



**Australian Government**

**Department of Immigration and Multicultural and Indigenous Affairs**

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Mr Owen Walsh  
Committee Secretary  
Senate Legal and Constitutional Committee  
Department of the Senate  
Parliament House  
Canberra ACT 2600

Dear Mr Walsh

I refer to the hearings conducted on the 23 February 2005 by the Senate Legal and Constitutional Committee as part of the Inquiry into the Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004.

Arising from the hearings a number of questions were placed on notice by members of the Committee. Please find attached the Department's response to those questions.

Yours sincerely

Vincent McMahon  
Executive Coordinator  
Border Control and Compliance Division

28 February 2005

## QUESTION TAKEN ON NOTICE

### INQUIRY INTO CRIMINAL CODE AMENDMENT (TRAFFICKING IN PERSONS OFFENCES) BILL 2004: 23 February 2005

#### IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

Output 1.3.3:

Senator Ludwig asked:

1. Submissions make the point that the best legislation in the world is meaningless if victims still fear being returned to their home countries after helping the police. The recent case of 'Julia' highlights the risk that women will be detained and deported even if they have helped the police if their information does not bring about a prosecution. What is the government doing to ensure this gap in the trafficking package is addressed?
2. The government has made efforts to ensure women who are trafficked into the sex industry can access a one month bridging visa, and not immediately put into detention for deportation. What is the government doing to ensure that no persons who have trafficked for any other purpose, such as labour, are currently in detention centres, unidentified?
3. What provisions exist in the visa arrangements to ensure that child victims are not required to testify in court or provide evidence do not have to prosecution process if it is not in their best interest, in compliance with Article 3 of the Convention on the Rights of the Child?
4. What provisions exist under current visa provisions to enable trafficking victims to visit their countries of origin while awaiting finalisation of court proceedings?
5. What level of specialized training is provided for government and contractor staff who interact with trafficking victims? What is the resource figure for this training? What kinds of training relate to children?
6. Of the trafficking victims identified by the Australian Federal Police (AFP) or Department of Immigration since the introduction of the trafficking package in October 2003, how many have assisted the AFP? How many of those who offered assistance have been deported?

*Answer:*

1. The Australian Federal Police (AFP) does turn its mind to whether people who have assisted in their investigation would be under threat if returned. A prosecution is not required for this to occur.

More broadly, the \$20 million trafficking package sought to deal with the whole problem, including assisting with repatriation. The visa regime was designed to choke the activities of traffickers by securing successful prosecutions while providing protection for those who assisted in the investigation and prosecution. It is not reasonable to expect that every person who claims to be trafficked should be allowed to stay in Australia and it is very difficult to test such claims if there is no judicial process. Some trafficking claims have not been substantiated and in some cases people may have been both

trafficked and participated in trafficking. Allowing ready access to residence may facilitate trafficking or increase the level of fraudulent claims, diverting criminal justice resources.

2. The visa regime applies equally to all victims of trafficking, regardless of the industry to which they may have been trafficked. Around 10 of the people involved in cases referred by the Department to the AFP have worked outside the sex industry.

Compliance staff are trained to look for signs of trafficking, some of which can be quite subtle. Interviews are also conducted at various stages during the location, detention and removal processes. At any stage where any indicators of trafficking come to light the matter is referred immediately to the AFP.

3. The question as to whether children are required to testify or provide evidence is a matter for law enforcement and prosecution agencies. The visa arrangements are available to persons who have assisted an investigation or prosecution and who are in danger of return.

4. Return visits have been facilitated within existing visa provisions.

5. People Trafficking General Awareness training has been delivered to over 370 DIMIA and law enforcement officers nationally. The training focused on a range of topics, including the trafficking phenomenon, economic, social and cultural factors, identification of trafficking indicators, referral procedures and the new visa arrangements. DIMIA officers also undertake gender sensitivity and cultural diversity training in relation to interview assessments.

Under current practices, DIMIA's role is to identify indicators of trafficking and to immediately refer persons to the AFP.

Resource data is not available.

There is no specific training for children. The key operational procedure is quick referral and child welfare agencies are alerted if any child is found working in the sex industry, irrespective of whether they are Australian citizens.

6. The Department of Immigration and Multicultural of Affairs (DIMIA) has referred between 1999 and 21 February 2005, 139 persons around whom there was one or more indicators of trafficking, of whom around 60% were accepted for assessment.

Data on the movements of these persons, some of whom would have departed of their own volition, is not readily available.

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IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

Output 1.3.3:

Senator Payne asked:

1. Why, given the nature of their experience, the risks associated with their repatriation, the likelihood that they would not be welcomed back to their own countries, and the small numbers involved, are victims of trafficking not given a right to stay in Australia?
2. Do the current arrangements allow trafficking victims to remain in Australia other than under a 30 day bridging visa or a criminal justice visa? If so, how? Are the refugee and asylum systems the only alternative?
3. How many trafficking victims to date have sought to remain in Australia other than under a bridging visa or a criminal justice visa? How many have been successful?
4. Are decisions to deport or repatriate trafficking victims reviewable?
5. Do the current arrangements allow for the issue of visas to children and siblings of trafficking victims and to trafficking victims who seeking safety in Australia having been trafficked elsewhere? If so, how?
6. When were the current visa arrangements for trafficking victims introduced? Have those arrangements been reviewed since their introduction?
7. Submissions argue that those countries that best support trafficking victims and which have adopted international best practice in relation to trafficking visas, such as Italy and the USA, are the countries where the most successful prosecutions of traffickers occur. Why has Australia not adopted a similar approach to that taken by Italy and the USA?

Answer:

1. The \$20 million trafficking package sought to deal with the whole problem, including assisting with repatriation. The visa regime was designed to choke the activities of traffickers by securing successful prosecutions while providing protection for those who assisted in the investigation and prosecution. It is not reasonable to expect that every person who claims to be trafficked should be allowed to stay in Australia and it is very difficult to test such claims if there is no judicial process. Some trafficking claims have not been substantiated and in some cases people may have been both trafficked and participated in trafficking. Allowing ready access to residence may facilitate trafficking or increase the level of fraudulent claims, diverting criminal justice resources.

2. The visa regime implemented on 1 January 2004 to assist in combating people trafficking includes the temporary and permanent Witness Protection (Trafficking) Visas. The Witness Protection (Trafficking) Visas allow trafficking victims to remain in Australia following the conclusion of a criminal justice process where the victim has significantly contributed to the prosecution or investigation of people trafficking matters and who may be in danger if they return to their home country.
3. It has not been possible to answer this question in the very short timeframe available. One difficulty is that without a judicial process there is no proof that a person has been trafficked.
4. Removal of a person from Australia under Section 198 of the *Migration Act 1958* occurs as a consequence of a person being unlawful and is not reviewable. However, refusals of visa applications, which would provide a basis for lawful stay in Australia, are reviewable.
5. The Bridging F Visa and Witness Protect (Trafficking) Visas provide for immediate family members of the primary applicant to be included in their application. An immediate family member, as defined under the *Migration Regulations 1994*, includes an applicant's spouse, any dependent child, and, if the applicant is under the age of 18, their parents.

A Criminal Justice Visa, Entry or Stay, is only granted to individuals required for the administration of criminal justice, and only the person to whom the visa was granted is permitted to enter or stay in Australia on that visa. Where a family member is required to travel to, or stay in, Australia with the person assisting in a criminal justice process it is usual practice to seek some other visa, such as a Visitor Visa, that would meet that family member's needs and for which they would be eligible. Where it is not possible for such a visa to be granted then the law enforcement agency requiring the assistance of the witness may seek a Criminal Justice Certificate, and subsequently a Criminal Justice Visa, for that family member in order to secure the assistance of the witness.

6. The Bridging F Visas and Witness Protection (Trafficking) Visas, forming part of the visa regime designed to assist in combating people trafficking, were introduced on 1 January 2004. The Criminal Justice Visas were already in use at that time. The arrangements have been closely monitored since that time.
7. In developing the visa regime consideration was given to trafficking visa models in other countries. The model developed has a strong focus on stopping the traffickers who perpetuate this insidious trade while protecting those who assist in their investigation and prosecution.