

Australia's response to victims of trafficking within Australia

A Policy Proposal by the Catalyst Advocacy Network
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Catalyst acknowledges and appreciates the work of Ms Fiona Smith in the preparation of this document. We also acknowledge our dependence on the Australian NGO Shadow Report on Trafficked Women in Australia and the research of Jennifer Burns.

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Executive summary

Article 7 of the *UN Trafficking Protocol* states:

“State Parties must consider adopting legislative or other means to permit victims to stay in their country temporarily or permanently in appropriate cases and that they should give consideration to humanitarian and compassionate factors.”

Australia has made some progress in meeting our international obligations through the introduction of a visa trafficking framework which provides temporary or permanent stay to persons who have made a “significant contribution” to the prosecution or investigation into trafficking offences. A victim support package is made available to persons on a trafficking visa which includes temporary accommodation, access to Medicare and medical services, counselling, three legal consultations, training and social support

However, Australia’s current response to trafficking is narrowly focused on prosecuting offenders as opposed to protecting victims and responding to their needs. The Witness Protection (Trafficking) (Temporary) Visa is only granted at the end of criminal investigations and victim support is only open to those deemed ‘useful witnesses’ in investigations or prosecutions. This leaves open the possibility that some victims will not receive protection, especially those who are suffering trauma and may be terrified about giving evidence in court.

For those who are considered ‘useless’ witnesses there are limited options. They may apply for a Protection visa (which has only been successful in isolated incidents), pursue a civil claim against their traffickers, or be repatriated to their country of origin.

Recommendations

Introducing measures which enhance the security of victims and are sensitive to their experiences would encourage cooperation with investigations and increase the success of prosecutions. To this extent, Catalyst calls the Australian government to:

1. Revise the visa trafficking framework

The focus of this visa framework should be on the person’s status as a victim of trafficking, not on their ability as a witness. Access to the Witness Protection (Trafficking) (Temporary) visa should be made available to victims “reasonably suspected” of being trafficked during the investigation and prosecution process, rather than at the conclusion.

2. Improve accessibility to victim support

The victim support package should be accessible to any person who is “reasonably suspected” of being trafficked into Australia.

The support package should be extended to provide victims of trafficking with ongoing legal advice, not just three appointments. If their evidence is not considered useful to enforcement agencies, they may require further legal assistance to apply for a Protection Visa or initiate a civil action against Traffickers.

3. Introduce guidelines for investigating and prosecuting trafficking

All officials, especially those within immigration, border control, labour inspectors, union officials, state police, prosecution and the judiciary should receive specialised training on the effect of being trafficked and the impact of the criminal justice process on victims.

The Australian Government in conjunction with state governments should consider establishing a victims compensation scheme in accordance with the recommendations from the supplementary report of the Parliamentary Joint Committee in the Australian Crime Commission to review the Criminal Code Amendment (Trafficking in Persons Offences) Act.

In addition, the Australian Government should review policies towards court procedure, especially in regards to directing the jury and the use of Victim Impact Statements. There should be increased funding of culturally appropriate victim court support schemes, which have proved successful in the few cases that have arisen.

4. Provide bilateral repatriation and reintegration assistance

We thank the Australian government for its bilateral approach to trafficking with Thailand and encourage a continued intergovernmental approach.

We ask that the Australian government reviews repatriation policies with our regional neighbours. We encourage the government to invite NGOs to participate in discussing the strengthening of reintegration policies

5. Inter-agency dialogue

The Australian government should establish taskforces at local, state and national levels which involve NGOs to coordinate responses to trafficking. We encourage further interaction with these agencies in conjunction with migrant resources centres, community legal centres, rape crisis centres and health professionals.

6. Funding support for NGOs and research

We recognise the role of NGOs, their unique expertise and assistance they provide to victims of trafficking. We encourage the Australian government to consult with NGOs in the formulation of anti-trafficking strategies, and promote a new research agenda into the push factors of trafficking and victims' experiences.

Introductory Comments

Trafficking in human persons is an insidious crime that spans the globe. The US Department of State estimates that every year 600,000-800,000 people are trafficked across international borders. No country is exempt. The State Department estimates that 14500-17500 people are trafficked into the USA every year and effectively enslaved in agriculture, industry, domestic services and the sex industry. Within Australia estimates vary from below one hundred to one thousand people trafficked and effectively enslaved at any one time.

We recognise the efforts and progress of the Australian Government to combat trafficking in our region, and particularly its efforts to combat trafficking into Australia. This includes the introduction of a new visa framework in 2004 which provides temporary stay to victims who assist in criminal prosecutions. However, we believe that the current response to trafficking preferences prosecution of traffickers over the protection of victims of trafficking. We urge the Government to maintain its strong prosecutorial efforts and to complement these with measures that enhance the protection of victims, especially women and children, and respond appropriately to their needs. Catalyst calls for the measures outlined in this document.

Revise the Visa trafficking framework

Issue

Article 7 of the *UN Trafficking Protocol* states:

“State Parties must consider adopting legislative or other means to permit victims to stay in their country temporarily or permanently in appropriate cases and that they should give consideration to humanitarian and compassionate factors.”

On 1 January 2004, the *Migration Amendment Regulations* (No 11) 2003 introduced two new witness protection (trafficking) visas providing temporary or permanent stay to persons who have made a “significant contribution” to the prosecution of or investigation into trafficking offences.

The visas are however difficult to access because there is no application process for victims and an offer must be made by the Minister for Immigration and Attorney-General at the end of the criminal justice process. This leaves open the possibility that some victims will not be protected, especially those who are suffering trauma and may be terrified about giving evidence. As Professor Jennifer Burn from the Anti-Slavery Project comments:

“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.”¹

Whilst Protection visas have been granted to some alleged victims of trafficking as an alternative, the Refugee and Immigration Legal Centre notes that these cases are isolated. Few applications are accepted on the basis of gender persecution.

Recommendations

- The focus of the visa framework should be on the person’s status as a victim of trafficking, not on their ability as a witness. Access to the Witness Protection (Trafficking) (Temporary) visa should be made available to victims during the investigation and prosecution process rather than at the conclusion.
- Any person who is reasonably suspected of being trafficked to Australia should be eligible to apply for a visa, not just those who make good witnesses.
- Guidelines on trafficking and sexual slavery offences should be produced for Department of Immigration and Citizenship (DIAC) and Refugee Review Tribunal members who are involved in assessing applications for Protection Visas.

These measures would assist in providing greater security to victims who are fearful of removal and encourage greater cooperation with investigations into trafficking offences.

¹ Burn, Jennifer & Simmons, Frances, ‘Rewarding witnesses, ignoring victims; an evaluation of the new trafficking framework’ *Immigration Review* 24 (2006): 7

Improve accessibility to victim support

Issue

Victims of trafficking who are authorised to stay in Australia through a 30 day Bridging Visa F (BVF) or other visa in the trafficking framework and who assist in criminal investigations qualify for support services and assistance from the Government.

The support package, which is administered by the Department of Families, Community Services and Indigenous Affairs (FaCSIA), includes temporary accommodation, access to Medicare and medical services, counselling, three legal consultations, training, social support and work rights.

However, access to social support is very limited. If the person on the BVF decides to give evidence but the enforcement agencies do not believe that the evidence will be useful, no further visas will be sought and the person will not be entitled to victim support. Also, at any time during the 30 days, the BVF can be revoked if the victim is no longer of interest to police. This puts victims in an unstable position, which seemingly undermines the purpose of the 30 days to provide victims with a time of reflection and space to take back control over their lives.

Recommendations

- The victims support package should be accessible to any person who is “reasonably suspected” of being trafficked into Australia.
- The support package should be extended to provide victims of trafficking with ongoing legal advice, not just three appointments. If their evidence is not considered useful to enforcement agencies, they may require further legal assistance to apply for a Protection Visa or initiate a civil action against Traffickers.
- Increased consultation with NGOs and faith-based organisations who have knowledge and experience in assisting victims. Under the present system, private organisations possess the government tender to provide services to victims. There should be ongoing independent evaluation of the provision of those services, with input from NGOs on best practice principles.

Guidelines for investigating and prosecuting trafficking

Issue

To date the number of successful trafficking prosecutions have been low - only four convictions in the last eight years. Some of the main obstacles are: securing cooperation of victims; training and resources of the AFP and prosecutors; and insensitive attitudes by the jury.

Although there has been some effort to train the AFP on trafficking issues, there have been fewer measures at the state level and in training prosecutors. State police are less attuned to the issues of trafficking and are unlikely to identify labour cases as trafficking.

The DPP has also commented that unsuccessful prosecutions were due to the fact that juries were not used to these sorts of crimes and did not perceive the women involved to be victims. Some countries have implemented the use of Victim Impact Statements and compensation schemes in order to allow victims to express their perspective on the effects of the crime and achieve redress.

In the few trials which have taken place trafficked women giving evidence have received some protection and support. They are usually accompanied to and from court by a social worker or case manager, have access to an interpreter and receive an explanation of the court process. NGOs such as the Anti-Slavery project are also involved in a volunteer court observance system where volunteers attend court to monitor proceedings.

Recommendations

- All officials, especially those within immigration, border control, labour inspectors, union officials, state police, prosecution and the judiciary should receive specialised training on the complexity of trafficking. For those in law enforcement, there should be schemes that develop an awareness of the effect of being trafficked and the impact of the criminal justice process on victims.
- We recommend the establishment of guidelines in prosecuting trafficking and slavery offences for the judiciary and prosecutors. The Australian government should review policies and court procedure, especially in regards to directing the jury and the use of Victim Impact Statements.
- Trafficked victims should have access to compensation and redress. The Australian Government in conjunction with state governments should consider establishing a scheme to fund victims of the crime of trafficking in accordance with the recommendations from the supplementary report of the Parliamentary Joint Committee in the Australian Crime Commission to review the *Criminal Code Amendment (Trafficking in Persons Offences) Act*.
- Increase funding of Victim Court Support and culturally appropriate measures which have proven very successful in the trials which have taken place thus far.

Repatriation and Re-integration assistance

Issue

Where trafficked persons are unwilling or unable to assist authorities with investigations, they are generally repatriated to their country of nationality unless they apply for a Protection visa. Governments in destination countries have a responsibility to ensure that if trafficked persons are returned, they are assisted to build a new life.

The Australian government currently provides aid assistance through AusAID to reintegrate trafficked women repatriated to Thailand in collaboration with the IOM and Thai government. Like the services for trafficked persons in Australia, the degree of support is dependent upon willingness to collaborate with authorities.

Recommendations

- We thank the Australian government for its bilateral approach to Trafficking with Thailand, and encourage a continued intergovernmental approach.
- We ask that the Australian government reviews repatriation policies with our regional neighbours. We encourage the government to invite NGOs to participate in discussing the strengthening of return policies.

Inter-agency dialogue

Issue

Trafficking is a complex phenomenon and requires a multi-disciplinary approach. The Australian government is committed to a “whole of government approach” in tackling human trafficking. At a national level, an Inter-Departmental Committee has been established involving agencies connected to trafficking - eg Department of Immigration and Citizenship, AFP, Office for Women, Attorney General’s Department, Director of Public Prosecutions, Department of Foreign Affairs and Trade, and AusAID.

There is however still more scope for NGOs to be involved in the policy process. Organisations in Australia such as Project Respect, UTS Anti-Slavery Project, the Australian Catholic Religious Against Trafficking in Humans (ACRATH) and the National Network in Trafficking in Women have developed a special expertise in trafficking issues due to their contact with victims. For example, in Thailand NGOs are permitted to work with the authorities in Immigration Detention Centres to identify trafficked persons, which is good practice.

Recommendations

- We acknowledge the work of the Inter-Departmental Committee in investigating and reviewing responses to trafficking.
- The Australian government should establish taskforces at local, state and national levels which involve NGOs to coordinate responses to trafficking. We encourage further interaction with these agencies in conjunction with migrant resources centres, community legal centres, rape crisis centres and health professionals.
- The Inter-agency should evaluate strategies targeting community awareness and education. The current Community Awareness Program could be extended beyond the sex industry to other sectors such as the construction industry where trafficking may occur.

Funding support for NGOs and research

Issue

While the majority of services to victims of trafficking are provided by private companies through government tenders, a number of NGOs such as Project Respect, which advocates for sex workers, have close contact with victims due to their unique position, and perform invaluable research and advocacy. However, organisations like Project Respect and the UTS Anti-Slavery Project are limited in their work by a lack of resources.

Recommendations

- We recognise the role of NGOs, their unique expertise and the assistance they provide to trafficked persons. We encourage the Australian government to consult with NGOs in the formulation of anti-trafficking strategies and new research agendas.
- We encourage the Australian government to increase funding towards research into the nature and extent of trafficking in our region to develop a better understanding of the push factors and experiences of trafficked persons.

Increase labour protections for temporary workers

Issue

Temporary working visas such as the Subclass 457 Temporary Business (Long Stay) visa have been circumvented to exploit migrant workers in situations akin to slavery and debt bondage. While the 457 visa is meant to prevent instances of trafficking, it can in fact disguise exploitative work conditions. The media has reported widely of instances of underpay, overcrowded and squalid accommodation, unsafe work environments and controlled movements. Unions have expressed concern that there are negligible monitoring of employment conditions, poor complaint reporting mechanisms, and a dangerous relationship of dependence on the sponsoring Australian employer.

Recommendations

- We applaud the Federal Government's plan to establish a new external reference group made up of industry experts to review temporary migration, and encourage the inclusion of anti-trafficking NGOs and Unions.
- We encourage the implementation of recommendations from the Parliamentary Joint Standing Committee on Migration to introduce a more comprehensive, confidential complaints mechanism.
- There should be a widespread education campaign of employers and migrant workers in culturally appropriate forms addressing employers' legal obligations such as payment of minimum rates, medical expenses and occupational health training, and employees' rights.