



# Visas for Trafficked People: The Australian Response

Policy Position Paper No. 3  
August 2016

## Introduction

Visas for survivors of human trafficking, slavery and slavery-like practices were created by the Australian government in 2004 to provide protection, security and certainty to survivors. The visa framework was amended in 2009, and again in 2015. Anti-Slavery Australia recommends further amendments to the visa framework to fully reflect the strategic and human rights intent behind the creation of the visas.

## Key Points

1. The current eligibility criteria for the grant of permanent visas to victims of trafficking, is unduly narrow and the element of “danger” creates uncertainty in various circumstances.
2. Some victims of trafficking are unable to provide evidence to the police and in such cases there should be possibility of the grant of a permanent visa where there are human rights concerns and compassionate circumstances.

## Trafficking visa framework 2004 - 2016

In January 2004 the Australian government established a visa program system for those who were victims of trafficking, slavery, and slavery-like practices.<sup>1</sup> The trafficking visas were intended to provide lawful stay to a victim of human trafficking, initially for 30 days, and for a longer period if the victim engaged with a police investigation or commonwealth prosecution and met additional visa criteria. The framework recognised that victims of trafficking were often reluctant to give evidence in a trial where, as a consequence, they could face reprisals if they returned to their home country.<sup>2</sup> In describing the new framework, the Member of Parliament for Wentworth, Mr Malcolm Turnbull, now Prime Minister, explained that a permanent Witness Protection (Trafficking) (Permanent) Visa would come into effect ‘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’.<sup>3</sup>

<sup>1</sup> *Migration Regulations 1994* (Cth) sch 8, as amended by *Migration Amendment Regulations 2003 (No. 10)* (Cth) sch 1.

<sup>2</sup> Jennifer Burn and Frances Simmons, ‘Rewarding witnesses, ignoring victims: an evaluation of the new trafficking visa framework’, (2005) 24 *Immigration Review* 6, 6.

<sup>3</sup> Malcolm Turnbull, Commonwealth, *Parliamentary debates*, House of Representatives, 14 March 2005, 12 (Malcolm Turnbull).



Anti-Slavery Australia  
UTS, Faculty of Law  
PO Box Broadway NSW  
2007

P: 9514 9660

E: [antislavery@uts.edu.au](mailto:antislavery@uts.edu.au)  
[www.antislavery.org.au](http://www.antislavery.org.au)



## The 2015 amendments to the trafficking visa framework

The *Migration Regulations 1994* were amended on 1 July 2015 to significantly change the trafficking visa framework and the titles of the visas. The amendments were made with the aim of avoiding “*stigmatization*” and facilitating “*better-targeted support and access to benefits*”<sup>4</sup> for victims of trafficking, slavery, and slavery-like practices. Changing the names of visas in the trafficking visa framework was an important and long-requested change. The change of visa titles from Criminal Justice Stay Visa and Witness Protection Visa to a restructured Bridging F Visa and Referred Stay (Permanent) Visa, respectively, removed any preconceptions and misconceptions attached to the words and phrases previously used. However, while changing the names of visas is an important amendment, there is still work to do to ensure that the visa framework is appropriate.

Currently, the trafficking visa scheme contains two different visas:

- a) The Bridging F (Class WF) Visa – From 1 July 2015, the Bridging F Visa was expanded to ensure that, “*victims of trafficking, slavery, and slavery-like practices who are assisting in the administration of criminal justice in Australia... [were moved] out of the criminal justice stay visa framework and onto the visa catering specifically for trafficked persons (the Bridging F Visa)*”.<sup>5</sup> The restructuring of the Criminal Justice Stay Visa addressed concerns articulated by advocacy organisations<sup>6</sup> that the title of the visa stigmatized those who were granted the visa. Feedback from visa holders was that potential employers feared that the term ‘criminal justice visa’ suggested that the potential employee was a criminal or involved in some form of criminal conduct. Further, the visa was for any person required to stay in Australia for purposes of the ‘administration of justice’ and is potentially granted to both defendants and witnesses.
- b) The Referred Stay (Permanent) (Class DH) Visa is the new permanent visa for victims of human trafficking, slavery and slavery-like practices, previously named the ‘Witness Protection (Trafficking) (Permanent) Visa’. The renaming of the WPTPV was intended to address concerns of



Anti-Slavery Australia  
UTS, Faculty of Law  
PO Box Broadway NSW  
2007

P: 9514 9660

E: [antislavery@uts.edu.au](mailto:antislavery@uts.edu.au)  
[www.antislavery.org.au](http://www.antislavery.org.au)

<sup>4</sup> Explanatory Statement, Migration Legislation Amendment (2015 Measures No. 2) Regulation 2015 (Cth) 1.

<sup>5</sup> Department of Immigration and Border Protection, *PAM3: Act – Character and Security – People Trafficking*, [83].

<sup>6</sup> Such as Anti-Slavery Australia, The Australian Red Cross, Australian Catholics Religious Against Trafficking in Humans, Scarlet Alliance, Project Respect and the Salvation Army.



stigmatization linked to the visa name,<sup>7</sup> and reflected long-term advocacy.<sup>8</sup> In a very welcome change to the visa criteria, the *Migration Regulations* 1994 were amended to provide a better and more efficient pathway to permanent residence. For the grant of a permanent visa, there is no longer a visa criteria requirement for there to be a prosecution of a person who is alleged to have trafficked a person (or a decision by the CDPP not to prosecute). Rather, a victim may be granted an Attorney-General's certificate to the effect that the "applicant made a contribution to, and cooperated closely with, an investigation in relation to another person who was alleged to have engaged in human trafficking, slavery or slavery-like practices",<sup>9</sup> and the Minister is satisfied that the applicant would be in danger if they were returned to their home country.<sup>10</sup>

01 July 2016: DIBP issued policy guidance on the assessment of 'danger' as part of the criteria for the grant of a subclass 852 Referred Stay (Permanent) visa.

In deciding whether to grant a subclass 852 Referred Stay (Permanent) visa, the delegate must be "satisfied that the referred stay applicant would be in danger if he or she returned to his or her home country."<sup>11</sup> The 1 July 2016 policy document explains that the delegate should consider the likelihood and consequences of the person being exposed to danger if returned to their home country. Anti-Slavery Australia is preparing advice about the nature of the policy guidance.

## Evaluating the current trafficking visa framework

An evaluation of the current visa framework identifies a number of problems.

In order to obtain an extended Bridging F Visa and a Referred Stay (Permanent) Visa the applicant is still required to participate and cooperate in an investigation relating to a possible human trafficking and slavery offence. The investigations required for such matters are often complex and lengthy, and victim-witnesses are left in a continuing state of uncertainty and stress.



Anti-Slavery Australia  
UTS, Faculty of Law  
PO Box Broadway NSW  
2007  
P: 9514 9660  
E: antislavery@uts.edu.au  
www.antislavery.org.au

<sup>7</sup> Explanatory Statement, Migration Legislation Amendment (2015 Measures No. 2) Regulation 2015 (Cth) 10.

<sup>8</sup> Anti-Slavery Australia, Submission No 34 to Joint Committee on Foreign Affairs, Defence and Trade, *Inquiry into Slavery, Slavery-Like Conditions and People Trafficking*, 9 October 2012.

<sup>9</sup> *Migration Regulations 1994* (Cth) reg 2.07AK.

<sup>10</sup> *Migration Regulations 1994* (Cth) reg 2.07AK.

<sup>11</sup> *Migration Regulations 1994* (Cth) reg 2.07AK(3)(f).



## Assessment of 'danger' in Migration Regulation 2.07AK

In addition to the visa criteria dealing with the extent of the contribution of the victim to law enforcement, the Minister for Immigration (or delegate) is required to form an opinion that:

"[T]he Minister is satisfied that the person would be in danger if he or she returned to his or her home country."<sup>12</sup>

Anti-Slavery Australia submits that the requirement to demonstrate 'danger' be removed from the visa criteria. The eligibility criteria for the grant of the visas are already narrowly framed. The additional hurdle of meeting the 'danger' criteria seems unnecessary and has resulted in considerable uncertainty in the assessment of cases. Clearly the test of danger anticipated in the *Migration Regulations* is a different test to the requirement to provide evidence of persecution in relation to a Protection visa.

## Compassionate circumstances

As previously recommended in the Anti-Slavery Australia submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade 'Inquiry into Slavery, Slavery-like Conditions and People Trafficking'<sup>13</sup>, Anti-Slavery Australia continues to recommend the granting of permanent visas in compassionate circumstances, where trafficked people are unable to participate in a criminal investigation.

Anti-Slavery Australia observes that there is a significant gap in the trafficking visa framework that could be remedied by the implementation of a mechanism to grant a permanent visa in compassionate circumstances. There are a small number of victims of trafficking and slavery who are unable to participate in criminal investigations, and do not qualify for any other visa.

## Examples of cases where a visa in the trafficking framework may not be available

Identified gaps include a lack of visa supports for people who:

- experienced human trafficking, forced labour and forced marriage prior to amendments to the Commonwealth Criminal Code in 2005 and 2013 introducing relevant criminal offences;

<sup>12</sup> *Migration Regulations 1994* (Cth) reg 2.07AK(3)(f).

<sup>13</sup> Anti-Slavery Australia, Submission No 34 to Joint Committee on Foreign Affairs, Defence and Trade, *Inquiry into Slavery, Slavery-Like Conditions and People Trafficking*, 9 October 2012, 34.



Anti-Slavery Australia  
UTS, Faculty of Law  
PO Box Broadway NSW  
2007  
P: 9514 9660  
E: [antislavery@uts.edu.au](mailto:antislavery@uts.edu.au)  
[www.antislavery.org.au](http://www.antislavery.org.au)





- are unable to participate in the criminal justice process due to physical and mental difficulties, or fear for their own lives or the lives of their families;
- are unable to participate in the criminal justice system and where there are compassionate and compelling circumstances;
- have made a contribution but are no longer able or required to assist due to situations outside of their control, including a lack of corroborating evidence, or the trafficker has left the jurisdiction or cannot be identified;
- are minors, trafficked to Australia and who are unable to participate in the criminal justice process.

This paper incorporates part of Anti-Slavery Australia's Submission No 9 to the Joint Committee on Law Enforcement, Inquiry into Human Trafficking, 2015.



Anti-Slavery Australia  
UTS, Faculty of Law  
PO Box Broadway NSW  
2007

P: 9514 9660

E: [antislavery@uts.edu.au](mailto:antislavery@uts.edu.au)

[www.antislavery.org.au](http://www.antislavery.org.au)

