

## ARTICLE

**[387] Rewarding witnesses, ignoring victims: an evaluation of the new trafficking visa framework**

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Sarah arrived in Australia on a student visa in 1999: she had been promised a restaurant job and a chance to study.<sup>1</sup> When she arrived her new "boss" took her to a house in Sydney's outer west, a makeshift prison tucked away in suburbia. Sarah's "boss" told her that she owed him money for her visa and her air ticket. To "pay back" this debt Sarah was forced to have sex with 500 men. Sarah eventually escaped the brothel with the help of a client.

Now, Sarah is in Villawood Detention Centre. Sarah has been in Villawood before. Last time, she was identified as a potential trafficking witness and released from detention under the new Bridging Visa F before being granted a Criminal Justice Stay Visa. In a series of interviews Sarah told Australian Federal Police (AFP) about her "boss", about other "contract girls" she knew, about a brothel that trades in trafficked women. She divulged "all the bosses' names", identifying alleged traffickers in Melbourne and Sydney.

But ultimately, the AFP told Sarah her story was too old; her "boss" couldn't be found; her evidence was simply not enough. An AFP officer, the same AFP officer that Sarah says reassured her that she would never have to go back to a Detention Centre, drove her to Villawood.

Sarah's story reflects the failure of the Australian Government's new trafficking visa framework to protect the victims of trafficking. The police are now reconsidering Sarah's case. If corroborating evidence can be produced Sarah may be freed from detention on a Criminal Justice Stay Visa. If not, she will be removed from Australia.

In October 2003, the Australian Government announced a \$20 million package to combat trafficking in persons after the death of Puontong Simaplee, who died in Villawood detention centre in 2001 after being trafficked from Thailand into sexual servitude in Australia, exposed the failure of Australian laws to provide justice for the victims of trafficking. At the root of this failure was the impact of the mandatory detention provisions of

the *Migration Act* 1958 (Cth).<sup>2</sup> By removing the victims of trafficking from Australia, the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) deported the evidence of trafficking and, inadvertently, provided the traffickers with impunity from prosecution.<sup>3</sup> Since the death of Ms Simaplee, the Australian government has acted to implement legislative and policy reforms culminating in the Commonwealth's *Action Plan to Eradicate Trafficking in Persons*.<sup>4</sup> A new visa regime introduced in January 2004 offers a gateway to victim support services but, crucially for trafficking victims, protection and support is contingent on their capacity to help the police.

**The new visa framework**

Much has changed since the death of Ms Simaplee and yet, as Sarah's story demonstrates, the new visas are not helping trafficking victims. From 1 January 2004, the *Migration Regulations* were amended by the *Migration Amendment Regulations* (No 11) 2003.<sup>5</sup> The amendments established two new witness protection (trafficking) visas providing temporary or permanent stay to persons who made a significant contribution to the prosecution or investigation of alleged trafficking offences, and may be in danger upon returning to their home country. The witness protection (trafficking) visas are part of a four-stage package consisting of:

1. The new Bridging Visa F (subclass 060);
2. The existing criminal justice stay visa (Pt 2, Division 4 of the *Migration Act* 1958 (Cth));
3. Class UM, Subclass 787 (Witness Protection (Trafficking) (Temporary) Visa under Regulation 2.07AJ); and
4. Class DH, Subclass 852 (Witness Protection (Trafficking) (Permanent) Visa under Regulation 2.07AK).

The grant of the visas is highly discretionary: there are no application forms enabling the applicant to apply for a visa<sup>6</sup>, rather, the Attorney-General and the Minister

for Immigration have the discretion to offer a trafficking victim the chance of the visa. The new witness protection (trafficking) visas appear impossibly elusive: to date no witness protection visas have been issued. This is because under the current visa and policy framework the witness protection (trafficking) visas are only available at the end of the criminal justice process, not while a trafficking victim is in the process of giving evidence.<sup>7</sup>

The focus of the new visa framework is not on the status of the person as a victim of trafficking but the person's ability to act as a witness. It has been designed to "choke the activities of traffickers by securing successful prosecutions while providing protection for those who assisted in the investigation and prosecution".<sup>8</sup> The lack of successful trafficking prosecutions in Australia<sup>9</sup> has prompted the government to recognise that "the major impediment to achieving a prosecution is the reluctance of victims/witnesses to give evidence of the offence".<sup>10</sup> Victims of trafficking fear that after they testify against traffickers, they will be removed and forced to face reprisals from traffickers in their home country. However, by making access to visas contingent on the quality of the evidence provided the new visa framework fails to alleviate the fears of trafficking victims. Ultimately unless trafficking victims make good witnesses the door to victim support services stays closed: detention and removal remain the reality. For those the government refers to as "witnesses/victims" simply being willing to assist police investigations may not be enough and people like Sarah, whose evidence was deemed not useful to a criminal investigation or prosecution, will find no protection in the current visa arrangements.

#### **Bridging Visa F and Criminal Justice visas**

If an unlawful non-citizen is identified by the AFP as a person of interest to police in relation to offences of people trafficking, sexual servitude or deceptive recruiting he or she will be eligible for the new Bridging Visa F (BVF), which has a maximum 30-day period of validity.<sup>11</sup> The BVF allows the person to stay lawfully in the community or be released from immigration detention as the holder of a valid visa while the law enforcement agency assesses whether the person is able and willing to assist

with investigations into people trafficking, sexual servitude and/or deceptive recruiting. A valid BVF application must include a statement of support from the AFP or State/Territory police.<sup>12</sup>

Where BVF holders are alleged victims of trafficking, they are given access to victim support administered by Southern Edge Training Pty Ltd under a contract for services issued by the Office of the Status of Women.<sup>13</sup> This support includes temporary accommodation, access to Medicare and medical services, counselling and legal services, training, and social support. Although BVF holders are not eligible for social security payments, hotel accommodation is provided, as well as a \$500 emergency allowance, a food allowance of \$80 per week and a living allowance of \$80 per week.<sup>14</sup>

Ultimately, if the agency decides the non-citizen's continued presence in Australia is required to assist in the prosecution or investigation of trafficking offenders, a Criminal Justice Stay Certificate will be issued by the Attorney-General (State or Federal), the State DPP or the AFP and DIMIA may grant a Criminal Justice Stay Visa (CJSV). If the person decides to give evidence but the agency does not believe the evidence will be useful, no further visas will be sought.

The BVF process focuses on the person's suitability as a witness, rather than their status as a victim. Although the BVF supposedly provides suspected trafficking victims with time to "reflect on their circumstances"<sup>15</sup> as soon as the AFP decides the evidence is insufficient the BVF will cease and the person will have the status of an unlawful non-citizen and be placed in detention. There is no obligation to give the BVF holder the benefit of a full month of reflection time and victim support.

Anecdotal evidence from anti-trafficking NGO Project Respect suggests that the decision not to seek a CJSV is often made within days of the grant of the BVF. On the 12 January 2005, the *Australian* reported that "Julia" who claimed to have been trafficked was "kicked off" the bridging visa program after the police told her her statement was "useless".<sup>16</sup> Another article published on the 24 January 2005 reported that the same woman, who was described as a Thai sex slave who had cooperated with police by naming traffickers, had been placed in Sydney's Willawood Detention

Centre.<sup>17</sup> It was reported that she would be deported, despite fears about her safety if she returns to Thailand, because the information she provided had not led to a prosecution.

The BVF process contradicts international best practice which suggests that trafficked women are less likely to provide evidence under pressure and require time to reflect and recover before deciding whether they wish to provide evidence for criminal investigations and prosecutions.<sup>18</sup> An important aspect of the BVF should be that it provides trafficked women a thirty day "reflection period" to consider whether or not to testify, and if they are willing to return to their home country. Access to a BVF should not require a trafficking victim to have already made a decision to assist the police.<sup>19</sup> While DIMIA policy recognizes that "a trafficking victim/witness with confidence in government authority is more likely to reveal they have been trafficked and be willing to assist with the investigation and prosecution of people trafficking offenders" not all suspected trafficking victims are given the full 30 days to "reflect" on their experiences and decide whether to give evidence. Trafficked women can remain under the influence of their traffickers immediately after apprehension<sup>20</sup>. Impatient and premature decisions to remove suspected victims ignore the fact that often time and trust are the most effective interview techniques.

If a law enforcement agency certifies that a person on a BVF is required in Australia to assist in the administration of justice, the person will probably be granted a Criminal Justice Stay visa (CJSV). A CJSV is granted after a Criminal Justice Stay Certificate has been issued. Those granted a CJSV are allowed to remain in Australia for as long as they are required for law enforcement purposes; an arbitrary time-frame that provides no certainty or security, from the perspective of trafficking victims afraid of being sent home. The issue of a Commonwealth Criminal Justice stay certificate and the subsequent grant of a criminal justice stay visa are matters to be decided at the absolute discretion of the Minister. CJSV holders are eligible for family assistance and continue to have access to support services through a case manager.<sup>21</sup> Work rights are attached to this visa.<sup>22</sup> A holder of a criminal justice visa is prohibited from

applying for any other visa except a protection visa<sup>23</sup>. This restriction prevents trafficked persons, who often have complex immigration histories, from applying for other visas. A useful reform would be to enable ministerial/delegates discretion to waive prohibitions on other visa applications for women on CJSVs so that eligible women could apply for other visas.

With the exception of an application for a protection visa, no other visa can be applied for by a CJSV holder<sup>24</sup>. However, where CJSV holders meet the criteria for a Subclass 787 Witness Protection (Temporary) Trafficking Visa, the visa *may* be granted if:

- (i) The Attorney-General has certified the person made a significant contribution to, and cooperated closely with, the prosecution of a person who was alleged to have trafficked a person or who was alleged to have forced a person into exploitative conditions (whether or not the person was convicted); or the person made a significant contribution to, and cooperated closely with, an investigation in relation to which the Director of Public Prosecutions decided not to prosecute a person who was alleged to have trafficked a person or who was alleged to have forced a person into exploitative conditions;
- (ii) The person is not the subject of any related prosecutions; and
- (iii) The Minister is satisfied the person would be in danger if they returned home.

If the CJSV holder meets the above criteria and accepts the offer of the visa the person may be issued with a Subclass 787 visa for 3 years.<sup>25</sup> A permanent witness protection (trafficking) visa (subclass 852) may be granted if the person held the corresponding temporary visa for at least 2 years and, in the opinion of the Minister, would still be at significant risk on return to their own country. Both temporary and permanent witness protection (trafficking) visa holders are entitled to income support, Medicare and have automatic work rights.<sup>26</sup>

#### Evaluating the new visa framework

The policy rationale for the witness protection (trafficking) visas is that witnesses in trafficking cases are often reluctant to testify in a trafficking case if they fear that they may be

required to return to their home country at the end of the trial, possibly to face the persons who trafficked them.<sup>27</sup> Since the introduction of the Government's *Action Plan to Eradicate Trafficking in Persons*, police have granted 24 bridging visas to women believed to have been trafficked. Of those 24 women, 18 were granted CJSVs and 16 are still in effect. Five women have been sent home and, at the time of writing, at least one victim of trafficking is currently being held in Villawood detention centre pending further investigations by the police. No witness protection (trafficking) visas have been granted.<sup>28</sup>

One problem with the new visa framework is that a temporary witness protection (trafficking) visa will not be granted while the victim has a criminal justice stay visa in force. DIMIA has stated that "the Witness Protection (Trafficking) visa allows 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" [emphasis added].<sup>29</sup> Outlining the visa process in the House of Representatives, Malcolm Turnbull MP stated if suspected victims "are able to assist police, then a criminal justice stay visa is provided, which can be of any period, during which secure accommodation is provided, together with access to Medicare and the Pharmaceutical Benefits scheme". He adds: "If at the end of this process it is established that they can not be safely returned to their country of origin, a witness protection visa can be issued to enable them to remain in Australia".<sup>30</sup> This position is confirmed by the explanatory statement, which states that offers of either temporary or permanent stay to a person will be made "following the prosecution or investigation of an allegation of trafficking or exploitation against another person".<sup>31</sup>

By declining to make the new temporary witness protection (trafficking) visa available while a trafficking victim is in the process of giving evidence, the Government ignores trafficking victims' concerns about security during the criminal justice process. A trafficking victim that makes a significant contribution to an investigation that then results in a prosecution, must wait until the end of the prosecution until she knows whether or not she

will be offered a witness protection (trafficking) visa. The visas are only available to proven witnesses, not trafficking victims who may be potential witnesses if an investigation or prosecution proceeds. This approach fails to provide trafficking victims who are in the process of giving evidence with the feeling that their long term security is important to police. Instead, they are left on a CJSV that could end whenever the law enforcement agency decides the witness is no longer useful. Part of the policy rationale of the witness protection (trafficking) visa is that it provides a sense of security and certainty to trafficking victims who are afraid that after they testify they will be sent home to face reprisals. To reserve the question of whether a significant contribution has been made to the "conclusion of the criminal justice process" denies trafficking victims the feelings of security, trust and safety that having a three year temporary witness protection visa would provide while they undertake the potentially dangerous and psychologically intimidating task of testifying. A better approach would be to make witness protection (trafficking) visas available to trafficking victims while they were witnesses.

Although the witness protection (trafficking) visas explicitly provide that the criteria for the grant of the visa is not contingent on a successful prosecution and that trafficking victims who assisted with investigations which were not pursued by the DPP could be eligible for the visa, withholding witness protection visas until the conclusion of criminal justice processes suggests that there is still deep suspicion about the stories of trafficking victims. In response to a question about the number of trafficked women who had successfully sought to remain in Australia, other than on a Bridging Visa or a Criminal Justice Visa, DIMIA stated:

"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."<sup>32</sup>

This statement suggests that ultimately the "proof" a person has been trafficked is a successful prosecution.

The standard of evidence that suspected trafficking victims need to provide to obtain visas and gain access to victim support services is unnecessarily difficult to satisfy. At the BVF and Criminal Justice Stay Visa stages willing

witnesses have been told that their evidence was not good enough. The experiences of trafficking victims who are now or have been detained in Villawood because their evidence was not good enough, raises the question: what is good enough? Because of the nature of the offences, one victim's account will generally be deemed insufficient for the police and the DPP. Law enforcement agencies will require corroborating evidence. But surely the value of the information provided by trafficking victims extends beyond its potential to bring offenders to justice. Even if the evidence is not enough to prosecute, hearing about the experiences of trafficked women allows police to create a profile of the different modes of operation of traffickers. Surely, if police have a reasonable belief that a trafficking victim is genuine and that victim is willing to assist police to the best of her ability, that contribution should be enough to secure access to victim-support services and legal protection.

In relation to the witness protection (trafficking) visas what constitutes a "significant contribution" to a criminal investigation or prosecution is a matter resolved by ministerial discretion on a case by case basis. However, it is arguable the words "significant contribution" are too onerous. Trafficking victims should instead be able to meet the criteria for the temporary witness protection (trafficking) visa on the basis that they are reasonably suspected of being trafficked and are willing to help police.

However, criticisms about the standard of information trafficking victims are required to provide to police and the unavailability of Witness Protection (Trafficking) visas during the process of giving evidence stay within a visa framework that focuses on law enforcement and criminal justice processes. Ultimately, however, the problem with the visa framework is that it focuses on law enforcement instead of the victims of trafficking. As the Human Rights and Equal Opportunity Commission (HREOC) observed:

"Restricting access to recovery and support programs to those women who undertake to assist the investigation or prosecution of trafficking offences and to those women whose evidence is considered to be of value, means that many victims of trafficking would not be eligible for any assistance despite suffering significant human rights abuses.

From a human rights point of view, access to these programs should be on the basis of need."<sup>33</sup>

Protection for trafficking victims should not be contingent on their capacity to act as witnesses in a criminal investigation or prosecution. The vagaries of criminal trials and prosecutions mean that for a multitude of reasons a trafficking victim's evidence may be dismissed as "useless". HREOC has observed that if "a person's evidence is required to be of a sufficient standard to allow them to receive support, it could well be argued during criminal proceedings that the evidence was fabricated in order to achieve that standard".<sup>34</sup> In contrast, if support is provided as a matter of course, it is difficult for defence lawyers to attack evidence on the basis it was fabricated to obtain a visa. The UNHRC High Commissioner has stated that [trafficking victims] "should be entitled to adequate protection under any circumstances, irrespective of any decision to instigate judicial proceedings".<sup>35</sup>

Making the protection of trafficking victims conditional on the victim's being both able and willing to provide information of a quality that constitutes a "significant contribution" to a criminal investigation or prosecution, is unsound. It leaves open the possibility that trafficking victims will not be protected: women who are so psychologically terrified that the thought of giving evidence cannot even be contemplated will be deported; the same fate awaits those willing witnesses whose information is deemed insignificant or useless. In response to a question about the risk that trafficked women will be detained and deported if their evidence is not deemed useful, DIMIA responded:

"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."<sup>36</sup>

The belief that enacting legislation that protects trafficking victims regardless of their cooperation with law enforcement agencies may encourage fraudulent claims is unfounded. Commentators have observed that States who issue temporary residence permits have a higher rate of success prosecuting traffickers than States that do not; the success rate is more pronounced if the residence permits are available to all trafficking victims, not simply those willing to testify against traffickers.<sup>37</sup>

The best example of a victim-centered alternative to the witness protection visa model adopted in Australia is Italy's legislative response. Instead of focusing on the trafficked person's usefulness as a witness, the Italian legislation concentrates on the victim's experience, extending protection to trafficking victims irrespective of whether they cooperate with state authorities. Under Italian law a special permit to stay can be issued when "situations of violence or grave exploitation towards a foreigner have been identified and concrete dangers for his or her safety emerged as a result of the intent to withdraw from the circle. The "social protection residence permit" is valid for six months, renewable for one year, and provides the possibility for victims to remain in Italy permanently. The permit is not conditional on the victim assisting police investigations or prosecutions and can be applied for by both law enforcement agencies and NGOs. Despite fears that a residency permit that did not require the person to give evidence in a criminal prosecution or investigation would encourage people to abuse the system, there is no evidence of this occurring in Italy. On the contrary, the Italian system has been effective in investigating and prosecuting traffickers. A 2001 report by the Italian Ministry of the Interior found that the residence permits have had a positive effect in combating trafficking, with an increase in the incrimination of traffickers from 664 traffickers in 1990, to 2866 in 2000.<sup>38</sup>

### Conclusion

Within a visa framework with a criminal justice and law enforcement focus, meaningful reform could be made, including:

- Removing the requirement that to obtain a witness protection visa (temporary or permanent) a trafficking victim must be deemed to have made "significant

contribution and cooperated closely" with a prosecution or investigation. Instead the requirement could be that if a person is reasonably suspected of being trafficked, they will be eligible for the witness (temporary) protection visa if they demonstrate they are willing to help police investigations.

- Allowing trafficking victims on a criminal justice visa to apply for a temporary witness protection visa while they are still in the process of giving evidence. This would involve allowing trafficking victims to initiate the visa application process, rather than wait for a discretionary offer to apply from the Attorney General and the Minister for Immigration.
- Amending the visa criteria for the permanent witness protection visa to remove the requirement that the temporary visa has been held for a period of 2 years. Rather the criteria should focus on the victim - particularly on the extent of their contribution to police investigations or a criminal prosecution and whether they are fearful of being returned to their home country.
- Extending the existing "mainstream visa" model to victims of trafficking. The mainstream visa option was designed to allow some people who held temporary protection or humanitarian visas on 27 August 2004 to apply for most onshore visas.<sup>39</sup> Trafficking victims could apply for a "mainstream visa" if legislative barriers within the Migration Act and Regulations were removed. Generally, these barriers restrict the kinds of visa applications that can be made in Australia. For example, victims of trafficking may have made previous applications for protection visas, possibly on the instructions of the trafficker. If that application has been refused and the applicant is an unlawful non-citizen or doesn't hold a substantive visa the applicant cannot apply for most types of visas. Consequently victims in genuine and continuing relationships with Australian citizens and permanent residents may be precluded from applying for a partner visa because of their immigration history.<sup>40</sup> A useful reform would be to introduce discretion within the legislation that has the effect of removing

legislative barriers and therefore permitting a victim of trafficking to apply for another kind of visa, within the general Australian visa framework, regardless of their visa history.

The victims support package should be accessible to any woman who is reasonably suspected of being trafficked to Australia, not just good witnesses.

However, ultimately, these reforms may not be enough. Until the visa framework is based on a person's status as a victim instead of their

ability as a witness, criminals will not be prosecuted and victims will continue to be punished.

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1. Sarah's story is a composite of accounts of women trafficked to Australia for sexual servitude. See also, Roger Price, House of Representatives, *Hansard*, 14 March 2005, pp 9-10
2. See *Migration Act 1958* (Cth), s 189
3. See *Migration Act 1958* (Cth), s 198; see also Carrington K, Hearn J, "Trafficking and the Sex Industry: from Impunity to Protection" *Current Issues Brief* no. 28 2002-03, Department of the Parliamentary Library
4. See <http://www.ag.gov.au/agd/www/Agdhome.nsf/Page/RWPA835B403668897F6CA256EB0000F7264?OpenDocument>
5. Statutory Rule No 363 of 2003, Schedule 8
6. See *Migration Regulations*, Schedule 1, Item 1224AA. Witness Protection (Trafficking) (Temporary) (Class UM) and Item 1133. Witness Protection (Trafficking) (Permanent) (Class DH).
7. See further Malcolm Turnbull, House of Representatives, *Hansard*, 14 March 2005, p 11
8. DIMIA, Submission No.16, Senate Legal and Constitutional Committee Inquiry into the Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004 [2005].
9. The first person charged with forcing women into sexual slavery was not charged until June 2003. There have been no successful prosecutions to date. The Australian Federal Police has set up a new mobile strike team, the Transnational Sexual Exploitation and Trafficking Team. It has five matters before the courts, with a total of 14 offenders facing charges. See House of Representatives, *Hansard*, 14 March 2005, p 12
10. See "Chapter 13, People Smuggling and Trafficking", *Managing the Border: Immigration Compliance*, DIMIA, June 2004. Available online: [www.immi.gov.au/illegals/mtb/mtb\\_chapter13.pdf](http://www.immi.gov.au/illegals/mtb/mtb_chapter13.pdf)
11. The applicant for the BVF must be subject of written advice from Federal, State or Territory police stating that the applicant is a person of interest in relation to an offence or alleged offence involving: people trafficking or sexual servitude or deceptive recruiting or is a member of the immediate family of such a person. See Migration Series Instruction 390: Bridging Visa (Subclass 060) — Legislative Framework and Further Guidelines, para 2.1.2
12. *Migration Regulations*, Schedule 1, Item 1306 Bridging Visa F: Migration Series Instruction 391: People Trafficking, para 8.2.3
13. Migration Series Instruction 391: People Trafficking, para 5.3.1. See also Minister for Family and Community Services Senator Kay Patterson, "Trafficking victim support contract awarded" media release 21 April 2004, Southern Edge Training hold the tender to provide services to trafficked women.
14. Malcolm Turnbull, House of Representatives, *Hansard*, 14 March 2005, p 12
15. *Ibid*
16. "Use and Abuse", *The Australian*, 12 January 2005 p 11
17. "Sex slave informant to be deported, case dropped", *The Australian*, 24 January 2005. The woman referred to in "Use and Abuse" is the same woman referred to in "Sex slave informant to be deported, case dropped".
18. See Jenna Shearer Demir, "The Trafficking of Women for Sexual Exploitation: A Gender-Based and Well-Founded Fear of Persecution?" UNHCR New Issues in Refugee Research, Working Paper No. 80 (March 2003); see also ECPAT "Briefing on a proposal for European Union Council Directive (COM (2002) 71 final) on the Short-Term Residence Permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who co-operate with the competent authorities", 2002.
19. Malcolm Turnbull recently commented that: "the first priority with suspected victims is to get them out of the sex industry so they are free to reflect on their circumstances and to assist police with investigations". This statement suggests suspected victims will only be free to reflect on their circumstances if they first agree to assist the police. See Malcolm Turnbull, House of Representatives, Votes and Proceedings, *Hansard*, 14 March 2005, p12

20. A three-month reflection period is currently in place in the Netherlands and Belgium. See Jenna Shearer Demir, "The Trafficking of Women for Sexual Exploitation: A Gender-Based and Well-Founded Fear of Persecution?" UNHCR New Issues in Refugee Research, Working Paper No 80 (March 2003).
21. CJSV holders are eligible for Special Benefit and exempt from the Special Benefit Newly Arrived residents waiting period if the CJSV has been issued for the specific purpose of assisting in the administration of criminal justice in relation to people trafficking, sexual servitude or deceptive recruiting. See Chapter 13, "People Smuggling and Trafficking", *Managing the Border: Immigration Compliance*, DIMIA, June 2004. Available online: [www.immi.gov.au/illegals/mtb/mtb\\_chapter13.pdf](http://www.immi.gov.au/illegals/mtb/mtb_chapter13.pdf)
22. CJSV holders are entitled to work in some circumstances, see *Migration Act* s 35(4A) and see <http://www.facs.gov.au/guide/ssguide/912130.htm>.
23. See ss 46 and 161 *Migration Act*. However, trafficking victims may be able to apply for and meet the criteria for a protection visa under s 36 of the *Migration Act*. In recent years, Trafficking victims have successfully applied for protection visas. See, for example, RRT Reference: N04/48551
24. See sections 46 and 161 *Migration Act*.
25. This visa is subject to health and character checks, although these may be waived.
26. Migration Series Instruction: People Trafficking, para 8.5.5
27. Migration Series Instruction 391: People Trafficking, para 8.5.1; "Chapter 13, People Smuggling and Trafficking", *Managing the Border: Immigration Compliance*, DIMIA, June 2004. Available online: [www.immi.gov.au/illegals/mtb/mtb\\_chapter13.pdf](http://www.immi.gov.au/illegals/mtb/mtb_chapter13.pdf)
28. "Use and Abuse", *The Australian*, 12 January 2005 p 11
29. DIMIA, Submission No16, Senate Legal and Constitutional Committee Inquiry into the Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004 [2005].
30. Malcolm Turnbull, House of Representatives, *Hansard*, 14 March 2005, p12
31. Explanatory Statement for Statutory Rules 2003 No 363, Issued by the Minister for Immigration and Multicultural and Indigenous Affairs, Migration Amendment Regulations 2003 (No 11)
32. *Ibid*
33. HREOC, Submission No 19, Senate Legal and Constitutional Committee Inquiry into the Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004 [2005].
34. Mrs Moyle, HREOC, Senate Legal and Constitutional Committee Inquiry into the Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004 [2005], *Committee Hansard*, 23 February 2005, p 9
35. As quoted in ECPAT "Briefing on a proposal for European Union Council Directive (COM (2002) 71 final) on the Short-Term Residence Permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who co-operate with the competent authorities", 2002.
36. DIMIA, Submission No 16, Senate Legal and Constitutional Committee Inquiry into the Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004 [2005].
37. Jenna Shearer Demir, "The Trafficking of Women for Sexual Exploitation: A Gender-Based and Well-Founded Fear of Persecution?" UNHCR New Issues in Refugee Research, Working Paper No 80 (March 2003), p 40
38. *Ibid*, p 38
39. See *Migration Act* s 46 and Migration Regulation 2.07AO Applications for certain substantive visas by specified persons. See also, "Applying for a mainstream visa" [http://www.immi.gov.au/refugee/tpv\\_thv/mainstream/2.htm](http://www.immi.gov.au/refugee/tpv_thv/mainstream/2.htm)
40. See *Migration Act* s 48 and *Migration Regulations* 2.12.