

# Recommendations to the Australian Government for Reform of Support for Victims of Trafficking in Australia

## 1 Summary

### 1.1 Visas for Trafficked Persons

1. That visas and recovery services be provided to trafficked people on the basis of need, unrelated to their utility as informants or witnesses in investigations and prosecutions.
2. That decisions regarding visa applications of trafficked persons should be reviewable, with right of access to a merits review of a negative decision by an independent tribunal.
3. That a presumed trafficked person be able to directly apply for a temporary visa of three months duration (rather than rely on law enforcement officers to offer her a visa). This visa will provide a reflection period and access to support services.
4. That the temporary visa should have appropriate attached rights, including legal assistance in preparing any further visa applications, work rights, temporary eligibility for Medicare, and material aid.
5. That the Australian Government create a humanitarian visa class for victims of trafficking, of two years duration, with automatic access to permanent residency on conclusion of the visa.
6. That dependent family members (ie children, parents, siblings) and spouses of trafficked persons can access the humanitarian visas for trafficked persons.
7. That the Australian Government provides visas for trafficked persons which allow them to participate in criminal and civil justice proceedings.

### 1.2 Support for All Victims of Trafficking

8. That all trafficked persons should have access to specialist support, not only those on the particular trafficking visas or those who are cooperating with criminal justice authorities.
9. That ongoing funding is provided to a range of Australian organisations to support trafficked persons.
10. That there be clear and publicly available minimum service standards for the service provider of the Support for Victims of People Trafficking program, including standards for gender sensitivity, cultural sensitivity, appropriate training for staff, and use of interpreters.
11. That independent evaluations of the Support for Victims of Trafficking Program (SVTP) be conducted to ascertain the program's effectiveness, involving consultation with the clients of the SVTP and community groups.
12. That trafficked children be able to attend school in Australia.

### 1.3 Accessing Justice in the Courts

13. That the Australian Government implements measures to improve access to justice for victims of trafficking, specifically protections for witnesses such as those which are available under State law to complainants in sexual offences cases.
14. That access to compensation is improved, including through the provision of information about compensation schemes in relevant languages.
15. That the Government resource agencies likely to come into contact with victims of trafficking with information about compensation so they inform victims about their rights and refer accordingly.

#### **1.4 Repatriation**

16. That a review of the repatriation procedures for victims of trafficking be conducted. Such a review, or key elements thereof, should be made public.

#### **1.5 Referral Protocols**

17. That referral protocols, or a national referral mechanism, are developed, to facilitate cooperation and comprehensive protection.

#### **1.6 Community Education**

18. That targeted community education materials on trafficking for sexual exploitation be revised so that they are accessible to all trafficked women and list all relevant support and law enforcement agencies.
19. That community education materials be developed regarding trafficking for labour exploitation, to reach both trafficked persons and the wider community.
20. That a wider community education program is developed and resourced.

## 2 Details of Project Respect's submission

Project Respect commends the Australian and the State Governments for their ongoing commitment to counter-trafficking measures and support of trafficking victims within Australia. The continuing dialogue between non-government organisations, academics, the Australian Institute of Criminology and government agencies has elucidated some of the obstacles and barriers faced by trafficked persons in accessing remedy and reparations. These include the current trafficking visa framework in which those who are unable, or do not wish, to participate in the criminal justice process are largely excluded from comprehensive, specialist support programs.

In this regard, we still have a long way to go towards achieving a fair and just process for victims of trafficking. In response, Project Respect makes the following recommendations for reforms to the Australian Government counter-trafficking response. Implementation of our recommendations would ensure that Australia meets its responsibilities under international human rights and humanitarian law, which include protection and assistance to victims irrespective of status and role in criminal law proceedings.

The Australian Government has a real opportunity to become a leader of the Asia-Pacific region's counter-trafficking governance. As a wealthy destination state, Australia has greater potential and hence, greater responsibilities to combat trafficking than less wealthy origin countries, both because of its greater capacity to do so and also because it is the site in which the real profits are made and the real exploitation takes place.<sup>1</sup> Practically speaking, this means that Australia should take proactive measures to investigate trafficking, to prevent exploitation, and to ensure the recovery of the victims. As victims of trafficking suffer significant human rights abuses within Australia, the greatest responsibility for ensuring remedy falls upon Australia rather than origin states. Key components of remedy for trafficking include security, such as a long-term temporary visa with possibility for permanent residency, and access to comprehensive support.<sup>2</sup>

### 2.1 Visas for Trafficked Persons

**Recommendation One: Visas and recovery services should be provided to trafficked persons on the basis of need**, unrelated to a person's utility as an informant or witness in investigations and prosecutions, as per the Protocol to Prevent, Suppress and Punish Trafficking, Especially Women and Children and the recommendations of the UN Committee on the Elimination of all forms of Discrimination Against Women (February 2006), the UN Committee Against Torture (April 2008), and the Australian Human Rights Commission.<sup>3</sup>

<sup>1</sup> Gallagher, Anne and Paul Holmes. 2008. "Developing an Effective Criminal Justice Response to Human Trafficking," in *International Criminal Justice Review*, Vol. 18, No. 3, September 2008, p. 321.

<sup>2</sup> See further the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the Basic Principles and Guidelines on the Right to a Remedy and Reparation or Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. <http://www2.ohchr.org/english/law/remedy.htm>

<sup>3</sup> <http://www.un.org/womenwatch/daw/cedaw/34sess.htm>, paragraph 21;

<http://www2.ohchr.org/english/bodies/cat/cats40.htm>, paragraph 32;

<http://www2.ohchr.org/english/bodies/cat/docs/ngos/HREOC.pdf>, page 13; Protocol to Suppress, Prevent and Punish all Forms of Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organised Crime (Articles 2, 6 and 7). Note too that the Human Rights Committee is monitoring this issue. The Committee asked the Australian delegation in its March 2009 report for the International Covenant on Civil and Political

Note that similar humanitarian provisions, with appropriate checks and balances to guard against misuse, already exist in the Australian immigration framework in protection visas and the family violence provisions of the migration program.

**Recommendation Two: Decisions regarding visa applications of trafficked persons should be reviewable**, with right of access to a merits review of a negative decision by an independent tribunal.

### 2.1.1 Temporary Visa (Reflection Period) for Presumed Trafficked Persons

**Recommendation Three: A presumed trafficked person should be able to directly apply for a temporary visa of three months duration, providing her with a reflection period** (and not rely on law enforcement authorities to apply for her). The purpose of this visa is to ensure that presumed trafficked persons can access support services and make reasonable decisions about their future from a position of security. Applications for Temporary Visas should be made to the Department of Immigration where a decision-maker trained in law, policy and procedures concerning trafficking in persons will assess the application.

Applications should be assessed within seven days, so that presumed victims of trafficking do not continue to live in limbo, with ambiguous legal status.<sup>4</sup> To expedite the process and maintain the integrity of the system, applications could be accompanied by a letter of support from a recognised counter-trafficking agency or migration agent.<sup>5</sup> If the person has not provided a letter of support from such an organisation, the Case Officer at Immigration should put them in touch with one of these organisations. Recognised organisations could include the Australian Federal Police (AFP) Transnational Sexual Exploitation and Trafficking Team, Project Respect, Samaritan House, the Australian Red Cross, etc.

Note that Europe offers a minimum 30-day reflection period to all victims of trafficking, as per Article 13 of the European Convention on Action Against Trafficking in Human Beings; Belgium provides 45 days; the Netherlands offer a three month reflection period; and Canada and Norway six months.

**Recommendation Four: The temporary visa should have appropriate attached rights**, including professional legal assistance in preparing any further visa applications, work rights, temporary eligibility for Medicare, and material aid.

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Rights whether support programs are limited to identified victims of trafficking who are “willing and able to cooperate with the police and prosecution authorities.” See Article 8, *List of issues*, at <http://www2.ohchr.org/english/bodies/hrc/hrcs95.htm>.

<sup>4</sup> Note that in Belgium, applications for visas must be supported by a recognised trafficking victim support agency, in recognition of their expertise and their greater capacity to develop a trusting relationship with a survivor of trafficking than law enforcement authorities. In Italy, registered trafficking victim support agencies may also support a victim’s application for a visa; however, there is no time limit for processing applications which means that a victim may live in limbo for an unknown amount of time while local police (who have responsibility for granting visas) assess the person’s application.

<sup>5</sup> Note that in Italy, victim support agencies registered under the relevant section of the Migration Act to support victims of trafficking are permitted to support trafficking victim’s applications for residency. Their letters of support are generally considered sufficient for the granting of a visa by the police (this is an administrative function of the local police, rather than of a separate immigration agency), due to the considerable expertise they have in counter-trafficking activities. In Belgium, the official victim support agencies only (not law enforcement authorities) may apply to the Minister for a stay of deportation and subsequent visas.

### 2.1.2 Humanitarian Visas with access to Permanent Residency for Trafficked Persons

**Recommendation Five:** Project Respect recommends that the Australian Government create a **humanitarian visa class for victims of trafficking, of two years duration, with automatic access to permanent residency on conclusion of the visa**. Trafficked persons should be able to directly apply for trafficking victim-related visas themselves. Processing an application must not exceed 3 months. Persons holding this visa should have access to specialist trafficking victim support services, free education, Medicare, legal advice, etc. Note that many trafficked women cannot return home and are entitled to refugee status. There are a number of survivors of trafficking who have already been granted refugee status in Australia.

This is consistent with international state practice and recommended best practice. The European Convention on Action against Trafficking recommends that States Parties issue renewable residence permits where the person's stay is necessary owing to their personal situation and/or where they are assisting in criminal proceedings (Article 14). The Explanatory Report to the 2005 Council of Europe Convention recognises that the 'personal situation requirement' should take into account such factors as the victim's state of health, family situation, as well as safety (para 184). This permit is to be granted without prejudice to the right 'to seek and enjoy asylum' (Article 14.5). Italy provides humanitarian visas to migrant victims of grave exploitation, to enable them to escape their exploitation and seek recovery services.

**Recommendation Six: Dependent family members (children, parents, siblings) and spouses should be able to access these visas;** if said persons are still in the origin country, they should be able to come to Australia with this visa.

### 2.1.3 Justice Visa for Trafficked Persons

**Recommendation Seven:** Project Respect recommends that the Australian Government provide **visas for trafficked persons which allow them to participate in both criminal and civil justice proceedings**. There already exists discretionary criminal justice stay visas but these should be expanded to cover civil proceedings and trafficked persons should be able to apply directly for the visas. Providing access to compensation is a mandatory provision of the UN Trafficking Protocol, ratified by Australia in 2005 (Article 6). This visa is necessary as a complement to the proposed humanitarian visa class as there may be persons who wish to pursue justice but do not wish to remain permanently in Australia, or to have a visa with only a two-year time limit when legal proceedings may be considerably longer.

## 2.2 Support for All Victims of Trafficking

Currently access to the Support for Victims of Trafficking Program (SVTP) is limited to those trafficked persons who are of interest to the AFP and hold a trafficking-related visa, either Bridging Visa F (BVF) or the Criminal Justice Stay Visa (CJSV).

**Recommendation Eight: All trafficked persons should have access to specialist support, not only those on the particular trafficking visas or those who are cooperating with criminal justice**

**authorities.** This is consistent with our obligations under the UN Trafficking Protocol, which Australia ratified in 2005.<sup>6</sup> Eligibility for the support program should be assessed by the service provider, rather than the AFP.

**Recommendation Nine:** Ongoing funding must be provided to a range of Australian organisations to support trafficked persons. This ensures that:

- existing organisations with expertise in specific areas can provide services tailored to suit specific needs and contexts of trafficked persons; and
- expertise in trafficking is maintained in a variety of organisations across different sectors.

Project Respect commends the Australian Government for providing \$1 million over approximately two-and-a-half years to itself, Anti-Slavery Project, Australian Catholic Religious Against Trafficking in Humans and Scarlet Alliance from the Proceeds of Crime Act Fund. This funding must be ongoing however. We further recommend that a pool of funding be created for anti-trafficking projects so that other organisations can apply for such funding and expertise in assisting trafficked persons and combating trafficking is created and maintained throughout various community organisations.

**Recommendation Ten:** Project Respect commends the Government for its changes to the Support for Victims of Trafficking Program (SVTP) so that a formal complaints mechanism is required of the implementing agency. However, this must be accompanied by **clear and publicly available minimum service standards, including gender sensitivity, cultural sensitivity, appropriate training for staff, and use of interpreters.**

**Recommendation Eleven:** Furthermore, the service providers must be held to appropriate levels on accountability and scrutiny. **Independent evaluations of the SVTP must be conducted to ascertain their effectiveness, involving consultation with community groups and the clients of the SVTP.** This would ensure that the SVTP maintains the highest standards of care. To assist world-wide policy makers and the evidence-based practice of support agencies, the findings of the evaluations should be made public (whilst noting legitimate concerns regarding privacy, confidentiality and security of persons).

**Recommendation Twelve:** At any point, **if the trafficked person concerned is a child, he/she should be able to attend school in Australia,** with fees for non-citizens waived.

### 2.3 Accessing Justice in Courts

Testifying in court can be a re-traumatising experience for victim-witnesses, particularly in matters involving slavery, servitude or trafficking. However, there are currently no federal laws to protect victim-witnesses.

**Recommendation Fourteen:** Project Respect recommends the **implementation of measures to improve access to justice for victims of trafficking, specifically protections for witnesses such as those available to complainants in sexual offences cases.** There should be automatic name-suppression orders for complainants as well as the option of testifying via closed circuit television.<sup>7</sup>

<sup>6</sup> See the Protocol to Suppress, Prevent and Punish all Forms of Trafficking in Persons, Especially Women and Children (Article 2(b), Article 6).

<sup>7</sup> See also David, F. 2008. *Trafficking in women for sexual purposes*. Canberra: Australian Institute of Criminology. For comprehensive recommendations on protections for complainants in sexual offences matters, see Victorian Law Reform

Australia has obligations, under its agreements in international law, to provide access to remedies to victims of trafficking.<sup>8</sup> Remedy includes not only access to support and recovery services but also to financial and material compensation.

**Recommendation Fifteen: Access to compensation must be improved**, including through the provision of information about compensation schemes in relevant languages. Project Respect has already developed materials regarding compensation in Victoria in Chinese, English, Korean, Thai, and Russian; these could be adapted for use in other States and Territories.

**Recommendation Sixteen:** The Government should resource agencies likely to come into contact with victims of trafficking so that they are aware of the possibility of compensation and can **refer victims to appropriate agencies**.

## 2.4 Repatriation

There is a real lack of information about repatriation procedures for victims of trafficking;<sup>9</sup> there appears to be no guidelines for police in the return of victims of trafficking.

**Recommendation Seventeen:** There should be a **review of the repatriation procedures for victims of trafficking**, including the Australian Government-funded return and reintegration program for Thai victims implemented by the International Organisation for Migration. Such a review, or key elements thereof, should be made public. Consideration should be given to operational issues such as funding to local organisations for repatriation support; and who gives the offer of repatriation support (offers should be given to victims of trafficking by people they know or trust to reduce the rate of refusal to participate).

## 2.5 Protocols

Communication and collaboration between the various agencies actively working on combating trafficking and supporting victims is vital to ensure that services are as efficient, comprehensive and victim/survivor-focussed as possible.<sup>10</sup>

**Recommendation Eighteen: Referral protocols, or a national referral mechanism, should be developed to facilitate cooperation and comprehensive protection.** Referral protocols ensure that referrals are made in a standardised manner; that trafficked persons do not need to tell their stories twice, with due consideration to issues of confidentiality, privacy and security; that they are able to access a full range of services; and that different agencies maintain good lines of communication and do not duplicate services. Relevant agencies to be involved in such a system include local, State and Federal government agencies (police, prosecution, immigration, women's affairs, health, justice,

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Commission. 2008. *Sexual offences final report*. Melbourne: Victorian Law Reform Commission, particularly Chapter 4: Making it Easier for Complainants to Give Evidence. Available from: <http://www.lawreform.vic.gov.au>

<sup>8</sup> See the International Covenant on Civil and Political Rights (Article 9); the European Convention on Action against Trafficking (Article 15); the Protocol to Suppress, Prevent and Punish all Forms of Trafficking in Persons, Especially Women and Children (Article 6). Note that access to compensation is one of the mandatory victim support provisions of the protocol.

<sup>9</sup> See for example, GAATW. 2007. *Collateral Damage*. Bangkok: GAATW.

<sup>10</sup> See OSCE Office for Democratic Institutions and Human Rights (ODIHR). 2004. *National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons – A Practical Handbook*. Warsaw: OSCE ODIHR.

education, employment and workplace relations, multicultural affairs) and all trafficking victim support agencies.

## 2.6 Community Education

**Recommendation Nineteen:** Targeted community education materials on trafficking for sexual exploitation should be revised so that they are accessible to all trafficked women and list all relevant support and law enforcement agencies. The community education campaign should be properly resourced so that campaign materials reach their target market. This could include posters in brothels (that brothels were compelled to display through licence conditions), which give information to clients and women involved in the sex industry about trafficking and where to report it and/or seek help. Note that the Cities of Yarra, Melbourne and Moreland are already developing such posters.

**Recommendation Twenty:** Community education materials should be developed regarding trafficking for labour exploitation, to reach both trafficked persons and the wider community.

**Recommendation Twenty-One:** There remains a need for a wider community education program on the issue of trafficking. Materials could be developed for schools, women's groups, business associations etc (such as those developed by the Stop the Traffik campaign).

24<sup>th</sup> March 2009