



HUMAN TRAFFICKING WORKING GROUP

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NEW VISAS FOR VICTIMS OF TRAFFICKING; AUSTRALIA

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On July 1 2009, a number of amendments were made to Australia's People Trafficking Visa Framework, which had been in operation since 2004. This has also affected the Support for Victims of People Trafficking Program, in terms of changing its entry conditions and the length of support available under this rehabilitative program.¹

1. Removal of Temporary Witness Protection visas and easier access to Permanent Witness Protection visas

The major change has been to combine the Witness Protection (Trafficking) (Temporary) Visa,² and its permanent equivalent the Witness Protection (Trafficking) (Permanent) Visa.³ This has the effect of making all trafficking victims who qualify for witness protection holders of a permanent Australian visa. This will offer greater security for these individuals as it will remove the requirement for regular renewals of their temporary visas. Additionally, the visa program has been extended to cover the family members of victims, including immediate family overseas who were previously not able to access this visa.⁴

If the victim can demonstrate that he or she would be in danger if they returned to their home country, and that they have contributed to and cooperated closely with, a prosecution or investigation related to trafficking,⁵ he or she will be able to apply for the permanent visa. This standard is a modification of the original requirement for a witness protection visa. The issuing of a Witness Protection (Trafficking) Certificate by the Attorney-General acts as the prerequisite for this visa, and previously required victims to have made a 'significant contribution' to a trafficking investigation. This standard has been lowered to the provision of a 'contribution' to either an investigation or prosecution, whether or not the matter proceeded to trial.⁶ Additionally, Witness Protection (Trafficking) Visas will now be available before the conclusion of the relevant prosecution, after the activation of an 'independent trigger' (however, it is not specified what must occur for this trigger to be activated).⁷ Previously, victims were required to wait until the conclusion of any relevant prosecutions before they were able to apply for a witness protection visa.

These reforms address the major area of criticism of the previous trafficking visa scheme, as many commentators argued that helpful victims were being unnecessarily excluded from protection because their efforts did not meet the 'significant contribution' standard required.⁸ These changes can also be seen as an acknowledgement that the previous divisions between

¹ See separate memo 'Australia — New Support for Victims of Trafficking'.

² Class UM, Subclass 787, under Regulation 2.07 AI.

³ Class DH, Subclass 852, under Regulation 2.07AK.; 'Changes to the People Trafficking Visa Framework', Department of Immigration and Citizenship, <<http://www.immi.gov.au/legislation/amendments/2009/090701/lc01072009-08.htm>> at 9 July 2009.

⁴ 'Changes to the People Trafficking Visa Framework', Department of Immigration and Citizenship, <<http://www.immi.gov.au/legislation/amendments/2009/090701/lc01072009-08.htm>> at 9 July 2009.

⁵ 'Australian Government Anti People-Trafficking Strategy', Department of Families, Housing, Community Services and Indigenous Affairs, <<http://www.fahcsia.gov.au/sa/women/progserv/violence/Pages/AntiPeopleTraffickingStrategy.aspx>> at 9 July 2009.

⁶ 'Changes to the People Trafficking Visa Framework', Department of Immigration and Citizenship, <<http://www.immi.gov.au/legislation/amendments/2009/090701/lc01072009-08.htm>> at 9 July 2009.

⁷ 'Australian Government Anti People-Trafficking Strategy', Department of Families, Housing, Community Services and Indigenous Affairs, <<http://www.fahcsia.gov.au/sa/women/progserv/violence/Pages/AntiPeopleTraffickingStrategy.aspx>> at 9 July 2009.

⁸ See for example, Jennifer Burn & Frances Simmons, 'Rewarding Witnesses and Ignoring Victims: an evaluation of the new trafficking visa framework' (2005) 387 *Immigration Review*, 9, 10; Lara Fergus, *Trafficking in Women for Sexual Exploitation* (Australian Institute of Family Studies: Australian Institute for the Study of Sexual Assault, (2005), 27.

Temporary and Permanent Witness Protection (Trafficking) visas were ineffective, particularly as no permanent visas were issued from their creation in 2004 to 2008.⁹

2. Extension of the initial trafficking victim visa

Additionally, the duration of the Bridging F visa¹⁰ has been extended from 30 days to up to 45 days.¹¹ This increases the amount of time victims of trafficking (including persons who are illegal non-citizens) have to receive support and to decide about whether they will cooperate with any criminal investigations into the circumstances of their trafficking.

3. Application of the reforms

The amendments discussed relate only to visas made on or after July 1, 2009 or for visas that have been applied for but where yet to be determined at that date. Applications for a Witness Protection (Trafficking) (Temporary) visa are excluded.¹²

The Department of Immigration and Citizenship (DIAC) has noted that the visa changes will allow for faster results for victims and an overall simplification of the existing visa scheme. This will allow for both DIAC and its partners to 'respond to the range of circumstances of trafficking victims and provide for a more balanced approach to combating trafficking while providing protection to victims'.¹³

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⁹ Commonwealth, *Management of the Australian Government's Action Plan to Eradicate Trafficking in Persons*, Australian National Audit Office, ANAO Audit Report No.30 2008–09, (2009) [48].

¹⁰ Class WF, Subclass 160.

¹¹ 'Changes to the People Trafficking Visa Framework', Department of Immigration and Citizenship, <<http://www.immi.gov.au/legislation/amendments/2009/090701/lc01072009-08.htm>> at 9 July 2009.

¹² 'Changes to the People Trafficking Visa Framework', Department of Immigration and Citizenship, <<http://www.immi.gov.au/legislation/amendments/2009/090701/lc01072009-08.htm>> at 9 July 2009.

¹³ 'Changes to the People Trafficking Visa Framework', Department of Immigration and Citizenship, <<http://www.immi.gov.au/legislation/amendments/2009/090701/lc01072009-08.htm>> at 9 July 2009.