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MEETING BRIEF

A/g First Assistant Secretary: Peter Richards, Community Protection Division

Meeting Date: 29/05/2017	Meeting Time: 10:00-11:00	Item: N/A
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NSW PARLIAMENTARY COMMITTEE ON HUMAN TRAFFICKING INQUIRY

Talking points:

Human Trafficking Visa Framework

- DIBP supports trafficked victims by administering the Government's comprehensive Human Trafficking Visa Framework ("the Framework").
- The Framework regularises the status of unlawful non-citizens assessed by the Australian Federal Police (AFP) as suspected victims of trafficking. It allows them to remain in Australia for a period of rest and recovery, and to assist with criminal justice processes.
- As of 1 July 2015, significant reforms have been made to the Framework. This includes broadening the definition of human trafficking within the Migration Regulations.
 - The definition now includes activities such as trafficking in persons, organ trafficking and debt bondage, and a range of offences under state, territory or Commonwealth criminal codes.
 - It also provides a level of flexibility to include offences that may come under the umbrella of human trafficking in the future.

As part of the reforms, the Framework has been streamlined from three visas to two:

1. **Bridging F visa (BVF):** a person assessed by the AFP as a suspected trafficked person may be eligible for a BVF for up to 45 days for an initial period of rest and recovery. A BVF can also be granted to immediate family members in Australia. There is an option to grant a second BVF for a further 45 days (making up to 90 days available) for additional rest and recovery.
 - If a trafficked person is required to remain in Australia to assist authorities with an investigation or prosecution, another longer-term BVF can be granted for the duration of the criminal justice process. People granted this BVF are permitted to work. These BVF holders may depart Australia and re-enter, provided they are still required to assist authorities with the criminal justice process. Prior to the 2015 reforms to the Framework, trafficked people participating in a criminal justice process were generally granted Criminal Justice Stay visas (CJSVs).

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- The Department understands that the criminal justice process can be a lengthy process and has designed the BVF to allow a trafficked person to leave Australia for compassionate and completing reasons, when the person's departure from Australia is supported by the AFP.
 - The Department has a range of visa products that allow family members of a trafficked person to enter into Australia. Subsequent to meeting requirements of grant of those visas, they could spend time together in Australia.
2. **Referred Stay (Permanent) visa (RSV):** a trafficked person may be eligible for a RSV if they have made a contribution to, and cooperated closely with, an investigation into a human trafficking, slavery or slavery-like offence, and would be in danger if they returned to their home country. This visa allows the holder to remain in Australia permanently. It also has the option to include immediate family members in the visa application. Prior to July 2015, the RSV was titled the Witness Protection (Trafficking) (Permanent) visa (WPTV).
- The RSV is different from a protection visa as it is intended for a specific cohort, namely those victims of human trafficking who have contributed to the criminal justice process.
 - The RSV provides a permanent visa pathway, protection and support to trafficked victims who would be in danger if they returned to their home country, following their contribution to the criminal justice process.
 - Following the 2015 reforms, the Department has updated its Procedures Advice Manual (PAM) to provide guidance to delegates on a variety of factors to consider when assessing the 'danger' requirements.
 - Victim's travel back to their home country in itself would not disadvantage a RSV applicant's claim of danger. However, frequent travel back to their home country, along with a variety of other factors, will be weighed up by the delegate as they consider the likelihood and consequence of the person being exposed to danger if they returned to their home country.
- Between 1 January 2004 and 30 June 2016, DIBP granted 272 BVFs, 211 CJSVs and 132 RSVs and WPTVs under the Human Trafficking Visa Framework. As of 1 July 2016 to 28 February 2017, DIBP has granted 10 BVFs and 7 RSVs to support suspected trafficked people and their immediate family members.
 - The Department and the AFP have an established DIBP-AFP Human Trafficking Referral Protocol (the Protocol). The purpose of the Protocol is to provide clear, agreed, processes and timeframes for actions by both agencies when ABF officers identify suspected human trafficking, slavery and slavery-like practices (HTS) (as defined under Australian law in Divisions 270 and 271 the Criminal Code) and refer this information to AFP for potential investigation.
 - The Department adopts a low threshold for referral of suspected cases of human trafficking and slavery to the AFP. This means that departmental officers would refer cases with indicators of human trafficking to the AFP as per the Protocol.
 - DIBP and the AFP have commenced work on revising the Protocol. The current revision is focussed on addressing shortcomings for both agencies in the current referral process, including distinguishing between higher quality referrals and lower threshold allegations and unsubstantiated information. For instance, information that does not have an identified victim/s, a specific address or location and substantive indicators of HTS, will be forwarded to the AFP as an information report rather than a formal referral.
 - The referrals of suspected victims of human trafficking which includes slavery, forced labour, servitude, debt bondage and forced marriage, can be found in a range of industries and occupations, including agriculture, sex work, hospitality, construction and domestic work.

- In the 2015/2016 financial year, the Department provided the AFP with 64 referrals for investigations. This financial year to date, the Department has made 40 referrals to the AFP.
- Of these referrals, the Department provided the AFP with 16 forced marriages referrals in the 2015/2016 financial year. This financial year to date, the Department has made 10 referrals on forced marriages to the AFP.
 - Most of the referrals on forced marriage are Australian citizens and permanent residents.
 - The Australian Border Force (ABF) acts on information provided by the State, Territory and Federal Police in an Alert Management System, and helps prevent travel of individuals, assessed by the Police as being at risk of being taken out of the country for forced marriage purposes, at border control points.
 - Suspected victims of forced marriage are placed on the Support for Trafficked People Programme administered by the Department of Social Services (DSS).
 - The Department recognises the complexities of issues surrounding forced marriage, particularly the challenges of gaining the co-operation of forced marriage victims in investigations and potential prosecutions in which the offenders are often the victims' family members.
 - The Department will continue to collaborate with the Attorney General's Department (AGD), AFP and community groups to address forced marriages through prevention and education. This will help to raise awareness of forced marriage within the community and ensure that people at risk are able to seek assistance.
- The Department has developed e-learning modules on human trafficking to raise general awareness of human trafficking as well as awareness on forced marriage and serious labour exploitation. The modules aim to equip departmental staff to recognise and act upon indicators of human trafficking and slavery, forced marriages and serious labour exploitation.
- As at end of April this year, 772 officers in the Department had completed these modules (further detail on training is provided under Training for ABF Officers below).
- Most victims of human trafficking identified in Australia have entered on visitor, student, or working holiday visas.
- DIBP knows that sometimes visa holders are reluctant to come forward to complain about underpayments or other breaches of workplace law because they are concerned that their visa may be cancelled.
- To help address this, DIBP and the FWO agreed that where a visa holder with work rights comes forward to make a complaint, DIBP will generally not cancel their visa, provided they agree to abide by their visa conditions in future and there is no other difficulty with their presence in Australia (e.g. criminality or character concerns).
- If a visa holder without work rights comes forward to report workplace exploitation DIBP will consider the case on its merits and ensure the visa holder is provided with relevant information to assist in resolving their visa status.
- The Department expects this approach will encourage visa holders to come forward to identify wrong-doing on the part of employers that can then be prosecuted by FWO or other agencies, including the Australian Border Force (ABF) where there are breaches of migration law.

- While some might argue that Government should go further than this – e.g. by offering some kind of general amnesty to visa holders – there is a risk that this would only serve to encourage systematic breaches of migration and workplace laws.
- The Department believes this is a measured approach which balances risks to the integrity of our visa programmes with protecting exploited migrant workers.
- DIBP and the FWO will update the Migrant Workers Taskforce in coming months on their progress in implementing the new arrangements. The next Taskforce meeting is scheduled for 21 June 2017.

What is the Department doing to address issues of forced marriages?

- Instances of forced marriage are dealt with under the government's National Action Plan to Combat Human Trafficking and Slavery 2015-19. The Department refers all suspected cases of forced marriage to the AFP for investigation via the established DIBP-AFP Human Trafficking Referral Protocol.
- Suspected victims of forced marriage are placed on the Support for Trafficked People Programme administered by the Department of Social Services (DSS). If necessary, the grant of visas under the Human Trafficking Visa Framework will be considered.
- The Department recognises the complexities of issues surrounding forced marriage, particular the challenges of gaining the co-operation of forced marriage victims in investigations and potential prosecutions in which the offenders are often the victims' family members.
- The Department will continue to partner with the AGD, DSS, other government agencies and community groups to make further progress on this issue.

Further information, specific to the NSW Legislative Council Select Committee on Human Trafficking

- ***Total number of permanent visas granted to persons in NSW***
 - **Since 1 March 2009, when grants of the permanent visa in the Human Trafficking Visa Framework commenced, a total of 26 clients residing in NSW have received a permanent visa.**
 - **Less than five have received a Referred Stay Visa (RSV) (since the name change in July 2015).**
 - **Over 20 received the previously named Witness Protection (Trafficking) (Permanent) visa (WPTV).**
 - **DSS/Red Cross also advise that a further small number of clients, who resided elsewhere in Australia who were being supported by NSW at exit, received the WPTV.**

- **Referrals to the Australian Federal Police (AFP) this financial year, that relate to cases in NSW**

This financial year, there have been 10 referrals by DIBP/ABF to the AFP concerning suspected human trafficking cases identified in NSW. The 10 referrals consisted of suspected forced marriage, forced labour, domestic servitude and sexual servitude. (In line with data protocols the Department is unable to disclose numbers less than five).

- *Sex Industry*

Colleagues in AGDs have suggested that as part of DIBP briefing we include information around suspected victims of human trafficking working in the sex industry.

The referrals of suspected victims of human trafficking can be found in a range of industries and occupations, including sex, agriculture, construction, domestic services and cleaning industries.

Visa holders, with work rights, can work in any capacity permitted by law. This includes working in the sex industry within the states which have legalised or decriminalised sex industry work.

Targeted activities are undertaken by the Department for those who are deliberately non-compliant with visa conditions, including by working in the sex industry. These activities are generally in response to allegations or referrals received from within the Department, the community, human services and law enforcement agencies.

The majority of trafficked people identified by Australian authorities historically have been women from Asia who have been exploited within the sex industry. However, in recent years the AFP are seeing a more diverse group of victims who have been exploited in a range of industries other than the sex industry, or within intimate and family relationships.

- *Attorney-General's Department Briefing Pack for this Inquiry*
 - A briefing pack developed by AGDs for use by Catherine Hawkins, FAS Criminal Justice Policy and Programmes Division at the hearing is enclosed at **Attachment A**.
 - Note that other Commonwealth representatives will include, Ryan Perry - Director, People Smuggling and Human Trafficking Section, AGD and Flora Carapellucci - Principal Advisor, Families Group, DSS.
 - The briefing pack includes the following information:
 - Sensitivities and key messages
 - Opening statement

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- A summary of submissions to the NSW Legislative Council Select Committee on Human Trafficking in NSW
- A summary from previous hearings of the NSW Legislative Council Select Committee on Human Trafficking Inquiry Hearing, including key issues relevant to the Australian Government
 - 6 March 2017
 - 28 March 2017
- A comprehensive Q&A brief which includes:

Key issues
Statistics
Cooperation with NSW
Legality of sex work (including Nordic Model)
Funding for Scarlet Alliance
Forced marriage investigations and prosecutions
Support for victims of forced marriage
Forced marriage awareness raising
Labour exploitation
Operation of Commonwealth human trafficking and slavery offences
Anti-Slavery Commissioner
Corporate reporting requirement
Commonwealth procurement
Reporting hotline
National Roundtable on Human Trafficking and Slavery
Identity documents
Additional issues that may be raised by the Committee
International Labor Organization and Forced Labor Protocol
Recently introduced legislative amendments
Vulnerable witness protections
Victims compensation
Supply Chains Working Group
NGO funding
Flexible referrals and de-linking government support from assistance with the criminal justice process
Commercial surrogacy and intercountry adoption

- Names and photos of members of the NSW Legislative Council Select Committee on Human Trafficking are included at **Attachment B**.
- Terms of Reference for the Committee are included at **Attachment C**.
- Relevant 2017 NSW media articles are included at **Attachment D**. Note that these have been compiled by AGDs.

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CONSULTATION:	As above
DATE:	24 May 2017

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Additional Talking Points:***“If Asked”******What is DIBP’s position when it comes to detaining and deporting exploited and trafficked victims?***

It is not the Department’s policy and practice to detain and deport exploited and trafficked victims.

Where a visa holder makes a complaint about their work situation, Australian Border Force (ABF) officers provide individuals with the “Workplace rights for foreign national” brochure, which includes information on Australian working conditions and entitlements and contact details for the Fair Work Ombudsman (FWO). This brochure has been translated into 12 community languages.

ABF officers are trained to assess each individual’s circumstances. If a visa holder states they have been subject to serious exploitation that raises slavery or slavery-like circumstances, the officer must refer the matter to a departmental Human Trafficking Contact Officer (HTCO).

HTCOs are specialist officers within the ABF, who determine if the matter should be referred to the Australian Federal Police (AFP). The AFP is Australia’s lead agency for the investigation of human trafficking matters.

To support and encourage visa holders to come forward with complaints, the Department has confirmed that where temporary visa holders with a work entitlement attached to their visa may have been exploited and they have reported their circumstances to the FWO, the Department will generally not cancel a visa, detain or remove those individuals from Australia, providing:

- the visa holder commits to abiding by visa conditions in the future; and
- there is no other basis for visa cancellation (such as on national security, character, health or fraud grounds).

The Department and the FWO have recently updated our respective websites with this information and continue to work in partnership to ensure visa holders have information on their work entitlements and Australian working conditions. This includes through visa grant notifications, webpages, social media platforms and through the Visa Entitlement Verification Online (VEVO) tool.

What is DIBP doing to prevent exploitation of overseas students working in Australia, in particular the compliance and enforcement of the 40-hour per fortnight work limit?

The Department provides visa holders, including overseas students, with information about their work conditions and entitlements in their visa grant notice. They also have the ability to check their visa conditions online at any time on our website.

Around seventy percent of visas granted to international students are for those enrolled in Higher Education, Diploma or Associate Diploma level courses. The overwhelming majority of these students have a positive experience, complete their courses and comply with visa requirements.

There is no hard data on the full extent of student visa holders' non-compliance with the 40-hour per fortnight work limitation. Based on what we do know, there is limited evidence to suggest non-compliance and exploitation is widespread.

At 30 June 2016 there were just over 400,000 student visa holders in Australia. Between July and December 2016, only 20 student visa holders had their visa cancelled for a breach of work-related conditions.

Where students do breach the work condition, some of the drivers include their limited understanding of visa conditions and responses to cultural and economic norms within a particular community group.

From an immigration compliance perspective, the Department responds to individual allegations of student non-compliance in line with our operational priorities. In particular, ABF and departmental resources are prioritised according to risk and harm to the broader community.

The Department actively responds to and targets illegal work through building awareness of the consequences of non-compliance; creating a credible threat of consequence for employers; and sanctioning businesses that commit breaches or persist in unlawful activity.

The keys to improving enforcement of the work limitation are two-fold:

- Better education of visa holders and employers
- Intelligence-led activity to identify those engaged in facilitating systemic abuse – providers, agents and employers.

Through the work of the Migrant Workers Taskforce, agencies are also working to better educate visa holders and employers.

Is there scope for the 457 visa being used to better support foreign sex workers?

On 18 April 2017, the Government announced that the subclass 457 visa will be abolished and replaced with the new Temporary Skill Shortage visa in March 2018.

The reform package contains a number of elements that protect against worker exploitation, including sharing tax file numbers to prevent employers from underpaying overseas workers, and publishing the details of sanctioned sponsors.

How does DIBP prevent people from entering into Australia using a false passport?

The Department is continually strengthening our border intelligence capabilities. We have incorporated advanced integrity and identity capabilities such as biometrics and document examination into our border processes.

The Department has an Airline Liaison Offshore network, which is an international, operational network, extending the reach of the ABF to pre-border activities at overseas airports. Airline Liaison Officers (ALO) are an integral part of the layered approach to border management. They complement Australia's universal visa system and perform an important role in preserving the integrity of the border. ALOs are recognised as a significant deterrent to people attempting to travel to Australia through fraudulent means. Strategically located at key international airports, ALOs operate ahead of the border to identify and manage threats and risks before they reach the Australian border. ALOs contribute to strengthening Australia's border and national security.

The Department also adopts a range of fraud measures and risk treatments such as:

- A Fraud Public Interest Criterion (Fraud PIC 4020) which provides a specific ground to refuse a visa application where false or misleading information or a bogus document is provided as part of an application or if a visa applicant fails to satisfy the Minister as to their identity
- The use of new technologies and partnerships to strengthen business processes to combat fraud, including establishing identity through the increasing use of biometrics, automated checking with trusted parties (for example, English language testing and health checking), and the use of advanced analytics to improve risk identification and treatments.
- Enhanced documentation examination and facial recognition capability with integration with training being offered to Visa Processing Officers, ALOs and Australian Border Force officers working at air and seaport.
- Enhanced liaison and cooperation with Five Country Conference partners.

Figures were extracted from Departmental systems on 7 July 2017. As data has been drawn from a live systems environment, the figures provided may differ slightly in previous or future reporting.

2014-15 to 2016-17			
Illegal workers located within the personal and other services (sex industry)			
Visa category	2014-15	2015-16	2016-17
Bridging*	<5	<5	<5
Student**	24	14	26
Temporary resident - working holiday	7	0	<5
Temporary resident - s457	<5	0	0
Total	35	15	30
Cancellation***	<5	<5	<5

* These figures also include BVE (subclass 050) and BVE (subclass 051).

** Student visa excludes (Student Guardian).

** These figures are based off Illegal workers located and cancelled within the same year

2014-15 to 2016-17			
Employer awareness activities within the personal and other services (sex industry)			
	2014-15	2015-16	2016-17
Total	46	27	61

Subclass 457 primary visa applications lodged in 2016-17 where the nominated occupation is ANZSCO Unit Group 4116 Massage Therapist - comparison with previous years.

Source: Department of Immigration and Border Protection, 2017 (BE11074.01)

Nominated Occupation (ANZSCO Unit Group)	2014-15	2015-16	2016-17
Massage Therapist (4116)	255	295	293

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