



Briefing Paper on Key Human Rights Issues in Australia

— November 2011 —

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1. Introduction

- 1.1 This briefing paper has been prepared for the Special Rapporteur on Trafficking in Persons, especially in women and children in preparation for her mission to Australia in November 2011. It provides an overview of the issue of trafficking in Australia, including:
- (a) the main forms and manifestations of human trafficking (section 2);
 - (b) existing or planned laws, policies and plans of action to address trafficking in persons (section 3);
 - (c) existing or planned bilateral or multilateral agreements to address trafficking (section 4);
 - (d) support services for victims of trafficking (section 5); and
 - (e) priorities for reform (section 6).
- 1.2 The most effective way to address human trafficking and severe exploitation is to “incorporate a human-rights based approach into measures taken to prevent and end trafficking in persons and to protect, assist and provide access to adequate redress to victims, including the possibility of obtaining compensation from the perpetrators”.¹ From a human rights perspective, we have identified the following priorities for reform:
- (a) reviewing Australia’s anti-trafficking laws to ensure compliance with Australia’s international obligations including obligations to prohibit forced labour and practices similar to slavery;
 - (b) investing in research to strengthen our understanding of emerging issues such as forced marriage, child trafficking and organ removal;
 - (c) consulting with community stakeholders to develop legal and policy initiatives to respond to the emerging issue of forced marriage, including multilingual guidelines for government agencies and NGOs working with people who have experienced forced marriage;
 - (d) strengthening pathways to effective remedies for trafficked people by building effective networks and referral protocol between support services and pro bono lawyers representing clients in compensation matters;
 - (e) facilitating and supporting family reunion between trafficked people and dependent children;
 - (f) improving victim support by ensuring all trafficked people have appropriate access to safe and sustainable housing;

¹ UN Human Rights Council, *Trafficking in Persons, Especially Women and Children: Regional and Sub-regional Cooperation in Promoting a Human Rights Based Approach to Combating Trafficking in Persons*, UN Doc. A/HRC/RES/14/2, 23 June 2010, 2.

- (g) developing protocol and guidelines for government agencies and support services working with child victims of trafficking to ensure the protection of human rights;
 - (h) improving coordination between federal and state government agencies to ensure a coordinated and efficient response to trafficking;
 - (i) developing a publicly available resource on accommodation options for trafficked people, which provides information and guidance on the provision of housing to trafficked people; and
 - (j) developing multilingual information and resources for all people entering Australia and for communities identified as most vulnerable to trafficking.
- 1.3 The briefing paper has been prepared by the Human Rights Law Centre and Anti-Slavery Australia with substantial pro bono assistance from major law firm, Mallesons Stephen Jaques.
- 1.4 The Human Rights Law Centre is a non-profit community legal centre that promotes and protects human rights and, in so doing, seeks to alleviate poverty and disadvantage, ensure equality and fair treatment, and enable full participation in society. The Centre also aims to build the capacity of the legal and community sectors to use human rights in their casework, advocacy and service delivery.
- 1.5 Anti-Slavery Australia is a law, research and policy centre at the University of Technology, Sydney dedicated to advancing the rights of people who have experienced human trafficking and extreme forms of exploitation. Anti-Slavery Australia provides legal advice to trafficked people applying for protection or humanitarian visas and represents trafficked people seeking financial compensation.² Anti-Slavery Australia has a strong research and policy profile and in 2011 made two substantial submissions to the Australian Attorney-General's Department³ as well as completing a major research project commissioned by Good Shepherd Australia and New Zealand.⁴ This submission draws upon Anti-Slavery Australia's experience representing people who have been trafficked into a wide range of exploitative situations.
- 1.6 In 2011 Anti-Slavery Australia advised over 80 clients, resulting in over 39 grants of permanent residence, and lodged (in partnership with Clayton Utz) 27 applications for compensation under statutory victim compensation schemes. Anti-Slavery Australia are represented on the National Roundtable on People Trafficking and are in receipt of specific research funding and additional funding from the Australian Attorney-General's Department to raise awareness of all forms of trafficking in Australia. Anti-Slavery Australia has established

² The Anti-Slavery Australia legal service is conducted by J.M. Burn Solicitor, which has been seconded to the Anti-Slavery Project by the UTS Law Faculty.

³ Anti-Slavery Australia, Submission to Criminal Justice Division, Attorney-General's Department (Cth), *Discussion Paper – Forced and Servile Marriage* (25 February 2011); Anti-Slavery Australia, Submission to Criminal Justice Division, Attorney-General's Department (Cth) *Discussion Paper: The Criminal Justice Response to Slavery and People Trafficking; Reparation; and Vulnerable Witness Protections* (8 March 2011).

⁴ Jennifer Burn, Frances Simmons et al, 'Labour Rights for Women and Girls: An Evidence Review and Performance Framework' (Research Discussion Paper, Good Shepherd Australia New Zealand, June 2011).

a new community network, the *Sydney Trafficking Response Network*, to bring together individuals and organisations to develop best practice support of trafficked people and the sound development of policy initiatives.

2. Main forms and manifestations in Australia and key human rights issues

2.1 People who have been identified as being trafficked to Australia have been exploited in situations of slavery, sexual servitude, forced labour, debt bondage and, in one reported case, organ removal.⁵ The Australian Red Cross has a contract with the Australian Government to provide support for trafficked people through the Support for Trafficked People Program. Between 1 January 2004 and 30 June 2010, 155 people were referred to the Support Program for trafficked people and most were women subject to sexual exploitation, as indicated by the table below.

Visa Reforms

Table 5: Total Support Program client numbers, by industry exploitation type and gender, January 2004 to 30 June 2010 *

	Other forms of labour exploitation	Sexual exploitation	Total from 1 January 2004 to 30 June 2010
Male	11	0	11
Female	12	132	144
Total	23	132	155

* Taken from Australian Government, Anti-People Trafficking Interdepartmental Committee, *Trafficking in Persons: The Australian Government Response: 1 May 2009-30 June 2010* (2010) 13.

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2.2 Specific provisions in the *Trafficking Protocol* and under Australia's *Criminal Code Act 1995* set out offences criminalising child trafficking (Cth).⁶ Trafficking in children will be considered as a discrete form of human trafficking in the discussion that follows.

2.3

⁵ Yuko Narushima, 'Police Investigate First Case of Organ Trafficking', *The Sydney Morning Herald* (Sydney), 28 July 2011, 1.

⁶ *Criminal Code Act 1995* (Cth) s 271.4.

A. TRAFFICKING FOR SEXUAL EXPLOITATION

Patterns

- 2.4 The majority of human trafficking into Australia has been identified as being for the purpose of sexual exploitation in the sex industry.⁷ Instances of human trafficking for sexual exploitation have been primarily detected in Melbourne and Sydney, with a further two cases in Queensland.⁸
- 2.5 This is not to suggest that there are no victims of trafficking in other parts of Australia. Trafficking in regional centres is a relatively new phenomenon — a prominent example being the case from Far North Queensland discussed above — and one that is poorly researched and understood.

Incidence

- 2.6 Quantifying the incidence of human trafficking is notoriously difficult due to a range of factors, including under-reporting by victims and the inherent challenge involved in monitoring illegal activity.⁹
- 2.7 In Australia reliable statistics on the prevalence of human trafficking for sexual exploitation remain scant.¹⁰ In most cases, reports on the number of victims are the product of guesswork or informed estimation.¹¹ The figures disclosed by government sources diverge considerably from those published by some non-governmental organisations (NGOs) and advocacy groups. In the absence of credible figures and consensus across the different sources, it is difficult to determine with any degree of certainty the true scale of human trafficking in Australia. Nevertheless, a summary of the available statistics is instructive:¹²
- (a) Between 1999 and 2007, the Department of Immigration and Citizenship referred 221 matters (involving 208 individuals) relating to trafficking in persons to the Australian

⁷ Jennifer Burn, Frances Simmons and Sam Blay, 'Combating Human Trafficking: Australia's Responses to Modern Day Slavery' (2005) 79 *Australian Law Journal* 543; Frances Simmons and Jennifer Burn, 'Evaluating Australia's Response to All Forms of Trafficking: Towards Rights-Centred Reform' (2010) 84 *Australian Law Journal* 712–713; Joudo Larsen, Lindley and Putt, 'Trafficking in Persons Monitoring Report July 2007 – December 2008' (Monitoring Report No 6, Australian Institute of Criminology, 2009), 37; United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons* (2009) 167; Andreas Schloenhardt, Genevieve Beirne and Toby Corsbie, 'Trafficking in Persons in Australia: Myths and Realities' (2009) 10 *Global Crime* 224, 231, 234; see also Andreas Schloenhardt, Genevieve Beirne and Toby Corsbie, 'Human Trafficking and Sexual Servitude in Australia' (2009) 32 *University of New South Wales Law Journal* 27, 31.

⁸ *Ibid.*

⁹ Jennifer Burn, Frances Simmons and Sam Blay, above n 7; Judy Putt, 'Human Trafficking to Australia: A Research Challenge' (Trends & Issues in Crime and Criminal Justice No 338, Australian Institute of Criminology, June 2007) 3–4; Joudo Larsen, Lindley and Putt, above n 7, 10, 15–16; Toni Makkai, 'Thematic Discussion on Trafficking in Human Beings' (Paper presented at the 12th Session of the Commission on Crime Prevention and Criminal Justice, Vienna, 15 May 2003) 8–13; Parliamentary Joint Committee on the Australian Crime Commission, Commonwealth Parliament, *Inquiry into the Trafficking of Women for Sexual Servitude* (2004) 5, 17.

¹⁰ Putt, above n 7, 5; Parliamentary Joint Committee on the Australian Crime Commission, above n 9, 19–20; Janet Phillips, 'People Trafficking: An Update on Australia's Response' (Research Paper No 5, Parliamentary Library, Parliament of Australia, 2008–09) 3; Schloenhardt, Beirne and Corsbie, above n 7, 27, 29–30.

¹¹ Schloenhardt, Beirne and Corsbie, above n 7, 27, 30.

¹² *Ibid.* 30.

Federal Police (**AFP**). 196 of these referrals (involving 174 individuals) related specifically to the sex industry.¹³

- (b) The AFP's Annual Reports for the financial years 2002–03 to 2007–08 reveal that the agency's Transnational Sexual Exploitation and Trafficking Teams became aware of between 15 and 29 new cases annually.¹⁴
- (c) From January 2004 to 30 June 2010, 155 victims of trafficking were provided with assistance through the Federal Government's victim support program.¹⁵
- (d) A 2004 inquiry by the Parliamentary Joint Committee on the Australian Crime Commission into the trafficking of women for sexual servitude found that while *'approximately 300 women are trafficked into the country each year for sex work, the number of those who can be considered to be in servitude is small'*.¹⁶
- (e) A 2007 report by the Commonwealth Attorney-General's Department concluded, on the basis of information provided by the Australian Crime Commission and other Australian law enforcement agencies, that since mid-2004 there have been less than 100 victims of human trafficking found in Australia.¹⁷

2.8 The Australian Government has cited Australia's remote location, the absence of any shared land borders, and robust immigration and visa requirements as factors that potentially explain what it sees as a relatively low number of trafficking victims in the country.¹⁸ However, as David has pointed out, the level of Government activity on trafficking in persons provides only *'limited insight into the incidence of trafficking in Australia'* and *'these statistics should not be interpreted as providing insight into the "full picture" or nature of trafficking in persons in Australia'*.¹⁹

Victim profiles

2.9 Those identified as trafficked have most often been women.²⁰ Clients in the Australian Government funded Red Cross program as at 30 June 2010 were primarily from South East and East Asia, as shown by these government statistics: Thailand (74), South Korea (29),

¹³ Fiona David, 'Trafficking of Women for Sexual Purposes' (Research and Public Policy Series No 95, Australian Institute of Criminology, 2008) 6.

¹⁴ See generally AFP, *Annual Reports* <<http://www.afp.gov.au/media-centre/publications/annual-reports.aspx>>.

¹⁵ Anti-People Trafficking Interdepartmental Committee, Australian Government, *Trafficking in Persons: The Australian Government Response: 1 May 2009 – 30 June 2010: The Second Report of the Anti-People Trafficking Interdepartmental Committee* (2010) 13; Anti-People Trafficking Interdepartmental Committee, Australian Government, *Trafficking in Persons: The Australian Government Response: January 2004 – April 2009: Inaugural Report of the Anti-People Trafficking Interdepartmental Committee* (2009).

¹⁶ Parliamentary Joint Committee on the Australian Crime Commission, above n 9, 22.

¹⁷ Attorney-General's Department, Australian Government, *Australia's Strategy to Combat People Trafficking* (2007) 3.

¹⁸ *Ibid*, 3.

¹⁹ David, above n 13, 6.

²⁰ Anti-People Trafficking Interdepartmental Committee, Australian Government, *Trafficking in Persons: The Australian Government Response: 1 May 2009 – 30 June 2010: The Second Report of the Anti-People Trafficking Interdepartmental Committee*, (2010), 13

- Malaysia (26), India (5), Indonesia (5), China (4), Philippines (3), Hong Kong (2), Vietnam (1), Uzbekistan (1), Singapore (1), Portugal (1), Macedonia (1), Fiji (1) and Czech Republic (1).²¹
- 2.10 The decision to migrate to Australia is complex and involves many factors including a desire to travel, to work in a foreign country and enjoy safe working conditions. Researchers have also distinguished between motivations sometimes known as ‘push factors’ — those factors that arise in the source country and encourage women to leave their homes — and ‘pull factors’ — those factors that attract migration of women to the destination country — that influence the movement of trafficked women.²² With respect to the former, while poverty is not the *cause* of trafficking, researchers have been able to draw on evidence that shows a link between trafficking and the social, economic and political conditions in a victim’s country of origin.²³ Thus, for example, most victims detected in Australia come from low socioeconomic backgrounds.²⁴
- 2.11 So far, the cases of trafficking identified in Australia often do not resemble the stereotypical images of slavery and trafficking where people are forcibly restrained or terrorised into submission through the use of violence.²⁵ In most cases, it is the more subtle forms of control such as ‘debt, fear of violence, psychological coercion and control’ that have been central to identifying the existence of slavery.²⁶
- 2.12 Suspected victims of trafficking and slavery who have been identified by the Australian Federal Police (AFP) have not always been kept under lock and key or ‘kidnapped from their home villages, held at gunpoint or chained to beds’.²⁷ Instead, trafficked people may be effectively controlled through more subtle methods such as threats to family members.

Recruitment

- 2.13 Victims of human trafficking are recruited in a number of ways.²⁸ Some may be actively recruited, whereas others are recruited ‘in transit’ and yet others seek the assistance of an agent to find them work in Australia. In these cases, although the women may know that they will be working in the sex industry, it is unlikely that they have any detailed understanding of actual work conditions.

²¹ Ibid, 14; Anti-People Trafficking Interdepartmental Committee, Australian Government, *Trafficking in Persons: The Australian Government Response: January 2004 – April 2009: Inaugural Report of the Anti-People Trafficking Interdepartmental Committee*, (2009).

²² Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into People Trafficking for Sex Work* (2010) 52.

²³ Ibid.

²⁴ Joudo Larsen, Lindley and Putt, above n 7, 37.

²⁵ Fiona David, ‘Trafficking for Sexual Purposes’, AIC, *Research and Public Policy Series*, no 95, 39; see also Fiona David, ‘Prosecuting trafficking in persons: known issues, emerging response’, Australian Institute for Criminology, *Trends and Issues in Criminal Justice*, no.358, June 2008.

²⁶ Ibid. See also David Weissbrodt and Anti-Slavery International, *Abolishing Slavery and its Contemporary Forms*, Office of the United Nations High Commissioner for Human Rights, 2002, 7 [22].

²⁷ Fiona David, above n 25, 39.

²⁸ See generally Drugs and Crime Prevention Committee, above n 22, 38-40.

Entering Australia

2.14 Information provided by the AFP suggests that entry into Australia is facilitated by small, yet highly organised, criminal networks.[query] These networks

‘are not at the ‘high end’ of major organised crime. Those involved have tended to include small business owners with business or family links to those involved in the other parts of the trafficking process, such as recruitment or document fraud. In particular, the groups involved in human trafficking do not appear to have the same high levels of organisation and sophistication as drug traffickers.’²⁹

2.15 There is some evidence of the use of sham marriages in order to deceive immigration officials and to ease the victim’s passage through customs.³⁰ Evidence provided in the Victorian Parliament inquiry into people trafficking was that trafficked persons may be accompanied by a person posing as their partner who is in fact an escort used by the trafficker to monitor the victim during the flight and subsequent customs and immigration process.³¹

Key human rights concerns

2.16 Many trafficked people arrive in Australia knowing that they will be working in the sex industry. Cases where the victim has been deceived into thinking that they will work in another industry (for example, hospitality) are rare. There is no evidence of any women being brought into Australia through the use of force or by being kidnapped and transported against their will.³²

2.17 While many women know what it is they will be doing in Australia, most women are unaware of the prevailing conditions in which they will be working:

‘What they do not know, however, is that they might be held in captivity, be subject to physical and sexual violence and intimidation, be forced to engage in unsafe sexual practices, be unable to refuse clients or certain services, and be obliged to pay off huge debts to their traffickers. These women are victims of trafficking, even if they consented to work in the sex industry.’³³

2.18 Most women that arrive in Australia do so pursuant to an oral ‘contract’ with a trafficker known as a ‘debt contract’. The terms of such debt bondage typically oblige a woman to work off a ‘debt’, which purportedly represents the cost of arranging her travel to Australia, by providing sexual services in a brothel. Although victims typically enter into contracts with traffickers prior to arrival in Australia, it is not uncommon for a person experiencing trafficking to be transferred from one trafficker to another once she is in Australia.

²⁹ Ibid 43.

³⁰ Ibid.

³¹ Drugs and Crime Prevention Committee, above n 22.

³² Schloenhardt, Beirne and Corsbie, above n 7, 33.

³³ Attorney-General’s Department, above n 17, 7.

- 2.19 Debts range, on average, from A\$10,000 to A\$40,000 but can be as high as A\$50,000.³⁴ Women pay off these debts by working in exploitative circumstances.
- 2.20 The environment in which trafficked women find themselves is often described as resembling a state of slavery. The violations of basic human rights that trafficked people may experience include:³⁵
- (a) physical and sexual abuse with potential consequences including long- and short-term injuries, and psychological trauma;
 - (b) unsafe working conditions;
 - (c) limited freedom of movement and choice;
 - (d) poor accommodation; and
 - (e) lack of remuneration and substandard working conditions.

B. TRAFFICKING FOR FORCED LABOUR

Incidence and patterns

- 2.21 Labour trafficking in Australia is under-reported and sometimes unrecognised, according to a report released by the Australian Institute of Criminology.³⁶
- 2.22 Labour trafficking in sectors outside the sex industry remains relatively overlooked and under-researched in Australia.³⁷ Indeed, although all forms of trafficking were within the remit of the 2004 Parliamentary Inquiry into trafficking in persons, the issue of sex trafficking dominated the discussion and, as has been pointed out, trade unions and other groups alleging instances of labour trafficking were entirely absent.³⁸
- 2.23 For this reason, and because, in the case of domestic servitude, labour trafficking takes place within the private sphere, its true nature and extent in Australia is even more difficult to determine than sex trafficking. Indeed, as in many other parts of the world,³⁹ its incidence in

³⁴ Parliamentary Joint Committee on the Australian Crime Commission, above n 9, 9.

³⁵ Ibid 33.

³⁶ Fiona David, Labour trafficking (Research and Public Policy Series 108) Australian Institute of Criminology, (2010), xii

³⁷ See, eg, Miriam Cullen and Bernadette McSherry, 'Without Sex: Slavery, Trafficking in Persons and the Exploitation of Labour in Australia' (2009) 34 *Alternative Law Journal* 1, 1, 4; Andreas Schloenhardt and Jarrod Jolly, 'Honeymoon from Hell: Human Trafficking and Domestic Servitude in Australia' (2010) 32 *Sydney Law Review* 671, 671, 675; Human Trafficking Working Group, T C Beirne School of Law, University of Queensland, *Labour Trafficking in Australia* <<http://www.law.uq.edu.au/labour-trafficking-in-australia>>.

³⁸ Cullen and McSherry, above n 37, 4.

³⁹ Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings, Organization for Security and Cooperation in Europe, *Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude* (2010) 10, 17; Joudo Larsen, Lindley and Putt, above n 7, 16. The International Labour Organization estimates that there are approximately 12.3 million victims of forced labour worldwide, more than 2.4 million of them as a result of trafficking: International Labour Organization, *A Global Alliance Against Forced Labour* (2005) 10.

Australia remains unknown,⁴⁰ with no reliable quantitative figures available.⁴¹ However, a research report published by the Australian Parliament claims that:

*'the numbers are estimated to be small. Although there were about 47,800 unlawful non-citizens in the country as at 30 June 2005, most of these would be people who have overstayed their visas and are not necessarily working here illegally, or if they are, are unlikely to be victims of forced labour. In 2004-05, the number of illegal workers located was 3,870, but once again information on how many, if any, of these may have been trafficked and exploited is not available.'*⁴²

2.24 While this extract highlights the close link between illegal migration and labour exploitation, considerable concern has also been raised about labour exploitation in the context of legal migration, particularly in relation to visa subclass 457 (temporary work visas).⁴³ Migrants on such visas may be especially vulnerable to exploitation due to their dependence on their sponsor for continued employment to meet the requirements for permanent residency.⁴⁴ Labour trafficking exists on a spectrum of exploitation – from gross underpayment and sexual harassment to trafficking, forced labour and slavery.⁴⁵ Only the worst forms of exploitation attract criminal sanctions under Australia's anti-trafficking laws, but the backdrop to this criminal exploitation is the more pervasive problem of substandard working conditions for marginalised workers.

2.25 The above extract also highlights the difficulty of drawing a line between labour exploitation and labour trafficking. There are many documented instances of the former (including debt bondage),⁴⁶ however, the US State Department's *Trafficking in Persons Report 2010* considers that there are also a 'modest' number of trafficking cases:

*'Men and women from several Pacific islands, India, China, South Korea, and the Philippines are recruited to work temporarily in Australia. After their arrival, some are subjected by unscrupulous employers and labour agencies to forced labour in agriculture, viticulture, construction and other sectors.'*⁴⁷

2.26 This appraisal is supported by a number of individual cases which have come to light in recent years. For example, in 2007 trafficking charges were brought against a Mr Rasalingam for

⁴⁰ Cullen and McSherry, above n 37, 3; Human Trafficking Working Group, above n 37.

⁴¹ Schloenhardt, Beirne and Corsbie, above n 7, 35; Human Trafficking Working Group, above n 37.

⁴² Phillips, above n 10, 11.

⁴³ Human Trafficking Working Group, above n 37.

⁴⁴ Ibid.

⁴⁵ See, further, Frances Simmons and Jennifer Burn, above n 7.

⁴⁶ See, eg, *ibid*; Schloenhardt and Jolly, above n 37, 676–78; Schloenhardt, Beirne and Corsbie, above n 7, 36.

⁴⁷ Department of State, United States Government, *Trafficking in Persons Report* (2010) 66. See also Department of State, United States Government, *Trafficking in Persons Report* (2008) 61, which noted 'cases of several men and women from India, the PRC, South Korea, the Philippines, and Ireland migrating to Australia for work, but subsequently subjected to forced labour including fraudulent recruitment, confiscation of travel documents, confinements, and debt bondage'. The Report specifically refers to a case involving a group of 'Indian nationals who arrived in Australia on tourist visas [and] were sent to a tomato farm in Jerilderie, New South Wales, where they were held in virtual confinement and forced labour': at 62.

allegedly trafficking a male Indian chef for exploitation in his restaurant.⁴⁸ During the trial, the victim testified that, upon arrival in Australia, his passport and airline ticket were confiscated by the defendant, he was forced to sleep on the floor and work seven days a week (sometimes for more than 15 hours a day) and that the defendant told him that he would be deported if he complained to the authorities.

2.27 In a second case, *Hortle v Aprint (Aust) Pty Ltd & Anor* [2007] FMCA 1547, the defendant director recruited four men from China to work in his firm and sponsored their applications for temporary work permits. The defendant charged the men A\$10,000 to come to Australia, with the fee subtracted from the men's pay at a rate of A\$200 per week. The men were accommodated in a run down, unheated house in Melbourne and a further A\$120 was deducted each week from their pay for accommodation and utility expenses. Each man worked an average of 50 hours per week and all were paid well under the minimum award rates, with the underpayment totalling some A\$93,667. Ultimately, no criminal charges were laid. However, a workplace inspector brought an application under the then *Workplace Relations Act 1996* (Cth) for the imposition of penalties for the underpayment of wages, failure to pay overtime and failure to require working hours not in excess of 38 hours per week. The case has been contrasted with sex trafficking cases and is said to highlight the way in which labour trafficking tends to be treated as a labour law issue, not a criminal matter, despite the existence of criminal sanctions.⁴⁹

Key human rights concerns

2.28 People who have experienced labour trafficking may suffer the following human rights violations:

- (a) physical and/or psychological abuse;
- (b) unsafe working conditions;⁵⁰
- (c) poor accommodation;
- (d) limited freedom of movement and choice; and
- (e) lack of appropriate pay and substandard working conditions.

C. TRAFFICKING IN CHILDREN

Incidence and patterns

2.29 There is very limited research on child trafficking in Australia, making it difficult to gauge its prevalence and the pattern of occurrence in this country.

⁴⁸ *R v Rasalingam* (Unreported, District Court of New South Wales, Puckeridge J, 2 November 2007). Ultimately, the jury found Mr Rasalingam not guilty, however, he was later convicted of one count of dishonestly influencing a Commonwealth public official contrary to s 135.1(7) of the Criminal Code. For an overview of the case: see Australian Institute of Criminology, 'Labour Trafficking: Prosecutions and Other Proceedings' (Transnational Crime Brief No 5, June 2009).

⁴⁹ Cullen and McSherry, above n 37. See also Joudo Larsen, Lindley and Putt, above n 7, 16.

⁵⁰ For recent Australian case studies, see Schloenhardt, Beirne and Corsbie, above n 7, 36.

- 2.30 In the international context, a number of forms of child trafficking have been identified, including labour exploitation, sexual exploitation, forced marriage, adoption, conscription and forced recruitment into criminal activities or begging.⁵¹ While it is unclear how many of these forms occur in Australia, it is possible to make some very general comments.
- 2.31 A number of articles report that there is no evidence of child trafficking occurring in Australia.⁵² While researchers have discussed child prostitution in Australia, few have discussed the potential link with child trafficking.⁵³ To date, there have been no prosecutions for child trafficking in Australia.⁵⁴ However, a child victim of trafficking into the sex industry has obtained compensation as a victim of crime under the *Victim Support and Rehabilitation Act 1996* (NSW).⁵⁵ The US Department of State's *Trafficking in Persons Report 2010* suggests '[Australia] is a source country for child victims of sex trafficking' but the source of these claims is unclear.⁵⁶
- 2.32 There have been at least three known instances of children being trafficked into Australia from countries in the Asia-Pacific for sexual exploitation.⁵⁷ The cases pre-date the introduction of Australia's child trafficking offences in 2005, however, in one case, investigations by Thai police led to the conviction and imprisonment for up to 19 years of three Thai nationals involved in trafficking the victim.⁵⁸
- 2.33 Some commentators have expressed concern that Australia's current intercountry adoption system is capable of being exploited by child traffickers.⁵⁹ In 2008, there were reports of children being kidnapped in India and later sold to agencies that changed their identities and offered them for adoption to couples in various countries, including Australia.⁶⁰ Although Australia's intercountry adoption system is often characterised as overregulated, this example shows it is not immune to misuse.

⁵¹ UNICEF, *Reporting the Trend: Child Trafficking in East and South-East Asia* (2009) 9.

⁵² See, eg, Elaine Pearson, 'Australia' in Global Alliance Against Traffic in Women, *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World*, GAATW, 2007) 28; Schloenhardt, Beirne and Corsbie, above n 7, 228.

⁵³ See Human Trafficking Working Group, T C Beirne School of Law, University of Queensland, *Child Trafficking in Australia* <<http://www.law.uq.edu.au/ht-child-trafficking>>.

⁵⁴ Jacqueline Joudo Larsen, 'The Trafficking of Children in the Asia-Pacific' (Trends & Issues in Crime and Criminal Justice No 415, Australian Institute of Criminology, April 2011) 1.

⁵⁵ Frances Simmons and Jennifer Burn, above n 7, 713.

⁵⁶ Department of State, United States Government, *Trafficking in Persons Report* (2010) 66.

⁵⁷ Human Trafficking Working Group, above n 37. See also Joudo Larsen, above n 53, 5.

⁵⁸ Joudo Larsen, above n 54, 5

⁵⁹ Human Trafficking Working Group, above n 53. For a more general discussion of the relationship between child trafficking and the intercountry adoption system: see David Smolin, 'Child Laundering as Exploitation: Applying Anti-Trafficking Norms to Intercountry Adoption under the Coming Hague Regime' (2007) 32 *Vermont Law Review* 1.

⁶⁰ Rory Callinan, 'Stolen Children', *Time* (August 2008), available at: <<http://www.time.com/time/magazine/article/0,9171,1834535,00.html>>.

Key human rights concerns

- 2.34 Trafficked children are clearly exposed to the same human rights abuses identified in paragraphs 2.16 to 2.20 and 2.28 above, however the effect of such abuses is often greater on child victims. As noted by UNICEF, '*[w]hen such experiences occur during a child's formative years — when they learn to relate to others and build their identity, self-esteem and trust — the adverse effects can be devastating, long-lasting and potentially irreparable*'.⁶¹

3. Existing or planned laws, policies and plans of action to address trafficking in persons

Executive Summary

- 3.1 Australia's anti-people trafficking strategy is overseen by an interdepartmental committee chaired by the Attorney-General's Department. It is intended to be a whole of Government response to each stage in the people trafficking cycle, emphasising prevention, detection and investigation, prosecution and victim support.
- 3.2 The *Criminal Code Act 2005* (Cth) (**Criminal Code**) establishes Australia's principal people trafficking offences, as well as offences for debt bondage, slavery, sexual servitude and deceptive recruiting. Various federal and state acts and regulations support, supplement, or rely on these offences. In particular, there are employer sanctions in the *Migration Act 1994* (Cth) (**Migration Act**) and victim visa measures in the *Migration Regulations 1994* (Cth) (**Migration Regulations**).
- 3.3 The Australian Government has been reforming trafficking offences, employer sanctions, and victim support legislation since 2005. No new anti-trafficking reforms have been tabled for the immediate future, however the Government has indicated that it is considering the protections afforded to vulnerable and disadvantaged witnesses in people trafficking prosecutions.⁶² The Government is also considering reforms to the Support for Victims of People Trafficking Program and the Communication Awareness Strategy.⁶³

D. POLICIES AND PLANS OF ACTION

National Action Plan to Eradicate Trafficking in Persons

- 3.4 In 2003 the Australian Government established a National Action Plan to Eradicate Trafficking in Persons. By 2009 the National Action Plan had evolved into the National Trafficking Strategy. The Anti-People Trafficking Strategy⁶⁴ is a whole of government response to the

⁶¹ UNESCO, *Child Trafficking in East and South-East Asia* (2009) 19.

⁶² Commonwealth, *The Government's Response to People Trafficking, Ministerial Statement* (22 November 2010) 8.

⁶³ Anti-People Trafficking Interdepartmental Committee, Parliament of Australia, *Trafficking in Persons – The Australian Government Response 1 May 2009 – 30 June 2010* (2010), 53.

⁶⁴ Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), *Anti-People Trafficking Strategy* (7 November 2011), FaHCSIA Internet <http://www.facs.gov.au/sa/women/progserv/violence/Pages/AntiPeopleTraffickingStrategy.aspx>.

entire trafficking cycle, focusing on prevention, detection and investigation, prosecution and victim support.

3.5 The National Trafficking Strategy was developed by the Anti-People Trafficking Interdepartmental Committee (IDC), which is also responsible for overseeing and reporting on the implementation of the National Trafficking Strategy. The IDC is chaired by the Attorney-General's Department and includes representatives from AusAID, Australian Crime Commission, Australian Federal Police, Australian Institute of Criminology, Commonwealth Director of Public Prosecutions, Department of Education, Employment and Workplace Relations, Department of Foreign Affairs and Trade, Department of Immigration and Citizenship, Department of the Prime Minister and Cabinet and the Office for Women in the Department of Families, Housing, Community Services and Indigenous Affairs.

3.6 Major initiatives of the National Trafficking Strategy include:

- (a) Human Trafficking Team (HTT), previously the Transnational Sexual Exploitation and Trafficking Team (TSETT) – a division of the Australian Federal Police dedicated to investigating people trafficking operations involving both sexual and labour exploitation. HTT investigators undertake specialist training with a particular focus on dealing with victims of people trafficking;⁶⁵
- (b) Australian Policing Strategy to Combat Trafficking in Women for Sexual Servitude – facilitating state and federal police cooperation in people trafficking investigations, including procedures and protocols for victim protection.⁶⁶ The strategy has been revised to deal with all forms of people trafficking;⁶⁷
- (c) People Trafficking Visa Framework – to assist suspected victims of trafficking without a valid visa to remain in Australia to assist with investigation and prosecution. The laws comprising the framework are discussed further in paragraphs 3.25 to 3.28 below;
- (d) Support for Victims of People Trafficking Program – administered by the Office for Women, the program's case management services are provided by the Australian Red Cross. Case managers assist victims in accessing accommodation, income support, medical treatment, counselling, legal and migration advice, skills training and social support;⁶⁸
- (e) Senior Migration Officers (Integrity) (Trafficking) in Thailand, China and the Philippines – to help prevent trafficking 'at its source', by monitoring visa applications for fraud and analysing visa trends;⁶⁹

⁶⁵ Anti-People Trafficking Interdepartmental Committee, Parliament of Australia, *Trafficking in Persons – The Australian Government Response January 2004 – April 2009* (2009) 18; Anti-People Trafficking Interdepartmental Committee, above n 63, 35

⁶⁶ Anti-People Trafficking Interdepartmental Committee, above n 63, 18.

⁶⁷ *Ibid*, 34.

⁶⁸ *Ibid* 11–12. See section 6 below for a more detailed description of the Program.

⁶⁹ *Ibid* 46.

- (f) Communication Awareness Strategy – providing targeted information about trafficking and the help available, including advertisements aimed at clients of sexual services who may be in contact with victims of trafficking;⁷⁰
- (g) increased regional cooperation – including participation in the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (**Bali Process**) and the delivery of aid programs focused on removing the economic, political and social conditions that make people trafficking possible;⁷¹
- (h) support for the Commonwealth Director of Public Prosecutions – including funding and training;
- (i) research into trafficking trends in the region – conducted by the Australian Institute of Criminology, with a recent focus on community attitudes, labour trafficking, special issues, risks and protections in the region and as perceived by sex workers, International Organization for Migration (**IOM**) data for Indonesia, and issues related to offenders and circumstances of offending;⁷²
- (j) return and reintegration support for victims of trafficking returning to their countries of origin – including two programs funded by AusAID and delivered by IOM in the Asia region;⁷³
- (k) cooperation with NGOs – including the National Roundtable on People Trafficking, funding for Labour Exploitation Projects, and Guidelines for NGOs working with trafficked people; and
- (l) labour trafficking fact sheets for employers and employees – to promote awareness about people trafficking, signs that a person may have been trafficked, what to do if you suspect that someone has been trafficked and what employers can do to combat people trafficking.

Auditing and Reporting on the National Trafficking Strategy

3.7 In April 2009 the Australian National Audit Office released their *Audit Report No. 30* on the Management of the National Trafficking Strategy (**Audit Report**). The Audit Report concluded that, under the National Trafficking Strategy, steps had been taken both overseas to disrupt trafficking operations, and within Australia to identify victims and offenders, refer victims to investigators, and to support victims assisting investigators and prosecutors.⁷⁴ However, the Audit Report revealed several weaknesses in both the operation of the whole of government approach of the National Trafficking Strategy, and the operations of particular agencies.⁷⁵ The Audit Report was also critical of the four key success measures of the National

⁷⁰ Ibid 40–41.

⁷¹ Ibid 44–46.

⁷² Ibid 51.

⁷³ Anti-People Trafficking Interdepartmental Committee, above n 63, 41.

⁷⁴ Australian National Audit Office, The Auditor-General, Audit Report No. 30 2008-09, *Management of the Australian Government's Action Plan to Eradicate Trafficking in Persons* (2008-09) 14.

⁷⁵ Ibid 14–16.

Trafficking Strategy, which it said lacked sufficient definition and which had not been reported against at that time.⁷⁶

- 3.8 In the same year, the IDC released a report on the Australian Government Response to Trafficking in Persons, for the period January 2004 to April 2009.⁷⁷ In 2010, a second report was released for the period May 2009 to June 2010.⁷⁸ This second report confirmed the Government's commitment to '*ensuring that its anti-people trafficking strategy remains relevant and responsive to emerging trends and issues*' and highlighted that over the next year, the Government will continue to focus on '*issues related to trafficking of people for exploitation outside the commercial sex industry and on options to increase support for victims and witnesses*.'⁷⁹

The National Roundtable on People Trafficking

- 3.9 A National Roundtable on People Trafficking (**People Trafficking Roundtable**) was established in June 2008 to develop a partnership between the Government and key stakeholders including anti-trafficking NGOs. The People Trafficking Roundtable is designed to improve Australia's response to people trafficking by establishing a network of stakeholders, facilitating collaboration and information sharing, providing a community consultative mechanism for Government policy, and communicating Australia's anti-trafficking efforts.⁸⁰ A key publication to emerge from the People Trafficking Roundtable is the guidelines for NGOs working with trafficked people, the second edition of which was released in 2010.⁸¹
- 3.10 The second meeting of the People Trafficking Roundtable was held in June 2009. The focus of the second meeting was labour exploitation, and a working group was established to raise awareness of fair work issues among migrant populations. The working group has since released a People Trafficking Information Sheet for employers and one for employees.
- 3.11 In 2010 the third meeting's focus was on challenges in raising awareness of labour trafficking and the release of two discussion papers prepared by the Attorney-General's Department.

Recent initiatives

- 3.12 The Australian Government has set aside A\$200,000 in funding from the *Proceeds of Crime Act 2002* (Cth) to support projects by NGOs that raise awareness of labour trafficking, provide

⁷⁶ Ibid 14, 17.

⁷⁷ Anti-People Trafficking Interdepartmental Committee, above n 63.

⁷⁸ Anti-People Trafficking Interdepartmental Committee, above n 63.

⁷⁹ Ibid 2, 6.

⁸⁰ The National Roundtable on People Trafficking, Terms of Reference (2008); The National Roundtable on People Trafficking, Statement of Outcomes (2008).

⁸¹ Working Group of the National Roundtable on People Trafficking to Assist Non-Government Organisations Working with Trafficked People, *2010 Guidelines for NGOs: Working with Trafficked People* (2nd Ed, Commonwealth of Australia, 2010).

advocacy and support to victims, and reach groups that are vulnerable to labour trafficking.⁸² Expressions of interest for funding closed on 29 April 2011.

- 3.13 In November 2010 the Minister for Justice issued a discussion paper inviting public submissions on the criminal sanctions available for slavery and people trafficking offences, as well as issues relating to the role of victims in prosecutions.⁸³ Submissions closed on 25 February 2011, and no report has yet been released.
- 3.14 In a further Government initiative, the Attorney-General's Department convened a Senior Officers meeting in 2011. The agenda focused on a presentation by AusAID and DFAT on international cooperation efforts, an update from the AFP, outcomes of public consultation about forced and servile marriage and people trafficking. NGOs (Anti-Slavery Australia and Australian Catholic Religious Against Trafficking in Humans) discussed victims of crime compensation, family reunion and the need for multilingual resources (Scarlet Alliance). The meeting concluded with an update from the Australian Institute of Criminology (AIC) and Scarlet Alliance about their ongoing research project.
- 3.15 In October 2011 the Minister for Justice and Minister for the Status of Women jointly announced further funding for projects which target employers and workers to raise awareness of labour exploitation. More than \$485,000 was granted to five organisations to combat slavery and human trafficking in Australia, through the provision of advocacy and outreach to industries or groups which may be vulnerable to these crimes, such as migrant workers.⁸⁴

E. EXISTING LEGAL FRAMEWORK

Trafficking in persons and debt bondage

- 3.16 Division 271 of the Criminal Code creates a range of offences relating to trafficking in persons and debt bondage. There are separate offences depending on whether persons are trafficked into, out of, or within Australia, and whether the trafficking involves:
- (a) the use of force or threats (widely defined) to obtain compliance;⁸⁵
 - (b) recklessness as to whether the trafficked person will be exploited;⁸⁶
 - (c) deception concerning the provision of sexual services, exploitation, debt bondage or the confiscation of travel or identity documents;⁸⁷

⁸² Attorney General's Department, *Labour Exploitation Project Funding* (25 March 2011) Australian Government Attorney-General's Department >

http://www.ag.gov.au/www/agd/agd.nsf/Page/PeopleTrafficking_Labourexploitationprojectfunding<.

⁸³ Ibid.

⁸⁴ The Hon Kate Ellis MP, 'More funding to fight slavery and labour trafficking' (Media Release, 17 October 2011) <http://www.kateellis.fahcsia.gov.au/mediareleases/2011/pages/morefundingtofightslaveryandlabourtrafficking_17_oct_2011.aspx>

⁸⁵ ss 271.2(1)–271.2(1A), 271.5(1).

⁸⁶ ss 271.2 (1B)–271.2(1C), 271.5(2).

⁸⁷ ss 271.2 (2)–271.2(2A), 271.5(2A).

- (d) agreement as to the provision of sexual services, but deception as to the nature of those services, the extent to which the person is free to leave their place of work or residence, the extent to which they are free to cease providing sexual services, or the existence or amount of any debt claimed to be owed;⁸⁸
- (e) aggravated forms of any of the offences set out above, involving an intention that the victim will be exploited after entering or exiting Australia,⁸⁹ cruel, inhuman or degrading treatment,⁹⁰ or recklessness as to danger of death or serious harm to the victim;⁹¹ or
- (f) trafficking in children with an intention that, or recklessness as to whether, they will be used to provide sexual services, or otherwise be exploited.⁹²

3.17 There are also separate offences for debt bondage⁹³ and aggravated debt bondage⁹⁴ where trafficking is not involved. Debt bondage is defined as a condition arising from a pledge of personal services as security for a debt, and where either the debt is manifestly excessive, the reasonable value of the services is not applied to service the debt, or the length and nature of the services are not limited and defined.

Slavery, sexual servitude and deceptive recruiting

3.18 Division 270 of the Criminal Code creates a separate range of offences for slavery, sexual servitude and deceptive recruiting for sexual services. These offences do not necessarily involve trafficking, and each includes an aggravated form where the victim is a child.⁹⁵

3.19 The Criminal Code defines slavery as a condition where any or all of the rights of ownership are exercised over a person, including where this results from a debt or contract made by the person.⁹⁶ There are both intentional and non-intentional offences for possessing a slave,⁹⁷ engaging in slave trading,⁹⁸ engaging in commercial transactions involving slaves,⁹⁹ as well as controlling, directing or providing finance for slave trading or commercial transactions involving slaves.¹⁰⁰

3.20 The Criminal Code defines sexual servitude as the condition of a person who provides sexual services and who, because of the use of force or threats, is not free to cease providing those services, or to leave the place where they are provided.¹⁰¹ The sexual servitude offences involve intentionally or recklessly causing a person to enter into or remain in sexual

⁸⁸ ss 271.2(2B)–271.2(2C), 271.5(2B).

⁸⁹ ss 271.3(1)(a), 271.6(1)(a).

⁹⁰ ss 271.3(1)(b), 271.6(1)(b).

⁹¹ ss 271.3(1)(c), 271.6(1)(c).

⁹² ss 271.4, 271.7.

⁹³ s 271.8.

⁹⁴ s 271.9.

⁹⁵ s 270.7.

⁹⁶ s 270.1.

⁹⁷ s 270.3(1)(a).

⁹⁸ s 270.3(1)(b).

⁹⁹ s 270.3(1)(c).

¹⁰⁰ s 270.3(1)(d).

¹⁰¹ s 270.4.

servitude,¹⁰² or knowingly or recklessly conducting a business involving persons in sexual servitude.¹⁰³

3.21 Deceptive recruiting for sexual services may involve deception about:

- (a) the fact that the agreement is for the provision of sexual services;
- (b) the nature of the sexual services to be provided;
- (c) the extent to which the person is free to leave their place of work or residence;
- (d) the extent to which they are free to cease providing sexual services;
- (e) the existence or amount of any debt claimed to be owed; or
- (f) the fact that the engagement will involve exploitation, debt bondage, or the confiscation of identity or travel documents.¹⁰⁴

Crimes against humanity – enslavement

3.22 Division 268 of the Criminal Code contains a specific offence for slavery, including in the course of trafficking in persons, where the conduct is committed intentionally or knowingly as part of a widespread or systematic attack on a civilian population.¹⁰⁵

People smuggling

3.23 Division 73 of the Criminal Code deals with people smuggling, rather than people trafficking. However, there is an aggravated offence for people smuggling with intent to exploit.¹⁰⁶ It is not clear how this offence interacts with the trafficking offences in division 271 of the Criminal Code.

Employer sanctions

3.24 The Migration Act contains a number of offences designed to prevent people from knowingly or recklessly employing victims of trafficking, or referring them for employment.¹⁰⁷ While these offences apply to all unlawful non-citizens and non-citizens without a relevant visa, aggravated versions of the offences apply where the employer or referrer knows, or is reckless as to whether, the victim will be exploited in slavery, forced labour, or sexual servitude. The aggravated offences are punishable by five years' imprisonment, as opposed to two years.

Visas for victims of people trafficking

3.25 The People Trafficking Visa Framework enables victims of trafficking assisting Australian Federal Police to stay in Australia lawfully if they do not already hold a valid visa. There are three stages in the trafficking visa framework.

¹⁰² s 270.6(1)

¹⁰³ s 270.6(2)

¹⁰⁴ s 270.7.

¹⁰⁵ s 268.10.

¹⁰⁶ s 73.2.

¹⁰⁷ ss 245AB–245AE.

- 3.26 A Bridging F (Class W) visa (**Bridging F Visa**) is a specific class of visa available for persons in Australia who have been identified by the AFP as a suspected victim of people trafficking, and their immediate family members.¹⁰⁸ A Bridging F Visa is valid for up to 45 days,¹⁰⁹ and a further Bridging F Visa may be granted for an additional 45 days in compelling circumstances.¹¹⁰ There are no work rights on a Bridging F Visa but the Red Cross can provide support, including financial help. A second Bridging F Visa may be granted in some cases.
- 3.27 After the Bridging F Visa expires, the AFP may request a Criminal Justice Stay Certificate (CJSC) so that victims of people trafficking can stay in Australia and assist police investigations. If the Attorney-General issues a Criminal Justice Stay Certificate, then the person may be granted a Criminal Justice Stay Visa (CJSV).¹¹¹ A holder of a CJSV is allowed to work and can access Medicare. A person may be eligible for Centrelink payments depending on their financial and family situation.
- 3.28 Victims of people trafficking who contribute to the investigation or prosecution of a trafficking offence and who the Minister considers would be in danger if returned to their country of origin may be eligible for a Witness Protection (Trafficking) (Permanent) (Class DH) visa.¹¹² A trafficked person who is invited to apply for a Witness Protection (Trafficking) (Permanent) visa may include his or her immediate family in the application.
- 3.29 A significant number of trafficked people in Australia have dependent family abroad. The process of applying for a WPTP therefore often involves family reunion. As this process can be extremely complicated and requires the provision of multiple documents from foreign jurisdictions that must be translated, this presents challenges for Red Cross Support Workers who are supporting trafficked people and their dependents.
- 3.30 Persons who are outside Australia, but who have been identified as suspected victims of people trafficking, and their immediate family members, may also be granted a Bridging F Visa, at the invitation and discretion of the Minister of Immigration and Citizenship.¹¹³

Other visas that may applicable to trafficked people

- 3.31 A trafficked person who would be in danger if he or she had to return home may be able to apply for a protection visa to stay in Australia permanently as a refugee. Claims for refugee status are commonly brought on the basis that trafficked people fear persecution because of their membership of a particular social group.¹¹⁴
- 3.32 Sometimes people who have been trafficked to Australia may be eligible to apply for other visas. For example, a trafficked person who has formed a relationship with an Australian

¹⁰⁸ *Migration Regulations 1994* (Cth) Sch 1 item 1306, Sch 2 items 060.3–060.4.

¹⁰⁹ *Ibid* Sch 2 item 060.5.

¹¹⁰ *Ibid* Sch 1 item 1306.

¹¹¹ *Migration Act 1958* (Cth) ss 147–161.

¹¹² *Migration Regulations 1994* (Cth) r 2.07AK, Sch 1 item 1133.

¹¹³ *Ibid* rr 2.20(14), 2.20B; *Migration Act* s 72–73.

¹¹⁴ See, eg, *VXAJ v Minister for Immigration & Anor* [2006] FMCA 234.

Citizen or Permanent resident may be able to apply for a partner visa. It is essential that trafficked people receive advice from registered Migration Agents about their immigration status.

- 3.33 The trafficking visa framework was reformed on 1 July 2009 to provide for support by the Australian Red Cross to any person regardless of their visa type or regardless of the visa that they held, when they are assisting law enforcement. For example, this may mean that a person holding a student visa may continue to hold that visa while they are providing assistance to the AFP and prosecution authorities and ultimately they may be eligible for a Witness Protection (Permanent) (Trafficking) visa under the visa trafficking framework.

Supporting legislation

- 3.34 The protective measures in Part IAD of the *Crimes Act 1914* (Cth) for children involved in court proceedings for sexual offences apply to proceedings for an offence against the trafficking, debt bondage, slavery, sexual servitude and deceptive recruiting provisions of the Criminal Code.¹¹⁵
- 3.35 Those offences in the Criminal Code also constitute ‘serious offences’ under the *Telecommunications (Interception and Access) Act 1979* (Cth)¹¹⁶ and ‘relevant offences’ under the *Maritime Transport Offshore Facilities Security Regulations 2003* (Cth).¹¹⁷

State and Territory laws

- 3.36 In the Australian Capital Territory, the Northern Territory and Victoria, a person who is convicted of trafficking in children under the Criminal Code becomes a registered sex or child sex offender.¹¹⁸ In Victoria, a convicted child sex trafficker released from custody may be subject to further detention, supervision, and/or monitoring orders.¹¹⁹
- 3.37 Victoria also has a number of laws which refer back to the trafficking offences under the Criminal code, relating to transport licensing,¹²⁰ working with children,¹²¹ sentencing,¹²² and sex workers.¹²³ Western Australia also has working with children laws that refer back to the child trafficking offences in the Criminal Code.¹²⁴

¹¹⁵ ss 15Y(1)(c), 15Y(1)(caa).

¹¹⁶ s 5D(3A).

¹¹⁷ Sch 1 Part 2 item 2.11.

¹¹⁸ *Crimes (Child Sex Offenders) Act 2005* (ACT) Sch 2 Part 2.2 items 2, 3; *Child Protection (Offender Reporting and Registration Act) 2004* (NT) Sch 2 items 16, 17; *Sex Offenders Registration Act 2004* (Vic) Sch 2 item 28AA.

¹¹⁹ *Serious Sex Offenders (Detention and Supervision) Act 2009* (Vic) Sch 1 item 39; *Serious Sex Offenders (Supervision) Act 2005* (Vic) Sch 1 item 37A.

¹²⁰ *Bus Safety Act 2009* (Vic) Part 1; *Transport (Compliance and Miscellaneous) Act 1983* (Vic) Part VI.

¹²¹ *Working with Children Act 2005* (Vic) s 13.

¹²² *Sentencing Act 1991* (Vic) s 1(df)(i).

¹²³ *Sex Work Act 1994* (Vic) Sch 3.

¹²⁴ *Working with Children (Criminal Record Checking) Regulations 2005* (WA) Sch 2.

4. Existing or planned bilateral or multilateral agreements to address trafficking

Executive Summary

- 4.1 Many of Australia's multilateral and bilateral agreements to address human trafficking are contained in free trade agreements under security and strategic relationships. However, the Productivity Commission's November 2010 report into Australia's bilateral and regional trade agreements recognised that '*trade by itself cannot represent a developmental panacea*'.¹²⁵
- 4.2 The Australian Government has recently reconfirmed its commitment to international and regional cooperation, with a particular focus on the Bali Process, to prevent and address people trafficking.¹²⁶

Australia's Commitment to Multilateral and Bilateral Approaches to Trafficking

- 4.3 The Australian Department of Foreign Affairs and Trade Corporate Plan expressly includes an objective to '*enhance the security of Australia and Australians at home and overseas by combating transnational crimes, including [...] people smuggling through practical cooperation with other countries and multilateral institutions, including the United Nations.*' The Australian Government has addressed this objective through a number of international agreements, discussed in turn below.

F. MULTILATERAL AGREEMENTS

- 4.4 Australia is party to a number of multilateral agreements dealing with the trafficking of persons internationally, and within the South East Asian and Pacific regions. In addition to these agreements, Australia is a key financial and resource provider for regional projects located in source and target countries; many of which are based on regional cooperation agreements.

United Nations Convention against Transnational Organized Crime (UNTOC) and the Trafficking Protocol

- 4.5 In 2004, Australia ratified the *United Nations Convention against Transnational Organized Crime* (also known as the *Palermo Convention*) which requires that States commit themselves to taking steps against transnational organised crime, including developing domestic criminal offences and mutual legal assistance and cooperation. The Convention is supplemented by the *Trafficking Protocol*. The *Trafficking Protocol* came into force in July 2003, and Australia ratified the protocol in September 2005.
- 4.6 The *Trafficking Protocol* formulates an agreed definition of the trafficking in persons (refer paragraph above), aimed to '*facilitate convergence in national approaches with regard to the*

¹²⁵ Productivity Commission, *Report into Bilateral and Regional Trade Agreements* (2010) 208.

¹²⁶ Commonwealth, *The Government's Response to People Trafficking*, above n 62.

establishment of domestic criminal offences that would support efficient international cooperation in investigating and prosecuting trafficking in persons cases.¹²⁷

- 4.7 Although one of the key aims of the *Trafficking Protocol* is to ensure consistency in understanding of the definition of trafficking, the Australian Centre for the Study of Sexual Assault (**ACSSA**), part of the Australian Institute of Family Studies (**AIFS**), has criticised the Australian Government's understanding of the fundamental definitions surrounding trafficking under the *Trafficking Protocol*.¹²⁸
- 4.8 The trafficking offences in the Criminal Code do not fully capture the conduct that is prohibited by the definition of trafficking in the *Trafficking Protocol*. First, the definition of exploitation does not cover "practices similar to slavery" or "servitude". Second, the abusive and coercive means that traffickers employ to exploit their victims is not adequately captured because the Criminal Code fails to define "abuse of a position of power and vulnerability". Finally, Division 271 does not target the maintenance of a person in a situation of exploitation.¹²⁹
- 4.9 We recommend review of the existing criminal framework to ensure it fully reflects Australia's international obligations to criminalise trafficking for all forms of exploitation and to prohibit exploitative practices such as forced labour and servile marriage.¹³⁰

Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)

- 4.10 CEDAW entered into force in 1981, with Australia ratifying the Convention in July 1983. Whilst CEDAW does not expressly deal with the definition of trafficking, Article 6 requires State parties to '*take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution in women*'.¹³¹
- 4.11 The CEDAW Committee's Concluding Observations on Australia's compliance with the treaty have recently been released. The Committee commended Australia for a number of its measures, which it notes reflect the *Trafficking Protocol* objectives.¹³¹ In addition, the Committee commended Australia's movement towards a more humanitarian response to suspected victims of trafficking. The Committee also urged Australia to assess the viability of the Bali Process (discussed below) and encouraged Australia to continue its role in the Asian region in improving the prevention of trafficking in the region.

Convention on the Rights of the Child and its Optional Protocol (CROC)

- 4.12 Article 35 of the CROC requires that State parties take all appropriate national, bilateral and multilateral measures to prevent the trafficking of children in any form. Whilst Australia ratified

¹²⁷ United Nations Office on Drugs and Crime, *United Nations Convention against Transnational Crime and its Protocols*.

¹²⁸ Australian Centre for the Study of Sexual Assault, *Trafficking in Women for Sexual Exploitation*, Briefing No 5 (June 2005) 6.

¹²⁹ Frances Simmons and Jennifer Burn, above n 7.

¹³⁰ *Ibid.*

¹³¹ CEDAW, *Concluding Observations of the Committee on the Elimination of Discrimination against Women*, CEDAW/C/AUS/CO/7 (30 July 2010) <<http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-AUS-CO-7.pdf>>.

the CROC in 1990, it only ratified the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography in January 2007. Whilst long overdue, Australia's ratification of this protocol is highly commended, addressing the many reasons for which children are trafficked, and taking steps for prevention.

G. BILATERAL AGREEMENTS

Lombok Treaty – Australia and Indonesia

- 4.13 In 2006, Australia and Indonesia entered into the *Agreement between the Republic of Indonesia and Australia on the Framework for Security Cooperation (Lombok Treaty)*.
- 4.14 Article 7 of the Lombok Treaty expressly agrees that both parties will cooperate through their relevant institutions and agencies, including prosecution authorities, to prevent transnational crimes including people smuggling and the trafficking of persons.
- 4.15 In addition, on 12 November 2008, Australia and Indonesia made a Joint-Ministerial Statement on People Smuggling and Trafficking in Persons, reaffirming their commitment under the Lombok Treaty to work together with particular focus on people trafficking. The Joint Statement also makes reference to the countries' commitment to work together at the Bali Process to this effect.¹³²

Australia and Malaysia

- 4.16 Australia has been meeting regularly with the Malaysian Attorney-General's Chambers with regard to the Malaysia-Australia Bilateral Technical Legal Working Group on People Smuggling and Trafficking.¹³³ This group meets to '*discuss technical legal issues in legislating effectively against people smuggling and trafficking*'.¹³⁴

Australia and Europe

- 4.17 In late 2009, Australia and the European Union entered into the *Australia-European Union Partnership Framework*. Unfortunately, whilst this document addresses transnational crime such as arms trafficking, it does not address people trafficking. The signing of the *EU-Australia Passenger Name Record Agreement* does assist in the monitoring of transnational crimes and the movement of persons, but is focussed on international security and terrorism matters, rather than human rights.

¹³² Australian Government, *Joint Ministerial Statement – People Smuggling and Trafficking in Persons* (12 November 2008).

¹³³ Attorney-General's Department, *Working in partnership with other countries*, (11 October 2010) Australian Government Attorney-General's Department
>http://www.ag.gov.au/www/agd/agd.nsf/Page/Publications_AnnualReports_Annualreport2009_AnnualReport2009-10PerformanceReports-Outcome2<.

¹³⁴ Anti-People Trafficking Interdepartmental Committee, above n 63.

H. MULTILATERAL APPROACHES

The Bali Process

- 4.18 In conjunction with the United States, New Zealand and Japan, Australia funds the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime. Australia and Indonesia are the co-chairs of the Bali Process, and Australia is a member of the Bali Process Steering Group. The steering group is a closed environment, and includes Australia, Indonesia, New Zealand, Thailand, the IOM and UNHCR.
- 4.19 The Bali Process is not treaty based, but is a fundamental non-binding process aimed at developing a regional network of intelligence and law enforcement to address trafficking in persons in the Asia-Pacific region. The structure of the Bali Process has involved three ministerial conferences (2002, 2003 and 2009), with a further 2-3 workshops held per year. The key achievements from these meetings include:
- (a) enabling electronic authentication of travel documents (2007);
 - (b) victim support programs (2006);
 - (c) regional strategy developed on child sex tourism (2005);
 - (d) development of inter-agency action plans to combat trafficking (2005); and
 - (e) developing best practice guidelines on asylum management (2003).
- 4.20 At the third ministerial conference held in 2009, the Bali Process identified a series of objectives for the strategies of addressing trafficking within the region, many of which are being targeted within the programs funded by AusAID (discussed below).¹³⁵
- 4.21 At the 2008 Vienna Forum, the Australian and Indonesian governments, in their capacities as co-chairs, hosted a side-event to disseminate information regarding the Bali Process. The Bali Process was deemed a suitable model for regional cooperation in preventing human trafficking, and regional models continue to be the most effective way for States to combat human trafficking.¹³⁶

Pacific Immigration Directors' Conference (PIDC)

- 4.22 Australia is a member of the PIDC, which is a forum for the official immigration agencies for countries within the Pacific region. Whilst there has been some movement within the forum's island countries, excluding Australia, to address the trafficking of people in the region, Australia and PIDC are yet to take a regional approach within the immigration sphere in relation to the trafficking of people throughout the Pacific. Australia has funded and supported Pacific-based projects, and these are discussed below.

¹³⁵ For further information concerning the Bali Process objectives, see: <http://www.baliprocess.net/index.asp?pageID=2145831401>.

¹³⁶ United Nations, *Report on the Vienna Forum to Fight Human Trafficking* (2008) 58.

Asian Regional Cooperation to Prevent People Trafficking Project (ARCPPT)

- 4.23 Whilst this project was completed in 2006, it provides the foundation for the current ARTIP Project (discussed below), and demonstrates the range of successful outcomes achieved through the Australian Government's Agency for International Development (AusAID). With A\$11 million in funding over 2003-2006, the ARCPPT Project aimed to contribute to the prevention of people trafficking throughout South East Asia. Counterpart countries included Burma, Cambodia, Thailand and Lao PDR, with contributions from Vietnam, China, Indonesia and the Philippines.
- 4.24 Successful outcomes of the project included the establishment of three anti-trafficking units and national law enforcement agencies in Lao PDR, Burma and Thailand, assistance in the drafting of Burma, Cambodia and Lao PDR's anti-trafficking laws, and the facilitation of Memoranda of Understanding between Thailand and Lao PDR, and between Cambodia and Vietnam.¹³⁷

Asia Regional Trafficking in Persons Project (2006-2011) (ARTIP)

- 4.25 ARTIP is an Australian Government initiative that builds on the successes of the previous ARCPPT. Scheduled to end in August 2011,¹³⁸ ARTIP is an A\$21 million project aimed at coordinating a regional approach to people trafficking in South East Asia. The project has focused on developing law enforcement, judicial and prosecutorial capacity whilst undertaking targeted research and outreach activities. This project involves Cambodia, Indonesia, Lao PDR, Burma, Philippines, Thailand and Vietnam, and cooperates with the Association of South East Asian Nations (ASEAN) and the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT).
- 4.26 ARTIP is a fundamental multilateral agreement addressing the prevention of trafficking, support of victims and the punishment of perpetrators.

Tripartite Action to Protect Migrants in the Greater Mekong Sub-region from Labour Exploitation (TRIANGLE)

- 4.27 AusAID is the donor for the TRIANGLE project, committing A\$10.5 million from 2010 to 2014 to a new initiative working in conjunction with the International Labour Organization (ILO). TRIANGLE involves the key source countries for people trafficking in the region, Cambodia, China, Lao PDR, Thailand and Vietnam, along with destination countries such as Malaysia. The ILO activities focus on the prevention of labour exploitation, establishment of non-exploitative practices and education within the local communities. This project is key to assisting vulnerable migrant workers in the region.¹³⁹

¹³⁷ Further information is available at: <<http://www.ausaid.gov.au/country/traffickrecent.cfm#ARCPPT>>.

¹³⁸ The Australian Government has stated that it intends a new anti-trafficking project to commence in 2012, and has been working with partner governments and organisations to build on ARTIP's success. See AusAID, *Anti-Trafficking Activities* <<http://www.ausaid.gov.au/country/antitraffick.cfm#>>.

¹³⁹ Further information about the project can be found at: <http://www.ilo.org/asia/whatwedo/projects/lang--en/WCMS_145664/index.htm>.

Project Childhood

4.28 This is a program specifically designed by AusAID to prevent child sex tourism in the Mekong sub-region. The project has A\$7.5 million in funding from 2010 to 2014, and is operated in conjunction with the United Nations Office on Drugs and Crime (**UNODC**), and World Vision Australia under two areas of focus. The first area of focus, the 'Protection Pillar', is operated in conjunction with the UNODC, commencing in 2010 to strengthen law enforcement capabilities, integration with Interpol and assistance from the AFP. The second pillar, the 'Prevention Pillar', is run in conjunction with World Vision Australia and commenced in 2011. The Prevention Pillar is aimed at education within communities prone to child sexual exploitation, and developing prevention initiatives with Mekong sub-region countries: Cambodia, Lao PDR, Thailand and Vietnam.

Current regional activities concluding in 2011¹⁴⁰

4.29 A number of the Australian Government's activities addressing trafficking in the region are approaching their final funding dates in 2011. The Australian Government has recently announced an A\$474 million increase in foreign aid spending in the 2011 Australian Federal Budget.¹⁴¹

AusAID UNICEF Partnership Framework

4.30 The Australian Government is currently providing A\$93.6 million over four years (2008-2011) in partnership with UNICEF for activities addressing a range of children's rights issues, including prevention of trafficking and support for victims of trafficking.

UNICEF's Regional Child Protection Program

4.31 Over 2011 and 2012, the Australian Government has committed A\$3 million in funding for this UNICEF program, which provides a multi-disciplinary response to the prevention of child exploitation, including commercial sexual exploitation, in Samoa, Vanuatu, Fiji, the Solomon Islands and Kiribati.

World Vision's 'Mekong Delta Regional Trafficking Strategy 2'

4.32 Targeting the prevention of child trafficking in Lao PDR, Burma and Vietnam, Australia has provided A\$1.7 million in funding (from 2008-2011) for development of community capacities to prevent trafficking in source communities.

Save the Children's Rights Programs

4.33 The Australian Government has committed funding to various children's rights programs throughout the Pacific region for 5 and 6 years up until 2011, including A\$800,000 in the Solomon Islands, A\$600,000 for Papua New Guinea and A\$400,000 in Vanuatu.

¹⁴⁰ Further information about these programs is available at: <<http://www.ausaid.gov.au/country/antitraffick.cfm>>.

¹⁴¹ Minister for Foreign Affairs, Hon Kevin Rudd MP, '2011-12 International Development Assistance Budget', (Media Release, 10 May 2011).

World Vision’s ‘Assistance, Support and Protection for Migrant and Trafficked Women and Children’

4.34 The Australian Government has committed A\$1.34 million over 6 years (2006-2011) for this program that focuses on addressing the susceptibility of migrant communities in Thai-Burma border areas to trafficking.

United Nations Global Initiative to Fight Human Trafficking (UN.GIFT)

4.35 UN.GIFT is dedicated to the promotion of international agreements reached at the United Nations addressing the prevention of human trafficking, in particular, the *Trafficking Protocol*. Australia has provided financial support to the establishment of UN.GIFT,¹⁴² and co-chaired a Bali Process side-event in conjunction with the Indonesian Government at the UN.GIFT Vienna Forum.¹⁴³ UN.GIFT recognises Australia’s National Trafficking Strategy.¹⁴⁴

¹⁴² UN.GIFT, *About*. Available at: <<http://www.ungift.org/knowledgehub/en/about/>>.

¹⁴³ United Nations, *Report on the Vienna Forum to Fight Human Trafficking*, above n 136.

¹⁴⁴ Available at: <http://www.ungift.org/doc/knowledgehub/resourcecentre/Governments/Australia_National_Strategy_against_Human_Trafficking_Fact_Sheet_2009.pdf>.

5. Support services for victims of human trafficking

Executive Summary

- 5.1 The Australian Government provides a range of support services to trafficked people. The services are more flexible, and available to more people, after changes were made in 2009 as part of the Australian Government's National Trafficking Strategy. De-linking initial support services from specific visas that were part of visas in the trafficking visa framework has increased the availability of support services for victims and suspected victims of human trafficking.
- 5.2 Comprehensive temporary support services are available to suspected victims of human trafficking identified by the Australian Federal Police and referred to the Red Cross Support for Trafficked People program. Formal ongoing support services are primarily available only to victims who have agreed to participate in an investigation into, or prosecution of, human trafficking crimes.
- 5.3 While services are improved, unless victims become part of an investigation, or can establish a threat to their life in their home-country, it is likely they will be repatriated to their home country within 90 days of identification, where support services are likely to be less comprehensive. NGOs are providing increasing services to victims of human trafficking, with several dedicated organisations now operating in Australia with funding contributions from the Australian Government. NGOs that provide direct services to trafficked people can complement the support provided under the Support for Victims of Trafficking Program or they may be able to support trafficked people who are not eligible for the Program or who are no longer receiving support through the Program.
- 5.4 There are still significant gaps in the availability of support services to victims of trafficking. For example:
- (a) the Red Cross Support Program can only provide ongoing support to trafficked people who are willing and able to assist Australian Federal Police or to assist in a criminal prosecution;
 - (b) the temporary immigration status of trafficked people can create significant challenges in securing emergency and ongoing accommodation.

A. GOVERNMENT SUPPORT FOR TRAFFICKED PEOPLE PROGRAM

Support for Trafficked People Program

- 5.5 The Australian Commonwealth Government is responsible for administering the Support for Trafficked People Program (**The Support Program**). This program forms a limb of the Government's National Trafficking Strategy. The Trafficking Victims Support Program falls within the portfolio of the Office for Women in the Department of Families, Housing,

Community Services and Indigenous Affairs, although the program is not restricted to only female victims of trafficking.

- 5.6 The Support Program is currently operated by the Red Cross, who won the initial Government tender for provision of the program.
- 5.7 The Support Program was modified as part of the suite of changes introduced as part of the National Trafficking Strategy in 2009. These changes make the program more accessible, and de-link the program from the Visa framework for victims of human trafficking.
- 5.8 The Support Program has two key limbs:
- (a) the Assessment Stream and Extended Intensive Support Stream; and
 - (b) the Justice Support Stream.
- 5.9 As at 30 June 2010, 155 clients had been accepted into the Support Program since the program's inception in 2004.¹⁴⁵ In the period 1 May 2009 to 30 June 2010, 24 new clients (22 women and 2 men) entered the program.¹⁴⁶ The majority of clients are from Thailand, followed by South Korea and Malaysia.¹⁴⁷ In February 2011, 65 clients were participating in the Support Program.¹⁴⁸
- 5.10 The issue of securing sustainable accommodation for trafficked people has emerged as a major issue for services supporting trafficked people. There is a need for advocacy with State Housing Departments to ensure that trafficked people on temporary visas can access emergency public housing.

The Assessment Stream

- 5.11 The Assessment Stream of the Trafficking Victims Support Program provides immediate and temporary support to people identified as victims or suspected victims of human trafficking. Identified or suspected victims do not need to have agreed to assist police in their investigations to be eligible for support. This initial support was previously provided for 30 days, and has now been extended to 45 days, with an option to further extend for a further 45 days (discussed further below).
- 5.12 While receiving support, a victim must have a valid visa. The Bridging F Visa is available to victims and suspected victims for 45 days where that person does not otherwise have a valid visa. The Australian Government Guidelines to the Bridging F Visa say:

'Unlawful non-citizens who have been identified by a law enforcement agency as persons of interest in relation to a trafficking matter will be eligible for a bridging visa F - visa subclass 060 (BVF)... The purpose of this visa is to give the agency sufficient

¹⁴⁵ Anti-People Trafficking Interdepartmental Committee, above n 63, 12.

¹⁴⁶ Ibid.

¹⁴⁷ Ibid 14.

¹⁴⁸ Minister for the Status of Women, Hon Kate Ellis MP, 'Support for Victims of People Trafficking' (Media Release, 9 February 2011)

http://www.kateellis.fahcsia.gov.au/mediareleases/2011/Pages/victims_of_people_trafficking_9022011.aspx.

*time to decide whether to seek the grant of a CJSV, so the person can remain in Australia to provide further assistance with an investigation.*¹⁴⁹

5.13 In order to provide the support under the Assessment Stream of the Trafficking Victims Support Program, the recipient is provided with a case-manager through the Red Cross to co-ordinate services. The support services offered include:

- (a) social support;
- (b) accommodation support;
- (c) counselling;
- (d) medical treatment;
- (e) food allowance; and
- (f) help for dependent children.¹⁵⁰

5.14 There are no rights to receive social security under the Assessment Stream of the Trafficking Victims Support Program. Since 2009, the Government now has an option to extend the assessment support period and BVF visa for a further 45 days, under the 'Extended Intensive Support Stream'. The grounds under which such an extension will be granted are unclear.

5.15 The Australian Government has explained that:

*'[p]reviously, victims who were not able to assist with an investigation and prosecution of a people trafficking offence were assisted to return to their country of origin, unless they could satisfy criteria of another visa enabling them to remain in Australia. Under the new arrangements, victims of trafficking who are willing, but not able, to participate in the criminal justice process may be eligible for up to 90 days support under the Program (45 days support under the Assessment Stream and 45 days support under a new Extended Intensive Support Stream).'*¹⁵¹

5.16 After assessment, victims may be transferred to the Justice Support Stream of the Trafficking Victims Support Program for continued support, if they will contribute to an investigation into or prosecution of human trafficking crimes. Otherwise, unless an extension is granted, a victim of human trafficking, who was for whatever reason unable or unwilling to provide assistance to an investigation in Australia, would be provided with support for up to 45 days, and then be deported from Australia.

Justice Support Stream

5.17 The Justice Support Stream of the Support Program applies to victims of human trafficking who are participating in an investigation or prosecution of a person or persons alleged to have

¹⁴⁹ Australian Government, *Guide to Social Security Law*, (version 1.177; 16 May 2011) at [9.1.2.130].

¹⁵⁰ Attorney-General's Department, 'National Human Rights Action Plan – Baseline Study' (Consultation Draft, Human Rights and Anti-Discrimination, June 2011) 15.

¹⁵¹ Australian Government, *Australian Government Fact Sheet: Australian Government Anti-People Trafficking Strategy* (June 2009).

committed crimes relating to human trafficking. These people are eligible for a range of visas and support services, and under these visas are eligible to work in Australia.

- 5.18 The support services offered during their time in Australia (which can be a significant period of time) include:
- (a) assistance with accommodation;
 - (b) health benefits;
 - (c) food allowance;
 - (d) rights to work in Australia; and
 - (e) access to legal services.
- 5.19 The Attorney-General can certify that a person has made a contribution to an investigation or prosecution of an alleged human trafficker, and that returning to their country poses a danger to that person, entitling that person to a permanent visa for residency in Australia. Prior to the 2009 changes to the Support Program and visa system, two victims of people trafficking and three of their dependants were granted permanent visas on this basis. After the 2009 changes were introduced, between 1 July 2009 and 20 June 2010, 15 victims and six of their dependants were granted permanent visas.¹⁵²

Support for trafficking victims giving evidence in court

- 5.20 For trafficked people giving evidence in court can be traumatic. Red Cross are unable to support trafficked people in court because of the application of the principle of neutrality.
- 5.21 The NGO Guidelines on Working with Trafficked People note that:
- In November 2008, the Commonwealth Director of Public Prosecutions (CDPP) Witness Assistance Service Pilot employed a Witness Assistance Officer to provide information and support to victims and witnesses of Commonwealth crimes prosecuted by the CDPP Sydney Office, including victims of human trafficking, sexual slavery, sexual servitude, debt bondage and labour trafficking. This assistance includes providing information about the court process; where appropriate, keeping victims and witnesses informed of key developments in the case and Liaising with Non-Government Organisations (NGOs) as appropriate.*¹⁵³
- 5.22 The pilot program resulted in a CDPP decision to employ a witness assistance officer on a permanent basis. If the officer does not have the capacity to support specific witnesses there may be a referral to another court support agency.

¹⁵² Anti-People Trafficking Interdepartmental Committee, above n 63, 9.

¹⁵³ Working Group of the National Roundtable on People Trafficking to Assist Non-Government Organisations Working with Trafficked People, *2010 Guidelines for NGOs: Working with Trafficked People* (2nd Ed, Commonwealth of Australia, 2010) 25.

6. Challenges in implementing the Support for Trafficked People Program

6.1 The Australian Government has identified the following challenges to effectively delivering the Support for Trafficked People Program:

- (a) access to safe, appropriate and affordable accommodation;
- (b) access to employment assistance; and
- (c) access to education and other services.¹⁵⁴

B. NGO SERVICES FOR VICTIMS OF HUMAN TRAFFICKING

6.2 Further services are provided independently by non-government organisations (**NGOs**) in Australia. In 2008, the Australian Government provided four A\$250,000 grants to a range of NGOs for the purpose of funding support services to human trafficking.

6.3 Further grants were made in 2011 to the Australian Red Cross, Asian Women at Work, Australian Hotels Association, Australian Council of Trade Unions and the Construction, Forestry, Mining and Energy Union (Construction Division) to promote awareness of labour trafficking.¹⁵⁵

6.4 NGOs providing support services or promoting community awareness of human trafficking in Australia include:¹⁵⁶

- the Anti-Slavery Australia, Sydney (Tel 02 9514 9662);
- the Samaritan Accommodation, Sydney (Tel: 02 9211 5794);
- Scarlett Alliance, the Australian Sex Workers Association, Sydney (Tel 02 9326 9455);
- Project Respect, Melbourne (Tel 03 9416 3401);
- Australian Catholic Religious Against Trafficking, Australia-wide (03 9205 4200); and
- Refugee & Immigration Legal Centre, Inc., Melbourne (Tel 03 9483 1144).

6.5 Support offered by NGOs to victims of human trafficking include, among many things:

- (a) legal services;
- (b) counselling;
- (c) translating services;

¹⁵⁴ Ibid 15.

¹⁵⁵ Minister for the Status of Women, Hon Kate Ellis MP, 'More Funding to Fight Slavery and Labour Trafficking' (Media Release, 17 October 2011)
<http://www.kateellis.fahcsia.gov.au/mediareleases/2011/pages/morefundingtofightslaveryandlabourtrafficking_17_oct_2011.aspx>.

¹⁵⁶ This list includes recommendations from: Anti-Slavery Project, *Fact Sheet on Victim Support Services for Trafficked People*, University of Technology, Sydney (2010) 5.

- (d) identification of victims of trafficking and appropriate referrals to government agencies and government support;
- (e) information and education services;
- (f) housing advice;
- (g) provision of emergency housing, clothing and food; and
- (h) English language classes.

6.6 Further information on NGO service-providers is available in a Guideline published in 2010 for NGOs working with victims of human trafficking.¹⁵⁷

¹⁵⁷ Working Group of the National Roundtable on People Trafficking to Assist Non-Government Organisations Working with Trafficked People, above n 79.

7. Priorities for Reform

A. PLANNED LAW REFORMS

- 7.1 While the Government has not tabled any definite changes to the anti-trafficking legal framework, the Government issued discussion papers in 2011 seeking opinion about forced and servile marriage and criminal justice responses to trafficking.¹⁵⁸ The present trafficking offences were introduced into the Criminal Code in 2005,¹⁵⁹ reforms to employer sanctions were introduced in 2007,¹⁶⁰ and reforms to the Migration Regulations affecting victims of trafficking were introduced in 2009.¹⁶¹
- 7.2 The Minister for Home Affairs and Justice has indicated that in 2011 the Government will look at further increasing protection for vulnerable and disadvantaged witnesses in people trafficking matters, and will re-examine the Support for Victims of People Trafficking Program and the Community Awareness Strategy.¹⁶²
- 7.3 The Government is also examining the need for legislative reform to address the practice of forced and servile marriage in Australia, issuing a discussion paper in late 2010.¹⁶³ The discussion paper noted the concern that the current trafficking offences in Division 271 of the Criminal Code do not expressly protect children or adults from being trafficked into forced or servile marriage.
- 7.4 The discussion paper canvasses several options for reform, including the creation of a specific offence of forced and servile marriage,¹⁶⁴ the amendment of the definition of 'exploitation' in the Criminal Code to include forced and servile marriage,¹⁶⁵ and the introduction of a regime of civil protection orders. Submissions closed on 25 February 2011, and to date the Government has not made any formal announcement about reform in this area.
- 7.5 Any effective legislative response to forced marriage must be developed through close consultation and engagement with the community and informed by further research about the

¹⁵⁸ Attorney-General's Department (Cth), *Discussion Paper – Forced and Servile Marriage* (2010); Attorney-General's Department (Cth) *Discussion Paper: The Criminal Justice Response to Slavery and People Trafficking; Reparation; and Vulnerable Witness Protections* (2010).

¹⁵⁹ *Criminal Code Amendment (Trafficking in Persons Offences) Act 2005* (Cth).

¹⁶⁰ *Migration Amendment (Employer Sanctions) Act 2007*.

¹⁶¹ *Migration Legislation Amendment Regulations 2009 (No. 2)* (Cth).

¹⁶² Commonwealth, *The Government's Response to People Trafficking*, above n 62, 8; Anti-People Trafficking Interdepartmental Committee, above n 63, 53.

¹⁶³ Criminal Justice Division, Attorney-General's Department, Australian Government, *Discussion Paper: Forced and Servile Marriage* (2010).

¹⁶⁴ The discussion paper states that under this offence:

'An individual could also be prosecuted if they knew, or were reckless as to whether the marriage was to occur without the full and free consent of the victim. This would capture those who 'aid and abet' the contracting of such marriages, and those who profit from procuring and trafficking individuals into such marriages'.

Criminal Justice Division, above n 159, 14.

¹⁶⁵ *Ibid* 15.

nature of forced marriage in Australia.¹⁶⁶ It must also ensure that non-citizens who experience forced marriage in Australia are able to stay in Australia while they receive support and that the threat of removal does not prevent victims from seeking help.¹⁶⁷

7.6 There is a need for a full review of Australian trafficking laws to ensure that Australia's anti-trafficking laws fully reflect Australia's international legal obligations.¹⁶⁸

B. PRIORITIES FOR REFORM

7.7 The most effective way to address human trafficking and severe exploitation is to “incorporate a human-rights based approach into measures taken to prevent and end trafficking in persons and to protect, assist and provide access to adequate redress to victims, including the possibility of obtaining compensation from the perpetrators”.¹⁶⁹ From a human rights perspective, we have identified the following priorities for reform (as identified in the introduction):

- (a) reviewing Australia's anti-trafficking laws to ensure compliance with Australia's international obligations including obligations to prohibit forced labour and practices similar to slavery;
- (b) investing in research to strengthen our understanding of emerging issues such as forced marriage, child trafficking and organ removal;
- (c) consulting with community stakeholders to develop legal and policy initiatives to respond to the emerging issue of forced marriage, including multilingual guidelines for government agencies and NGOs working with people who have experienced forced marriage;
- (d) strengthening pathways to effective remedies for trafficked people by building effective networks and referral protocol between support services and pro bono lawyers representing clients in compensation matters;
- (e) facilitating and supporting family reunion between trafficked people and dependent children;
- (f) improving victim support by ensuring all trafficked people have appropriate access to safe and sustainable housing;
- (g) developing protocol and guidelines for government agencies and support services working with child victims of trafficking to ensure the protection of human rights;

¹⁶⁶ Frances Simmons and Jennifer Burn, 'Forced Marriage: Challenges and Choices for Australian Law and Policy Makers' (2011) (unpublished, copy on file with authors) noting that while refugee decisions makers have (at least in some cases) recognised that forced marriage in a person's country of origin can amount to a persecutory harm, the people trafficking visa framework may not provide adequate protection to non-citizens experiencing forced marriage in Australia see further Jennifer Burn & Frances Simmons, *Anti-Slavery Australia, Submission to Criminal Justice Division, Attorney-General's Department (Cth), Discussion Paper – Forced and Servile Marriage* (25 February 2011).

¹⁶⁷ Frances Simmons and Jennifer Burn, above n 162.

¹⁶⁸ Frances Simmons and Jennifer Burn, above n 7.

¹⁶⁹ UN Human Rights Council, above n 1, 2.

- (h) improving coordination between federal and state government agencies to ensure a coordinated and efficient response to trafficking;
- (i) developing a publicly available resource on accommodation options for trafficked people, which provides information and guidance on the provision of housing to trafficked people; and
- (j) developing multilingual information and resources for all people entering Australia and for communities identified as most vulnerable to trafficking.