
ARTICLES

[570] Prioritising protection — A new visa framework for trafficked people

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1. Introduction

At the recent National Roundtable on People Trafficking² the Australian Government announced important changes to the framework for providing protection and assistance to trafficked people.³ These changes, which will come into effect on 1 July 2009, will simplify a complex visa framework, provide victims and their immediate family members with greater certainty about their immigration status, facilitate family reunion and improve access to the government funded victim support program.⁴

This article welcomes the changes. The new framework prioritises the protection of trafficked people while strengthening the capacity for law enforcement to build relationships of trust with people who are willing to give evidence against their traffickers. The reforms are the result of sustained advocacy by NGOs and academics⁵ and a thorough review of the visa framework by the Department of Immigration and Citizenship (DIAC).⁶ The review by DIAC commenced in 2007. In 2008 at the first National Roundtable on People Trafficking and NGOs and the Australian Human Rights Commission signed a joint statement recommending reforms to the visa framework.⁷

2. The framework for protecting and assisting trafficking people: January 2004 — June 2009

The People Trafficking Visa Framework was introduced in 2004 as part of the *Australian Government's Action Plan to Eradicate People Trafficking*. The Action Plan established multiple government initiatives designed to address people trafficking, including the creation of the People Trafficking Visa Framework. This framework consists of four visas: the Bridging F visa

(BVF), the Criminal Justice Stay visa (CJSV) and the Witness Protection (Trafficking) (Temporary and Permanent) visas. All visas in the People Trafficking Visa Framework are available to "immediate family members" in Australia.

The original framework for protecting and assisting trafficked people made access to the Support for Victims of People Trafficking Program, administered by the Australian Government Office of Women, contingent on holding a Bridging F Visa or a Criminal Justice Stay Visa. A person's eligibility for a BVF or a CJSV was assessed by Australian Federal Police.

The level of support available to trafficked people under the program depended on whether the victim had been recently identified as a person of interest to a police investigation or prosecution and whether they had decided to continue to assist the police in an investigation or appear as a witness in a criminal trial.⁸ The Red Cross is currently contracted to manage the support program which consists of three different streams:

- **The Assessment Stream** provides intensive support to people who have recently been identified as victims of trafficking. This support includes secure accommodation, a living allowance, a food allowance, access to health care, including counselling, access to interpreters and access to legal services.⁹ Before the changes to the visa framework, this support was only available for up to 30 days to suspected victims who have been identified as "of interest" to police and granted a Bridging Visa F.
- **The Justice Support stream** offers less intensive support to people who are assisting police with an ongoing investigation or prosecution. Before the

changes to the visa framework, this support was only available to people holding a Criminal Justice Stay visa.

- **The Temporary Trial Support stream** offers support and assistance to trafficked people who return to Australia to assist with a police investigation or prosecution.¹⁰ Currently, trafficking victims who have returned to their country of origin before deciding to assist in a prosecution of a suspected trafficker may be granted a BVF or criminal justice entry visa allowing them to re-enter Australia.

a. The first stage of the visa framework: the Bridging Visa F

The visa framework introduced in 2004 made access to the government-funded victim support program contingent on holding a visa from the visa framework. This meant that to get access to the assessment stream of the victim support program a person had to be identified as a “person of interest” to the AFP and granted a BVF. This visa lasted for up to 30 days and could be cancelled at any time. A person who holds a BVF is not legally allowed to work but a holder of the BVF has access to the assessment stream of the Victim Support program.

In the Anti-Slavery Project’s experience, the reasons for the early cancellation of a BVF were more likely to be related to a person’s willingness and ability to assist police than an assessment that they no longer required victim support.¹¹ Australian National Audit Office (ANAO) observed that support was occasionally withdrawn from alleged victims assisting the AFP.¹² However, there was limited recording of reasons for decisions to withdraw support. The ANAO recommended guidance on documenting reasons for decisions in these cases to improve transparency in decision making.

b. The second stage: the Criminal Justice Stay visa

The new regulations do not change the operation of the criminal justice visa. After the expiry of BVF, a CJSV may be issued at the request of the police which allows the holder to remain in Australia for so long as they are required for “law enforcement purposes”. Before the changes to the visa framework, a CJSV was the trigger to provide a person with access to the Justice Support Stream of the

Victim Support Program.¹³ Unlike a BVF holder, a person holding a CJSV had work rights.

The problem with the CJSV is that it does not provide victim-witnesses who are afraid of the consequences of giving evidence against their traffickers with any guarantee that they will receive protection after the prosecution has completed. Compounding this adverse effect on the victim-witness is the anxiety and uncertainty created if the holder of the CJSV has children or family overseas. There is no mechanism within the CJSV for that visa holder to be reunited with his or her family in Australia. This has created problems for trafficked people assisting police. As one client of the Anti-Slavery Project said:

Things are very hard for my family in my home country but I cannot go back there to help them because I will be killed. I am assisting the police here so I am on a visa that does not allow me to bring my family here. My family is living in poverty and there is nothing I can do. I do not speak English and I am having trouble finding a job. I am depressed and traumatised about what has happened to me. I am constantly anxious for my family. I do not know what I can do to fix this.¹⁴

c. Temporary and permanent witness protection visas

The original People Trafficking Visa Framework included a visa option for victim-witnesses who had assisted police and would be in danger if they were returned to their country of origin. Under the original framework a Witness Protection (Trafficking) (Temporary) (Class UM) visa could be offered to a person who held a CJSV and who:

- the Attorney-General certified have “made a significant contribution to, and cooperated closely with”, the prosecution or investigation of an alleged trafficking offender; *and*
- who the Immigration Minister considered would be in danger if he or she returned to his or her home country.

The temporary witness protection visa lasted for three years but after two years the police could recommend that the person be given a permanent Witness Protection (Trafficking) (Permanent) visa if the person still met the criteria for the grant of the temporary witness protection visa. There is no application process for either the temporary

or permanent witness protection visa. The visas are offered to people holding CJSVs at the discretion of the government.

The problem with the administration of the original framework is the temporary witness protection visas were only granted after the conclusion of a police investigation or prosecutions. This means that for the duration of a criminal trial victim-witnesses held temporary CJSVs. There is no guarantee that the holder of a CJSV holder will be offered a temporary witness protection visa. There are no visa options attached to the Criminal Justice Stay visa or temporary witness protection visa permitting family reunion of a witness and immediate family. This causes distress and anxiety for people on these visas.

Holders of the Witness Protection visas are ineligible for the government-funded Victim Support Program. It is the experience of the Anti-Slavery Project, a specialist legal service for trafficked people, that victims who have been granted a Witness Protection (Trafficking) (Temporary) visa may struggle after having the support services they were receiving on the Criminal Justice Stay visa suddenly cut. This concern will be addressed under the new visa framework.

3. Evaluating the 2004 visa framework

Since 2004, 131 suspected victims of trafficking have had access to the Victim Support Program.¹⁵ To date the majority of people who have been identified as victims of trafficking in Australia have been women who have been trafficked for exploitation in the sex industry. There have been 270 police investigations into allegations of trafficking and related offences and 7 convictions.¹⁶ In 2007-2008, 17 investigations assessments were undertaken. 58% of investigations concerned trafficking for sexual exploitation while the remainder were related to other forms of labour trafficking.¹⁷ There are five matters currently before the courts including the retrial of a case of labour trafficking.¹⁸

The Australian Government has reported that so far more than 70% of suspected victims of trafficking have been willing to assist police.¹⁹ From 1 January 2004 to 30 April 2009, 119 Bridging Visa F, 73 Criminal Justice Stay Visas and 17 Witness Protection (Trafficking) (Temporary) visas have been granted. While no Witness Protection (Trafficking) (Permanent) visas

had been granted at the time the new visa framework was announced on 17 June 2009, the first five permanent visas were granted on 23 June 2009. There are also a small but significant number of trafficked people who have been allowed to remain permanently in Australia as refugees.

This framework has sometimes failed to protect people who were unwilling or unable to help police. For example, a 2009 audit of Australia's response to trafficking found that while there have been cases of alleged victims of trafficking being mentally not fit to decide whether to continue to assist the AFP, Australian government agencies have "[not] developed a way forward on managing mentally impaired victims, to ensure that their rights and interests are adequately protected".²⁰

The number of identified victims of trafficking is significantly higher than the number of people who have been granted temporary witness protection visas. However, care must be exercised in relying on these figures to assess whether Australia is offering appropriate protection to victims. Some trafficked people may not wish to remain in Australia at the conclusion of criminal proceedings. Others may successfully pursue other avenues for protection.

While it can not be assumed that a trafficked person will face danger if they are returned home after assisting police, in the experience of the Anti-Slavery Project many trafficked people do hold genuine fears about the repercussions of assisting Australian police, the prospect of being re-trafficked or abused. For trafficking victims, giving evidence against their traffickers is a traumatic and potentially dangerous process. While some trafficking victims will want to return home, for others the prospect is terrifying. For these people, a permanent witness protection visa offers invaluable reassurance that they do not have to return to home to face the repercussions of speaking out and the prospect of being reunited with family outside Australia. The problem under the visa framework introduced in 2004 is that this reassurance comes too late.

Making the permanent witness protection available earlier in the criminal justice process is vital to overcome the anxiety and distress the current visa framework has caused for victim-witnesses who have immediate family still living in their country of origin. The

experience of some Anti-Slavery Project clients is that an uncertain visa process has resulted in considerable anxiety and stress; feelings which are often magnified by the distress caused by prolonged separation from their family.

From a human rights perspective, people who have been trafficked to Australia are the victims of human rights abuses and should have access to adequate support to recover from their experiences. The United Nations Principles and Guidelines on Human Rights and Human Trafficking state “access to adequate physical and psychological care [which] shall not be made conditional on the capacity or willingness of trafficked persons to cooperate in legal proceedings”.²¹ In 2009 the UN Human Rights Committee recommended Australia:

strengthen its measures to prevent and eradicate trafficking in human beings, including by adopting a comprehensive strategy, and provide equal assistance and protection to all victims identified regardless of their participation or otherwise in criminal proceedings against perpetrators.²²

In 2009 the UN Special Rapporteur on Trafficking has also recommended that trafficked people should be provided with specialised support and assistance, regardless of their immigration status.²³

The best way to protect the human rights of trafficked people is to separate the initial provision of victim support from participation in the criminal justice system. Providing the first stage of the victim support program to people who have been recently identified as trafficking victims irrespective of whether they are willing or able to assist police is vital because it enables people to obtain the intensive support they need to recover from their experiences, gives people time to reflect upon whether they want to assist police, and enables them to receive legal advice about other avenues for assistance and protection. This approach reduces the risk of defence lawyers attacking the credibility of victim-witnesses on the grounds that their evidence has been concocted in order to gain access to visas and victim support.²⁴

4. The changes to the people trafficking visa framework

The changes to the visa framework will lead to a more flexible and humane framework that will provide greater

protection for trafficked people. From 1 July 2009, the MR have been amended to:

- Make sure that a person who is in Australia unlawfully and identified as a suspected victim of human trafficking can obtain a Bridging F visa irrespective of whether they are willing or able to assist police.
- Extend the period of validity of the BVF from 30 days to 45 days and provide for the grant of a second BVF on a case by case basis.
- Abolish temporary witness protection visas in favour of a one stage process for offering trafficked people and their immediate family members a permanent witness protection visa.

As we explain below, these changes make sure initial access to the government-funded victim support program is not conditional on holding a visa from the people trafficking visa framework. They also provide trafficked people with greater certainty about their immigration status and facilitate family reunion.

a. Delinking visas and victim support

Under the new framework, access to the Victim Support Program is no longer dependent on a person holding a visa under the People Trafficking visa framework. The decision to delink the provision of the intensive stage of victim support from the grant of the BVF means that trafficked people who hold substantive visas (for example, a working holiday visa or a student visa) will not have to relinquish their existing visa and the accompanying work rights to obtain access to either the assessment or justice stream of victim support program. This means that people who already have a substantive visa such as a student visa, a business (long stay) visa or a working holiday visa will not be disadvantaged by having to cancel a substantive visa in order to obtain support. Importantly, under the new framework, holding a CJSV is not a prerequisite for the grant of a permanent witness protection visa.²⁵ This means that a person who holds a substantive visa may decide to be a witness in a criminal trial and meet the threshold eligibility criteria for consideration for the grant of the permanent witness protection visa.

b. Changes to the Bridging F visa

A BVF will now be granted to a non-citizen who is identified by the AFP or state and territory police “as a suspected victim of human trafficking”.²⁶ This replaces the previous requirement that a BVF could only be granted to a non-citizen who is a “person of interest in relation to an offence, or alleged offence, involving people trafficking, sexual servitude or deceptive recruiting”. The phrase “suspected victim of human trafficking” will include people who are identified as suspected victims of slavery, trafficking in persons offences, debt bondage, and sexual servitude. It would not, however, appear to include people who are assisting the Workplace Ombudsman to prosecute breaches of the rights of migrant workers under workplace relations laws unless the police have formed an opinion that the person is also a suspected victim of human trafficking.²⁷

The validity of a BVF will be extended from 30 to 45 days.²⁸ This will give trafficked people access to a longer period of intensive victim support. There will also be an option to grant a second BVF for a further 45 days (taking the total to 90 days). The second BVF is only available to those whose capacity to assist police is limited, for example, due to trauma or because “their information is insufficient to sustain an investigation”.²⁹

These reforms are vital. Trafficked people who have been deeply traumatised by their experience will receive the support they need to start recovering from their experience, irrespective of whether they are able to assist police. This support will include access to medical assistance and legal advice, including advice about whether they are eligible for protection as a refugee.

Bridging visas have also been granted to enable a person to travel to Australia for compelling or compassionate reasons or to enter Australia to assist with the investigation or prosecution a trafficking offence. The Australian Government has indicated this practice will continue under the new framework.

Under the new framework, temporary witness protection visas will be abolished in favour of a simpler process where eligible trafficked people and their offshore family members are offered a permanent protection visa.³⁰ The criteria for granting this visa will be:

- The Attorney-General certifies person has made a contribution to, and cooperated closed with, the prosecution or investigation of a person who is alleged to have trafficked a person or who was alleged to have forced a person into exploitative conditions.³¹
- The Minister for Immigration considers the person would be in danger if returned home.

This lowers the eligibility threshold for a witness protection person from a requirement that the Attorney-General certify the person has made a significant contribution to police investigation and prosecutions to a requirement to certify the person made a contribution.³²

Under the new framework, the applicant for a permanent protection visa does not need to be in Australia when the visa is granted.³³ The framework facilitates family reunion by ensuring that if a trafficking victim is eligible for a permanent witness protection visa then their immediate family members will also be invited to apply for a visa regardless of whether they are inside or outside of Australia.

Any visa framework for trafficked people should, as far as possible, provide certainty for people who are anxious or fearful about returning to their country of origin. The critical question is when these visas will be made available to trafficked people helping police. A person who is assisting police and would face danger if they were sent home should not have to wait until the conclusion of the criminal prosecution process to obtain the security of a permanent witness protection visa.

The government has indicated that under the new visa framework an independent trigger will be identified to initiate the process leading to the grant of a permanent witness protection trafficking visa. We recommend that where a victim has been willing to assist the police, formal consideration of whether the person satisfies the eligibility requirements for the permanent visa should take place six months after identification and every three months thereafter. The submissions made by, or on behalf, of the trafficked person should be taken into consideration.

Additionally, we recommend that the minister consider a recommendation from the AFP that a person be granted a permanent

witness protection visa at any stage during the justice support stream. This would enable the minister to issue a witness protection visa at the conclusion of a significant event, such as, for example, the conclusion of a committal hearing. It would also provide the flexibility that is necessary to enable a permanent witness protection visa to be granted in compelling circumstances. This could include where a victim-witness's children are facing danger in their country of origin and the immediate grant of the permanent visa would facilitate family reunion in Australia.

5. Alternative avenues for protection

It is important to recognise that the People Trafficking Visa Framework is not the only avenue for trafficked people to seek permanent protection in Australia. Some victims or potential victims of trafficking may be entitled to protection under the Refugee Convention on the basis that they are members of a particular social group.³⁴ While some trafficked people have successfully applied for a refugee protection visa in Australia, trafficked people may face particular difficulties “establishing the requisite link between the persecution and the state”.³⁵

Another potential avenue for protection will be created by the implementation of a system of complementary protection for people to whom Australia has non-refoulement obligations but who do not meet the criteria for the grant of refugee status under the Refugee Convention.³⁶ These new arrangements will provide an additional safeguard for people who have been trafficked to Australia and who will face a violation of their human rights if they are returned home.³⁷

6. Conclusion

The reforms to the trafficking visa framework show that Australia is willing to listen to the experiences of NGOs and government agencies working with trafficked people and revise its anti-trafficking strategy to be more responsive to the needs of trafficked people. By delinking visas and victim support the new framework creates the flexibility that is needed to make sure that trafficked people get access to the support they need to recover from their experience.

Abolishing the temporary witness protection visa will provide certainty for victim-witnesses who would face danger if they were sent home.

The immediate effect of these reforms will be that the seventeen people who currently have temporary protection visas will be transitioned onto a permanent visa. This will provide certainty to people who the minister has already decided would face danger if returned home and enable them to be reunited with family members who are not in Australia. As one client of the Anti-Slavery Project said:

I really appreciate the Australian Government taking this new approach, seeing me as a human being and helping me to be part of the multicultural Australian community. It seems like a small thing but it is not. Having a permanent visa will affect my whole life. It is not just a visa. Knowing that I finally have certainty about my life will improve the life of my family here and in my home country. This is good news for a whole community.

In the long term these reforms will improve access to victim support for all trafficked people in Australia and help engender relationships of trust between law enforcement and victim witnesses. The reforms will ensure that trafficked people will receive access to the first stage of victim support even if a person is not ultimately able to assist police. This is vital because it will ensure that people who have been trafficked receive legal advice about their other options for obtaining protection or assistance.

Australia's response to people-trafficking can still be improved. The growing focus on labour trafficking outside the sex industry will present new challenges. It is critical that trafficked people receive access to information and advice about their legal rights and options in a language they understand. The 2008 National Roundtable on People Trafficking recognised there is a need to develop culturally appropriate information for victims of trafficking in their own languages and it is vital that multilingual fact sheets about the new visa framework are developed as soon as possible.³⁸ This information should also contain information about the criminal justice remedies and civil remedies. To date there have been very few claims for compensation made on behalf of trafficked people. One obstacle for people who may be entitled to compensation as a

victim of crime or through a civil action against their trafficking may be the lack of information about visa options available to people who wish to remain in Australia to pursue compensation or civil remedies.

The recent reforms have already had a transformative effect on the lives of trafficked

people who can now rebuild their lives in Australia. The priority now is to make sure that Australia identifies and protects everyone who is trafficked to Australia, regardless of the industry in which the abuse occurs.

Footnotes

1. Frances Simmons is a lawyer at the Australian Human Rights Commission (the Commission) and board member of the Anti-Slavery Project. Any views expressed in this article are the views of the authors and not necessarily the views of the Commission.
2. The National Roundtable on People Trafficking is convened by the Australian Minister for Home Affairs. The second NRPT was held on 17 July 2009, Parliament House, Canberra.
3. C Evans, "Improved Support for Trafficking Victims", media release, 17 June 2009, accessed 7 July 2009, www.minister.immi.gov.au.
4. Migration Legislation Amendment Regulations 2009 (No2) SLI 116, Sch 8.
5. In 2005 the authors of this article expressed concern that the visa framework that was introduced in 2004 as part of the *Australian Government's Action Plan to Eradicate Trafficking in Persons* protected potential witnesses while ignoring the needs of victims of trafficking who were unable or unwilling to assist police. See J Burn and F Simmons, "Rewarding witnesses, ignoring victims: an evaluation of the new trafficking visa framework" (2005) 24 *Immigration Review* 6. See also J Burn, "Australian Trafficking Visas: 15 recommendations to better protect victims of human trafficking" (2007) 35 *Immigration Review* 7; F David, *Trafficking of women for sexual purposes*, Research and Public Policy Series No 95, Australian Institute of Criminology, 2008, pp 16-17; J Burn and F Simmons, "Trafficking and Slavery in Australia: An Evaluation of Victim Support Strategies", (2007) 15(4) *Asian and Pacific Migration Journal*.
6. The Explanatory Statement that accompanies the amendments to the MR states that the following government and non-government stakeholders were consulted about the changes to the visa framework: Attorney-General's Department; AusAID; Australian Crime Commission; Australian Federal Police; Australian Institute of Criminology; Australian Human Rights Commission; Commonwealth Director of Public Prosecutions; Department of Foreign Affairs and Trade; Department of the Prime Minister and Cabinet; State and Territory Governments through the National Working Group on Trafficking; Office for Women, Department of Families, Housing, Community Services and Indigenous Affairs; and the Victorian Government Department of Justice, National Council of Women of Australia; Australian Catholic Religious Against Trafficking in Humans; Project Respect; NSW Anti-Slavery Project; Refugee and Immigration Legal Centre; Salvation Army; World Vision; Scarlett Alliance; and International Organization for Migration.
7. The National Roundtable on People Trafficking — Human Rights and Equal Opportunity Commission and NGO Recommendations for changes to the trafficking visa framework, 23 June 2008.
8. The AFP is responsible for deciding whether a person is a suspected trafficking victim and if he or she may be able to assist with the investigation of a suspected trafficker. DIAC refers suspected trafficking victims to the AFP. Some NGOs also refer suspected trafficking victims.
9. Above, note 8.
10. Australian Government, Department of Families, Housing, Community Services and Indigenous Affairs, People Trafficking fact sheet, accessed 3 July 2009, www.fahcsia.gov.au/sa/women/progserv/violence/Pages/peopletrafficking.aspx#3.
11. See further J Burn and F Simmons, "Trafficking and Slavery in Australia: An Evaluation of Victim Support Strategies", (2007) 15(4) *Asian and Pacific Migration Journal*.
12. Australian National Audit Office, *Management of the Australian Government's Action Plan to Eradicate Trafficking in Persons*, Audit Report No 30 2008–09, Commonwealth of Australia, Canberra, 2009, paras 3.14, 4.48, Table 4.2.
13. CJSV holders are entitled to work and have access on a basis of need to Special Benefit, Rent Assistance and a Health Care Card administered by Centrelink (if they are eligible); assistance securing longer term accommodation; the Medicare Benefits Scheme and the Pharmaceutical Benefits Scheme; legal services and interpreters; assistance to obtain employment and training (including English language training); and links to social support.
14. This case study has been de-identified to protect the privacy of the client of Anti-Slavery Project. Consent has been obtained from the client to publish this case study.
15. "Trafficking in Persons: The Australian Government Response January 2004 — April 2009", Inaugural report of the Anti-People Trafficking interdepartmental committee, Commonwealth of Australia, 2009, p 30. This report states 63% of the Program's clients have been Thai nationals. Over 90% have been women.
16. "Trafficking in Persons: The Australian Government Response January 2004 — April 2009", Inaugural report of the Anti-People Trafficking interdepartmental committee, Commonwealth of Australia, 2009, p 1.
17. Above, note 16.

18. The retrial was ordered in *R v Kovacs* [2008] QCA 417; BC200811497.
19. "Trafficking in Persons: The Australian Government Response January 2004 – April 2009", Inaugural report of the Anti-People Trafficking interdepartmental committee, Commonwealth of Australia, 2009, p 20.
20. Australian National Audit Office, *Management of the Australian Government's Action Plan to Eradicate Trafficking in Persons*, Audit Report No 30 2008–09, Commonwealth of Australia, Canberra, 2009, paras 2.10.
21. United Nations High Commissioner For Human Rights Principles and Guidelines on Human Rights and Trafficking, E/2002/68/Add.1, 2002.
22. Human Rights Committee, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee — Australia (2009)*, UN Doc CCPR/C/AUS/CO/5, 2 April 2009, Advanced unedited version, [22].
23. J Ngozi Ezeillo, *Report on the Special Rapporteur on trafficking in persons, especially women and children*, 10th session of the Human Rights Council, 2009. A/HRC/10/116, p 27.
24. See, for example, J Fife-Yeomans, "Sex slaves turning a trick", *The Daily Telegraph*, 3 December 2008, accessed 3 July 2009, www.news.com.au/dailytelegraph/story/0,22049,24741393-5001031,00.html.
25. MR reg 2.07AK — Applications for Witness Protection (Trafficking) (Permanent) (Class DH) visas.
26. MR reg 2.20(14)(a)(ii)(E), Sch 8. The police need to tell immigration in writing that the applicant has been identified as a suspected victim of human trafficking. It is noted a BVF is also available to the member of the immediate family of a person who is identified as a suspected victim of trafficking. See Explanatory Statement, SLI 116 of 2009, "Item [19] — Sch 1, para 1306(3)(d)".
27. For further discussion see "Trafficking in Persons: The Australian Government Response January 2004 — April 2009", Inaugural report of the Anti-People Trafficking interdepartmental committee, Commonwealth of Australia, 2009, pp 13–14.
28. MR Sch 2 cl 060.511(2)(b)(ii).
29. MR Sch 1 item 1306(3)(c); PAM3: Act — Compliance — National strategies — People trafficking, para 18, 1 July 2009.
30. See Explanatory Statement, SLI 116 of 2009, "Item [26] — Sch 2, Pt 787".
31. The certification threshold for a witness protection permanent visa may be met regardless of whether or not the alleged trafficker was convicted or in circumstances where the Director of Public Prosecutions has decided not to prosecute the alleged offender.
32. MR reg 2.07AK(2)(c)(i) and (ii).
33. MR Sch 2 cl 852.411.
34. UNHCR, "Guidelines on International Protection: the application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked", HCR/GIP/06/07, 7 April 2006, 32.
35. See A Dorevitch and M Foster, "Obstacles on the Road to Protection: Assessing the Treatment of Sex-Trafficking Victims under Australia's Migration and Refugee Law" (2008) 9 *Melbourne Journal of International Law* 1.
36. In May 2009 the Australian Government committed to provide \$4.8 million over four years to implement a system of complementary protection. This system will make sure Australia meets its obligations under the ICCPR "not to extradite, deport, expel or otherwise remove a person from their territory where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by Arts 6 and 7 of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed": UNHRC, *General Comment 31: Nature of the General Legal Obligation imposed on States Parties to the Covenant*, 26 May 2004, [12]. UN Treaty bodies have repeatedly recommended Australia introduce a system of complementary protection. *Concluding Observations of the Committee Against Torture: Australia*, Advance unedited version, 40th session, 28 April — 16 May 2008, CAT/C/AUS/CO/115 May 2008; *Concluding Observations of the Committee Against Torture: Australia*, 25th session, 13–24 November 2000, CAT A/56/44/2001; see also Senate Committee on Ministerial Discretion in Migration Matters, *Report of Inquiry into Ministerial Discretion in Migration Matters*, Commonwealth of Australia, Canberra, 2004, para 8.82.
37. For a discussion of how this protection might assist people who are trafficked or enslaved, see J McAdam, *Complementary Protection in International Refugee Law*, Oxford University Press, Oxford, 2007, p 171; see also R Piotrowicz and C van Eck, "Subsidiary Protection and Primary Rights" (2004) 53 *ICLQ* 107, 125, 126.
38. The National Roundtable on People Trafficking, "Statement of Outcomes", October 2008, accessed 2 July 2009, www.ag.gov.au/www/agd/agd.nsf/Page/PeopleTrafficking_PeopleTrafficking.