuals on that visa able to apply for a permanent residency visa?

Answer

The Witness Protection (Trafficking) Visa (WPTV) is a permanent visa which allows the holder to remain in Australia indefinitely.

To be eligible for a visa, victims need to make a contribution to a prosecution of an offence under Division 270 or 271 of the Criminal Code *or* to an investigation in relation to such an offence where the Director of Public Prosecutions has decided not to prosecute, and also meet the additional criteria set out in regulation 2.07AK(3) of the regulations.

There is no requirement for a perpetrator to be in Australia for the grant of a WPTV nor is the grant of a WPTV reliant on a prosecution.

23. *The UN High Commissioner for Human Rights' Recommended Principles and Guidelines on Human Rights and Human Trafficking recommends that States ensure that the protection and care of trafficked persons shall not be made conditional upon the capacity or willingness of the trafficked person to cooperate in legal proceedings.*

Does the trafficking visa framework meet that requirement?

Answer

Principle 8 of the UN High Commissioner for Human Rights' Recommended Principles and Guidelines on Human Rights and Human Trafficking states that:

States shall ensure that trafficked persons are protected from further exploitation and harm and have access to adequate physical and psychological care. Such protection and care shall not be made conditional upon the capacity or willingness of the trafficked person to cooperate in legal proceedings.

In line with Principle 8, under Australia's anti-people trafficking strategy all suspected victims of trafficking who meet the eligibility criteria may access an intensive period of support, including physical and psychological care, regardless of their gender, the purpose for which they were trafficked, their visa status, and whether they are willing and/or able to participate in the criminal justice process.

Under the People Trafficking Visa Framework, any person who is a suspected victim of trafficking may be granted a Bridging F visa (BVF) for up to 45 days if they do not already have a valid visa. The grant of a BVF does not require a victim to be willing or able to assist with an investigation or prosecution of a slavery, slavery-like or people trafficking offence. During the initial 45 day period, victims receive intensive support under the Assessment Stream of the Support for Trafficked People Program (Support Program), which allows for recovery, reflection, and time for victims to assess their options. During the Assessment Stream, victims have access to the following support as needed: case management support; secure accommodation; a living allowance; an amount for the purchase of essentials such as clothing and toiletries; access to health care, including counselling; access to interpreters; and access to legal services. Access to a further 45 days' intensive support, and the grant of a second BVF, is available on a case-by-case basis to victims who are willing, but not able, to assist with an investigation or prosecution. A victim may be unable to assist for reasons such as ill health or trauma.

Over the life of Australia's anti-people trafficking strategy, significant enhancements have been made in response to community sector feedback. In particular, a number of changes were made to the Visa Framework and Support Program in 2009, following extensive consultation with the community. In the Government's view, these changes are in line with international best practice and the UN High Commissioner for Human Rights' Recommended Principles and Guidelines on Human Rights and Human Trafficking. These changes included, *inter alia*:

- *De-linking victim support from visas:* Previously, victims were required to hold a particular type of visa to access the Support Program. This sometimes led to victims requesting the cancellation of a valid visa, which might later disadvantage them in terms of visa eligibility. From 1 July 2009, victims of trafficking on any valid Australian visa have been able to access support under the Support Program.
- *Extending the initial stage of the Support Program from 30 to 45 days, and making it available to suspected victims irrespective of whether they are willing to assist with the criminal justice process:* Previously, the BVF and initial assessment stream of the Support Program were 30 days' duration. From 1 July 2009, the initial stream has been extended to 45 days' duration, and is available irrespective of a victim's willingness or ability to assist with the criminal justice process.
- *Providing a period of up to 90 days' assistance to victims who are willing, but not able to assist with the criminal justice process:* Previously, victims who were not able to assist with the criminal justice process after the initial stream were assisted to return to their country of origin, unless they could satisfy the criteria of another visa enabling them to remain in Australia. From 1 July 2009, a second period of 45 days in the initial stream is available where victims are willing but unable to assist with the criminal justice process.
- *Introducing a 20-day transition period for victims leaving the Support Program:* Previously, victims of trafficking who left the Support Program were provided with transitional assistance on an informal basis. From 1 July 2009, this arrangement has been formalised to ensure that a consistent level of service is provided to all victims.

Australia's anti-people trafficking strategy is designed to ensure a balance between victim welfare and criminal justice processes. Trafficking prosecutions rely heavily on witness assistance and testimony, and the complete de-linking of victim support and visa provisions from the criminal justice framework may affect the success, and thus the deterrent-effect, of trafficking-related prosecutions.

24. *Is there a visa that allows a person to stay in Australia while pursuing a compensation claim or reparation order?*

Answer

There is no visa specifically designed for the purpose of pursuing a compensation claim or reparation order. However, as long as the conditions of any other visa held are adhered to there is nothing precluding the holder from doing so while their visa remains valid. The holder of a Criminal Justice Stay Visa (CJSV) or Witness Protection (Trafficking) Visa (WPTV) would be able to pursue a compensation claim or reparation order in Australia.

The Government is aware that victims of trafficking holding visas under the People Trafficking Visa Framework have received compensation under State and Territory compensation schemes. However, as the Commonwealth does not oversee those schemes, statistics are not available.

The Government notes that a court may make a reparation order under section 21B of the *Crimes Act 1914*, during the sentencing of a federal offender. A victim seeking a reparation order in respect of a slavery, slavery-like or people trafficking offence would therefore be participating in the criminal justice process, and (if the victim were not an Australian citizen) would likely be the holder of visa allowing them to remain in Australia for the duration of that criminal justice process.

Separately, the Government notes that the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012, currently before the Senate, proposes to amend section 21B of the Crimes Act. The proposed amendment will improve the availability of reparations to individual victims of Commonwealth offences, including slavery, slavery-like and people trafficking offences.

25. *What type of screening is in place for either student or working holiday visa holders to ensure that they are not trafficked?*

Answer

The Department of Immigration and Citizenship plays a key role in preventing people trafficking through the vetting of visa applications by Senior Migration (Integrity) officers and in particular, through three dedicated Senior Migration Officers (Integrity) (Trafficking) (SMOIT), located in Bangkok, Guangzhou and Manila.

The SMOITs vet visa applications for evidence of fraud that may indicate potential trafficking and analyse trends in visa processing, including, applicants' travel patterns, use of migration agents, and the visa classes being targeted by trafficking organisations.

In addition, legislative requirements within both the Student visa program and the Work and Holiday visa program serve to ensure that visas are granted only for purposes consistent with that program.

All applicants for a Student visa must be a genuine student and a genuine temporary entrant. The Genuine Temporary Entrant criterion, which came into effect on 5 November 2011, means visa processing officers can refuse an application if they believe the applicant's primary motivation is work rather than study. More information on the Genuine Temporary Entrant criterion is available at www.immi.gov.au/students/pdf/2011-genuine-temporary-entrant.pdf

The Work and Holiday visa program requires applicants to have functional English, tertiary qualifications and a letter of home government support.

Summary of Support Program assistance

The Support Program provides individualised case management with support tailored to the particular needs of each client. Clients have access to a range of support and assistance as required. The types of assistance available, depending on need and circumstances, can include:

<u>All streams</u>
Medicare and Pharmaceutical Benefits Scheme
Emergency items such as clothing and personal items on entry to the Support Program and at other times such as during a safety-related change of accommodation
Counselling - clients may require assistance with specialised counselling because of their trafficking experiences
Additional medical fees for services related to the Support Program and/or criminal justice process and/or a Witness Protection (Trafficking) visa processes
Training/Education - clients are encouraged to undertake vocational training to improve their options and opportunities including English language training, as well as courses that assist in the socialisation of clients
Access to interpreter and translation services
Legal/Migration advice - clients may be assisted with the cost of legal/migration advice that involves Support Program matters and/or the criminal justice process
<u>Assessment Stream, Extended Intensive Support, Temporary Trial Support</u>
Living allowance (based on financial need and not to exceed 89 per cent of the applicable rate of Special Benefit (extra for dependent children living with the client))
Financial assistance with short term, furnished accommodation
<u>Justice Support Stream</u>
Financial assistance to enter long term accommodation – may include help with bond and initial rent
Household set up costs – help with basic home set up which may include essential furniture, utensils, and whitegoods
Centrelink benefits - clients covered by a Criminal Justice Stay visa / Witness Protection (Trafficking) visa may be eligible for Centrelink benefits such as Special Benefit, Rent Assistance, Health Care Card, Family Tax Benefit
<u>Transitional period</u>
When exiting the Support Program, clients are provided with assistance during the 20 day transition period in line with their needs and circumstances including the Support Stream they are exiting from.

Migration Agents Regulations 1998

Schedule 2

- 2.1A** A registered migration agent must not accept a person as a client if the agent would have any of the following conflicts of interest:
- (a) the agent has had previous dealings with the person, or intends to assist the person, in the agent's capacity as a marriage celebrant;
 - [(b) omitted by SLI 2006, 249 with effect from 1/10/2006 - LEGEND note]
 - (c) the agent is, or intends to be, involved with the person in a business activity that is relevant to the assessment of a visa application or cancellation review application;
 - (d) there is any other interest of the agent that would affect the legitimate interests of the client.
- 2.1B** If it becomes apparent that a registered migration agent has a conflict of interest mentioned in clause [2.1A](#) in relation to a client, the agent must, as soon as practicable taking into account the needs of the client, but in any case within 14 days:
- (a) tell the client about the conflict of interest; and
 - (b) advise the client that, under the Code, the agent can no longer act for the client; and
 - (c) advise the client about appointing another registered migration agent; and
 - (d) cease to deal with the client in the agent's capacity as registered migration agent.

Information Privacy Principle 1 at s. 14 of the *Privacy Act 1988*

Principle 1 - Manner and purpose of collection of personal information

1. Personal information shall not be collected by a collector for inclusion in a record or in a generally available publication unless:

- (a) the information is collected for a purpose that is a lawful purpose directly related to a function or activity of the collector; and
- (b) the collection of the information is necessary for or directly related to that purpose.

2. Personal information shall not be collected by a collector by unlawful or unfair means.

Visa grants under the People Trafficking Visa Framework (PTVF) 1 January 2004 to 30 June 2009

Bridging Visa F (WF-060)								
TOTAL VISAS GRANTED	Female	Male	Nationality		Primary Applicant	Dependent Applicant	Visa held on arrival (primary applicants)	
142	Not Available	Not Available	BRAZIL	1	119	0	Not Available	
119 initial, 23 subsequent for travel			THAILAND	66				
			UZBEKISTAN	1				
			MALAYSIA	16				
			HKSAR	3				
			INDONESIA	2				
			INDIA	3				
			PRC	2				
			SINGAPORE	1				
			SOUTH KOREA	21				
			MACEDONIA	1				
			PHILIPPINES	2				

* A second BVF can be issued to the same person due to trauma, or to facilitate travel

Criminal Justice Visas (ZB-951)								
TOTAL VISAS GRANTED	Female	Male	Nationality		Primary Applicant	Dependent Applicant	Visa held on arrival (primary applicants)	
102	Not Available	Not Available	THAILAND	51	74	2	Not Available	
76 initial, 26 subsequent for travel			UZBEKISTAN	1				
			INDONESIA	2				
			INDIA	2				
			PRC	2				
			SOUTH KOREA	10				
			BRAZIL	1				
			PHILIPPINES	2				
			MALAYSIA	5				

* A CJSV can be issued to the same person more than once

Visa grants under the People Trafficking Visa Framework (PTVF) 1 January 2004 to 30 June 2009 Cont.

Witness Protection (Trafficking) (Temporary) Visa (UN - 787)								
TOTAL VISAS GRANTED	Female	Male	Nationality		Primary Applicant	Dependent Applicant	Visa held on arrival (primary applicants)	
17	Not Available	Not Available	THAILAND	14	Not Available	Not Available	Not Available	
			INDIA	1				
			PRC	1				
			SOUT KOREA	1				

Witness Protection (Trafficking) (Permanent) Visa (DH - 852)								
TOTAL VISAS GRANTED	Female	Male	Nationality		Primary Applicant	Dependent Applicant	Visa held on arrival (primary applicants)	
5	Not Available	Not Available	THAILAND	5	Not Available	Not Available	Not Available	

Visa grants under the People Trafficking Visa Framework (PTVF) 1 July 2009 to 30 June 2010

Bridging Visa F (WF-060)								
TOTAL VISAS GRANTED	Female	Male	Nationality		Primary Applicant	Dependent Applicant	Visa held on arrival (primary applicants)	
33	32	1	MALAYSIA	15	32	1	Student	12
15 initial, 18 subsequent for travel			CHINA	3			Short stay visitor	11
			INDIA	2			Working Holiday	2
			PHILIPINES	1	32		ETA	6
			VIETNAM	1		1 male	Short Stay Business	1
			FIJI	2			Meidcal Treatment	1
			THAILAND	7				
			S KOREA	2				
							Total	33

* A second BVF can be issued to the same person due to trauma, or to facilitate travel

Criminal Justice Visas (ZB-951)								
TOTAL VISAS GRANTED	Female	Male	Nationality		Primary Applicant	Dependent Applicant	Visa held on arrival (primary applicants)	
23	23	0	FIJI	2	23	0	Working Holiday	1
20 initial, 3 subsequent for travel			INDIA	2			Short Stay Business	1
			MALAYSIA	10			Student	9
			PHILIPINES	1			Short stay visitor	10
			S KOREA	1			ETA	1
			THAILAND	6			Medical Treatment – Long Stay	1
			VIETNAM	1				
							Total	23

* A CJSV can be issued to the same person more than once

Witness Protection (Trafficking) Visa (DH-852)								
TOTAL VISAS GRANTED	Female	Male	Nationality		Primary Applicant	Dependent Applicant	Visa held on arrival (primary applicants)	
21	17	4	THAILAND	18	15	6	Short Stay Visitor	11
			PHILIPINES	1			Short Stay Business	1
			S KOREA	2			Working Holiday	2
					15 female	4 male 2 female	Sponsored Short Stay Business	1
							Total	15

Visa grants under the People Trafficking Visa Framework (PTVF) 1 July 2010 to 30 June 2011

Bridging Visa F (WF-060)								
TOTAL VISAS GRANTED	Female	Male	Nationality		Primary Applicant	Dependent Applicant	Visa held on arrival (primary applicants)	
24	20	4	BRAZIL	1	24	0	Short stay visitor	7
19 initial, 5 subsequent for travel			INDIA	3	20 female		Sponsored Business	3
			INDONESIA	1	4 male		Working Holiday	3
			MALAYSIA	9			Student	9
			CHINA	1			ETA	2
			S KOREA	2			Total	24
			TAIWAN	2				
			THAILAND	5				

* A second BVF can be issued to the same person due to trauma, or to facilitate travel

Criminal Justice Visas (ZB-951)								
TOTAL VISAS GRANTED	Female	Male	Nationality		Primary Applicant	Dependent Applicant	Visa held on arrival (primary applicants)	
29	17	12	INDIA	4	29	0	Sports Visa	4
25 Initial, 4 subsequent for travel			INDONESIA	2	17 females		Religious	1
			MALAYSIA	10	12 males		Short Stay Business	1
			PHILLIPINES	6			Sponsored Business	4
			CHINA	2			Student	11
			S KOREA	1			Short stay Visitor	5
			TAIWAN	1			Student	3
			THAILAND	2			Total	29
			VENEZUELA	1				

* A CJSV can be issued to the same person more than once

Witness Protection (Trafficking) Visa (DH-852)								
TOTAL VISAS GRANTED	Female	Male	Nationality		Primary Applicant	Dependent Applicant	Visa held on arrival (primary applicants)	
42	34	10	THAILAND	29	28	14	Short stay visitor	16
			S KORA	4			Short stay Business	5
			INDIA	8			Working Holiday	4
			CHINA	1			Sponsored Business	2
							Student	1
							Total	28

Visa grants under the People Trafficking Visa Framework (PTVF) 1 July 2011 to 30 June 2012

Bridging Visa F (WF-060)								
TOTAL VISAS GRANTED	Female	Male	Nationality		Primary Applicant	Dependent Applicant	Visa held on arrival (primary applicants)	
12	9	3	INDONESIA	2	12 3 males 9 females	0	Sports	3
9 initial, 3 subsequent for travel			MALAYSIA	4			Short stay visitor	3
			PHILIPPINES	5			Electronic Travel Authority	2
			THAILAND	1			Student	4
							Total	12

* A second BVF can be issued to the same person due to trauma, or to facilitate travel

Criminal Justice Visas (ZB-951)								
TOTAL VISAS GRANTED	Female	Male	Nationality		Primary Applicant	Dependent Applicant	Visa held on arrival (primary applicants)	
17	13	4	CHINA	2	16 3 male 13 female	1 1 male born in Aus	Sports	3
12 initial 5 subsequent *			INDONESIA	1			Short stay visitor	3
			MALAYSIA	5			Student	8
			PHILIPPINES	5			IAA	2
			THAILAND	4				
							Total	16

* A CJSV can be issued to the same person more than once

Witness Protection (Trafficking) Visa (DH-852)								
TOTAL VISAS GRANTED	Female	Male	Nationality		Primary Applicant	Dependent Applicant	Visa held on arrival (primary applicants)	
26	18	8	CHINA	1	16 15 Female 1 Male	10 7 male 3 female	Short Stay Visitor	5
			INDIA	1			Student	9
			MALAYSIA	11			Medical Treatment	1
			PHILIPPINES	4			Long Stay Business	1
			THAILAND	9				
							Total	16



AFP
AUSTRALIAN FEDERAL POLICE



Australian Government

**Department of Immigration
and Citizenship**

People Trafficking Referral Protocol March 2012

Jointly developed between
The Australian Federal Police (AFP) and
The Department of Immigration & Citizenship (DIAC)

This document is to be referred to by all DIAC officers. It outlines their responsibilities upon coming into contact with suspected cases of people trafficking during the course of their duties.

1. BACKGROUND

- 1.1 The People Trafficking Referral Protocol (Referral Protocol) was jointly developed and agreed to by the AFP and DIAC, and was reviewed in March 2012. It reflects agreed procedures for the referral of people trafficking information between the two agencies, and replaces all other AFP-DIAC trafficking referral protocols.
- 1.2 The development of procedures to address people trafficking issues is an evolving process and the Referral Protocol will be regularly reviewed to ensure currency and relevance (at a minimum, annually).
- 1.3 In July 2011, the AFP adopted the term “human trafficking”, while DIAC maintains its use of “people trafficking”. Both terms are interchangeable with the phrase “trafficking in persons” used in the relevant United Nations protocol (see below). Since the purpose of the Referral Protocol is to record DIAC’s responsibilities in referring matters to the AFP, and will be used predominantly by DIAC officers, the term “people trafficking” is used throughout this document.

2. WHAT IS PEOPLE TRAFFICKING (trafficking in persons)?

- 2.1 Under the United Nations Protocol to Prevent, Suppress and Punish Trafficking In Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organised Crime (2000) (Trafficking Protocol), “trafficking in persons” is defined in Article 3 as: *the recruitment, transportation, transfer, harbouring or receipt of persons, 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, for the purpose of exploitation.*
- 2.2 “**Exploitation**” is defined as including, 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.*

3. IDENTIFYING ELEMENTS OF PEOPLE TRAFFICKING

- 3.1 All DIAC officers must be alert for indicators of sex and/or labour exploitation. To assist in identifying suspected trafficked victims, a list of possible indicators has been developed by the AFP and is at **Attachment A**.
- 3.2 This list is not exhaustive and is regularly reviewed by the AFP. If any DIAC officer has concerns about a particular person notwithstanding that none of the identified indicators are present, they should contact the AFP and/or the People Trafficking Prevention & Support Section at National Office to discuss.

4. THE REFERRAL PROCESS

- 4.1 The underlying principle to be observed in all cases of suspected or alleged people trafficking is that they be referred to the AFP for assessment/investigation. The referral process outlining what to refer, how to refer, and time-frames for referral, is set out in table form at **Attachment B**.

- 4.2 Where suspected victims are determined to be at risk of immediate harm, or are minors, DIAC officers should contact the AFP (131 AFP) or State / Territory police (000) without delay.
- 4.3 All other referrals should be made at the earliest opportunity, and within the specified time-frames. Referrals to the AFP should be via telephone in the first instance to ensure that information is passed on quickly, followed by a formal written referral.
- 4.4 The AFP Operations Coordination Centre (AOCC) and AFP Operations Monitoring Centres (AFP OMC) receive all referrals from any Australian State or Territory. Initial enquiries are to be directed to the AFP Operations Monitoring Centre (AFP OMC) in the State or Territory where the suspected offences occurred. The AOCC and AFP OMC contact details for each State or Territory is at **Attachment C**.
- 4.5 A formal written referral must be made to the AFP in every instance, irrespective of the AFP's intention to proceed with the matter. Referrals of people trafficking matters by DIAC to the AFP are to incorporate both an Executive Summary (of not more than one page) and a Minute, which contains detailed information of the allegation and action taken to date. The approved referral template to be used for referral of all people trafficking matters is at **Attachment D**.
- 4.6 Where DIAC is the lead agency in a joint operation with the AFP, all cases of suspected people trafficking identified during the operation must be formally referred to the AFP in accordance with this protocol. This includes DIAC operations conducted as a result of AFP information/intelligence, or at the request of the AFP.
- 4.7 Should any assistance be required in referring a matter to the AFP, please contact the People Trafficking Prevention & Support Section (National Office) at people.trafficking@immi.gov.au
- 4.8 The key responsibilities of the two agencies under the Referral Protocol are outlined below.

5. DIAC RESPONSIBILITIES

- 5.1 DIAC receives information on cases of suspected people trafficking through a number of sources: written correspondence; verbal advice through call centres; or first hand during compliance field operations or through other client interactions. DIAC officers must not evaluate or investigate any cases of suspected trafficking and must refer all matters that may potentially fall within the boundaries of the UN Trafficking Protocol to the AFP for preliminary assessment.
- 5.2 DIAC has designated People Trafficking Contact Officer (PTCO) positions in each State and Territory to coordinate the flow of information pertaining to people trafficking. The role of the PTCO is to coordinate the regional response for people trafficking matters, and act as a contact point for managing the regional caseload. They also decide the appropriateness of granting an initial Bridging F visa to suspected trafficked victims, and will, in most cases, be the DIAC officers referring matters to the AFP in accordance with the Referral Protocol. It is important that DIAC officers notify the PTCO in their State/Territory office of any people trafficking allegations. A contact list of the PTCO's in each State/Territory is at **Attachment E**.

5.3 DIAC officers must also:

- Consult with the AFP **prior** to undertaking any compliance operation involving premises or people with suspected links to people trafficking;
- Remain on-site if considered appropriate or if advised by the AFP, and until the AFP provides advice as to what further action should be taken;
- Record details of the initial contact, including name of the AFP officer, date and time of contact, elements of people trafficking at the visited premises, and advice received from the AFP officer;
- Treat suspected trafficking victims and witnesses with appropriate care and sensitivity at all times;
- Notify the Director, People Trafficking Prevention & Support Section, of developments, including the AFP written response, and the outcome of the matter via the People Trafficking mailbox, people.trafficking@immi.gov.au.
- Update departmental database/s appropriately.

6. **AFP RESPONSIBILITIES**

6.1 The AFP is responsible for investigating all matters involving allegations of people trafficking. In addition, other responsibilities include to:

- Provide appropriate, timely advice to DIAC compliance officers who refer trafficking matters;
- Provide agent details and a PROMIS number when first contacted by DIAC regarding people trafficking information;
- Where DIAC has contacted the AFP regarding a person in immigration detention, provide written confirmation to DIAC where the person is not of interest, prior to that person's departure from Australia;
- Provide DIAC (referring officer and people.trafficking@immi.gov.au mailbox) with written acknowledgment of receipt of a formal referral and written notification of the outcome of the matter within 28 days.
- Advise DIAC within six hours of initial contact (unless there are reasonable grounds not to) whether the client is a victim of trafficking and, if the victim is unlawful, that a Bridging F visa (BVF) will be supported. Where the client has a valid visa, the assessment of the person as a trafficked victim is still required.

6.2 AFP will refer all suspected victims to the Red Cross and facilitate their access to the Support for Trafficked People Program, which provides 45 days support, regardless of their willingness to assist police and the visa they hold.

7. **OVERSEAS POSTS**

7.1 People trafficking information received by overseas posts is to be referred in accordance with the timeframes of this Referral Protocol. However, as well as referring the information to the AOCC/OMC onshore, DIAC officers located overseas are to refer the information to their regional AFP contact for action.

- 7.2 A copy of the referral should also be forwarded to the Director, People Trafficking Prevention & Support section via the People Trafficking mailbox: people.trafficking@immi.gov.au, and to the SMOIT posted in that region.

8. COMPLAINT HANDLING

- 8.1 It is essential that both DIAC and the AFP fulfil their obligations in accordance with the terms of this Referral Protocol and within agreed timeframes.
- 8.2 Any complaints or suggestions regarding DIAC action are to be made to the Director, People Trafficking Prevention & Support Section via the People Trafficking mailbox: people.trafficking@immi.gov.au
- 8.3 Complaints or suggestions regarding AFP action are to be forwarded in the first instance to the AFP's Human Trafficking Team via their mailbox: HumanTrafficking@afp.gov.au.
- 8.4 If the complaint is serious and against an individual HTT member, it should be referred directly to AFP Professional Standards Operations Monitoring Centre on +612 6131 6789 or in writing to:

Professional Standards Operations Monitoring Centre
PO Box 401
Canberra City ACT 2601

Version 2 (March 2012)

**Indicators of sex and/or labour exploitation (trafficking)
as advised by the Australian Federal Police (AFP)**

Persons who:

- have limited English and/or occupation specific words or language
- travel to or from a place of work under supervision
- are escorted wherever they go
- are always in the presence of their employer, who does not want or allow them to talk to police
- move regularly between different work sites, including interstate
- do not smile or seem unhappy, distressed, intimidated, injured, sick or not free to leave
- may be afraid of revealing their immigration status and/or occupation
- have false or no identity or travel documents
- do not possess their passport or travel/identity documents, which are held by their employer
- have no labour or employment contract/agreement
- do not know or are reluctant to state their home or work address
- have little or no money or no access to their earnings
- are nervous/upset/traumatised/intimidated
- have physical injuries that may have resulted from being assaulted, harshly treated or having been subjected to unsafe work practices
- work excessively long hours and have few, if any, days off
- sleep where they work
- have very few items of clothing or inappropriate/unsafe work clothing
- are disciplined through harsh fines and other penalties (e.g. extra work hours)
- never or rarely leave accommodation for non-work reasons
- have no choice of accommodation or work location
- have an employer/manager who is unable to show wage records for them
- have an unsafe or poor-quality workplace with no health and safety equipment
- live in group accommodation with other workers and repay owner for rent from salary.

DIAC – AFP Referral Process

If suspected victims are determined to be at risk of immediate harm, or are minors, the AFP or State/Territory Police must be called for immediate action on 131 AFP or 000

What to refer	Where to refer	How / When to refer
<p><u>Allegations (information)</u> Refer all written or verbal allegations where indicators of people trafficking are present (refer even if the AFP advises that it may not be accepted/investigated).</p>	<p>1) Australian Federal Police (AFP) Operational Command Centre (AOCC) in accordance with State contacts at <u>Attachment C</u>.</p> <p style="text-align: center;">AND</p> <p>2) Director, People Trafficking Prevention & Support Section DIAC at people.trafficking@immi.gov.au</p>	<p>1) by telephone within 12 hours in the first instance (request a PROMIS number from AFP)</p> <p style="text-align: center;">AND</p> <p>in writing within two working days - provide a formal written referral to the AFP within two working days using the agreed referral template at <u>Attachment D</u>.</p> <p style="text-align: center;">AND</p> <p>2) Email Director People Trafficking Prevention & Support Section DIAC within one hour of identification and provide a copy of the formal referral within two working days.</p>
<p><u>Suspected victims</u> Suspected trafficked victims identified in person during compliance field operations, self-referral or during interview etc.– Refer all suspected victims of trafficking and/or where observable indicators at premises suggest the existence of trafficking.</p>	<p>1) Australian Federal Police (AFP) Operational Monitoring Centre (OMC) in accordance with State contacts at <u>Attachment C</u>.</p> <p style="text-align: center;">AND</p> <p>2) Director, People Trafficking Prevention & Support Section DIAC at people.trafficking@immi.gov.au</p>	<p>1) by telephone within ONE hour in the first instance (request a PROMIS number from AFP)</p> <p style="text-align: center;">AND</p> <p>in writing within two working days - provide a formal written referral to the AFP OMC within two working days using the agreed referral template at <u>Attachment D</u>.</p> <p style="text-align: center;">AND</p> <p>2) Email Director People Trafficking Prevention & Support Section DIAC within one hour of identification and provide a copy of the formal referral within two working days.</p>



Australian Government

Department of Immigration and Citizenship

EXECUTIVE SUMMARY

REFERRAL OF PEOPLE TRAFFICKING MATTER TO THE AFP

DIAC referring officer:	<i>{insert name & State}</i>
Date of referral:	<i>{insert date}</i>
AFP's PROMIS number (if available):	<i>{insert PROMIS number from AFP}</i>
AFP contact:	<i>{insert AFP contact name}</i>

Suspected victim/s details

Name/DOB of suspected victim/s (if known)	<i>{insert name/ dob of suspected victim}</i>
Nationality of suspected victim/s:	<i>{insert nationality of victim/s}</i>
Current location of suspected victim/s:	<i>{insert current location of victim/s}</i>

Alleged offender/s details

Name & particulars of alleged offender/s:	<i>{insert name of alleged offender/s}</i>
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Locations of Interest:

- *{Insert addresses/premises of interest}*

Indicators of People Trafficking:

- *{In dot points summarise the indicators of people trafficking}*
-



Australian Government

Department of Immigration and Citizenship

To: The Co-ordinator
Operations Monitoring Centre
Australian Federal Police

{Insert address}

cc: {insert name}

Federal Agent

AFP Liaison Officer

Referral of suspected people trafficking matter to the AFP by the Department of Immigration and Citizenship (DIAC)

SUMMARY

{provide a summary of what trafficking information was received by the department, how it was received, and what action was taken}

ALLEGATION

{provide detailed information regarding the allegation including dates, addresses etc}

DIAC ACTION

{provide a detailed account of the department's action in relation to the allegation}

OUTCOME

{what was the outcome of DIAC action, what is the status now}