

The Parliament of the Commonwealth of Australia

**PARLIAMENTARY JOINT COMMITTEE
ON LAW ENFORCEMENT**

**An inquiry into human trafficking, slavery and slavery-like
practices**

July 2017

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Abbreviations

AATIP	Australia-Asia Program to Combat Trafficking in Persons
ACIC	Australian Criminal Intelligence Commission
ACRATH	Australian Catholic Religious Against Trafficking in Humans
AFP	Australian Federal Police
AGD	Attorney-General's Department
AHRC	Australian Human Rights Commission
AIC	Australian Institute of Criminology
AMWCHR	Australian Muslim Women's Centre for Human Rights
ASA	Anti-Slavery Australia
Bali Process	Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime
Border Force	Australian Border Force
CALD	culturally and linguistically diverse
CATWA	Coalition Against Trafficking in Women Australia
CDPP	Commonwealth Director of Public Prosecutions
Crimes Act	<i>Crimes Act 1914</i>
Criminal Code	<i>Criminal Code Act 1995</i>
DFAT	Department of Foreign Affairs and Trade
DIBP	Department of Immigration and Border Protection
DOE	Department of Employment
DSS	Department of Social Services
ELC	Employment Law Centre of WA
Family Law Act	<i>Family Law Act 1975</i>

FW Act	<i>Fair Work Act 2009</i>
FWO	Fair Work Ombudsman
HTIC	Human Trafficking Investigations Course
IDC	Interdepartmental Committee on Human Trafficking and Slavery
IJM	International Justice Mission Australia
ILO	International Labour Organization
IOM	International Organization for Migration
ISCH	Inner South Community Health Ltd
LCA	Law Council of Australia
Migration Act	<i>Migration Act 1958</i>
MOU	Memorandum of Understanding
NAP	<i>National Action Plan to Combat Human Trafficking and Slavery 2015–19</i>
NGOs	Non-government organisations
NorMAC	Nordic Model Australian Coalition
NSW	New South Wales
OWG	Operational Working Group
Palermo Protocol	<i>Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime (Palermo Protocol).</i>
PoC	proceeds of crime
Roundtable	National Roundtable on Human Trafficking and Slavery
Slavery Links	Slavery Links Australia Inc
Special Rapporteur	Special Rapporteur on trafficking in persons, especially women and children
STPP	Support for Trafficked People Program

SWP	Seasonal Worker Programme
the committee	Parliamentary Joint Committee on Law Enforcement
The Salvation Army	The Salvation Army—Freedom Partnership to End Modern Slavery
the US report	<i>Trafficking in Persons Report</i>
UCA	Uniting Church in Australia, Synod of Victoria and Tasmania
UK	United Kingdom
UNODC	United Nations Office on Drugs and Crime
US	United States

Recommendations

Recommendation 1

2.24 The committee recommends that member agencies of the Interdepartmental Committee on Human Trafficking and Slavery strengthen their coordination and engagement with each other, and that frontline Commonwealth agencies strengthen existing relationships with state and territory frontline agencies.

Recommendation 2

2.37 The committee recommends that the Commonwealth government funds the *National Action Plan to Combat Human Trafficking and Slavery 2015–19* so that it may be fully implemented, with a human rights-based approach to its implementation.

Recommendation 3

2.84 The committee recommends that the Commonwealth government increases the number of Australian Federal Police officers with specialised human trafficking and anti-slavery training in all states and territories.

Recommendation 4

2.85 The committee recommends that the Commonwealth government:

- expands training for frontline staff employed by the Australian Federal Police, the Department of Immigration and Border Protection and the Fair Work Ombudsman with respect to the Commonwealth offences at Divisions 270 and 271 of the *Criminal Code Act 1995*;
- works with its state and territory counterparts to ensure that state and territory police also receive adequate training with respect to the Commonwealth offences at Divisions 270 and 271 of the *Criminal Code Act 1995*; and
- ensures that this training includes reference to non-government organisations working on human trafficking, slavery and slavery-like practices so that they can refer victims for support and assistance offered through non-government organisations.

Recommendation 5

2.99 The committee recommends that the Commonwealth government commits to continuous funding of overseas anti-trafficking programs, including AATIP and the work undertaken by the International Labour Organization with respect to migrant workers in the ASEAN member states.

Recommendation 6

2.117 The committee recommends the Commonwealth government de-links access to the Support for Trafficked People Program from compliance with criminal investigations.

2.118 The committee recommends that the Commonwealth government facilitates and expedites family reunification for victims of trafficking, slavery and slavery-like offences.

Recommendation 7

2.130 The committee recommends the establishment of a national compensation scheme for victims of trafficking, slavery and slavery-like offences to be funded by proceeds of crime.

Recommendation 8

2.136 The committee recommends that the Commonwealth government considers ways in which to make the existing reparation orders available under section 21B of the *Crimes Act 1914* more accessible to victims of trafficking, slavery and slavery-like offences.

Recommendation 9

2.151 The committee recommends that the Commonwealth government considers appointing an Anti-Slavery and Trafficking Commissioner, to:

- monitor the implementation of the *National Action Plan to Combat Human Trafficking and Slavery 2015–19*;
- provide recommendations, advice and guidance to government agencies on the exercise of their functions;
- oversee the effectiveness of Commonwealth legislation and policies intended to reduce the prevalence of human trafficking, slavery and slavery-like practices and respond to corresponding offences; and
- collect and request data and information on these practices.

Recommendation 10

3.21 The committee recommends that the Commonwealth government:

- expands the pre-departure briefings and information currently available through the Seasonal Worker Program to a wider range of pre-departure countries and other categories of visa holders eligible to work in Australia, and

- introduces post-arrival briefings to ensure migrant workers are provided with relevant information from the Fair Work Ombudsman.

Recommendation 11

3.34 The committee recommends that the Commonwealth government strengthens visa protections where a visa holder has been subject to trafficking, slavery and slavery-like offences.

Recommendation 12

3.45 The committee recommends that the Commonwealth government establishes a licensing regime for labour hire companies.

Recommendation 13

4.1 The committee recommends that the Commonwealth government commission balanced and constructive research into the prevalence of sex trafficking into and within Australia.

Recommendation 14

4.20 The committee recommends that the Commonwealth government strengthens visa systems to prevent involuntary human trafficking into the sex industry in Australia.

Recommendation 15

4.26 The committee recommends that Australian governments support and fund initiatives to inform migrant sex workers about their legal rights and obligations both pre-departure and post-arrival in Australia.

Recommendation 16

4.52 The committee recommends that the Commonwealth government investigates the adequacy of current legislative provisions and criminal offences to address cybersex trafficking and makes legislative amendments as necessary where current arrangements, including the provisions of the *Criminal Code Act 1995*, are ineffectual.

Recommendation 17

5.26 The committee recommends that the Commonwealth government considers extending the application of protection orders relating to forced marriage to people over 18 years of age.

Recommendation 18

5.38 The committee recommends that the Commonwealth government continues to fund organisations and programs that engage in outreach, education and awareness-raising activities on forced marriage issues.

Recommendation 19

5.40 The committee recommends that Australian governments consider the inclusion of education on forced marriage in school curricula.

Recommendation 20

5.52 The committee recommends that information on forced marriage is consistently and routinely provided to newly arrived migrants in Australia through their engagement with government officials and agencies, as well as appropriate community groups and programs.

Chapter 1

Introduction

Conduct of the inquiry

1.1 On 2 December 2015, the Parliamentary Joint Committee on Law Enforcement (the committee) initiated an inquiry into human trafficking, which lapsed at the end of the 44th Parliament. The committee had received a number of submissions to the inquiry at the time the inquiry lapsed.

1.2 On 12 October 2016, during the 45th Parliament, the committee reinstated this inquiry. The committee resolved that all correspondence that it received in the 44th Parliament, including documents accepted as submissions, would be considered in respect of the current inquiry. The committee also resolved to accept additional submissions to the current inquiry.

1.3 The terms of reference for the inquiry were as follows:

Pursuant to the committee's functions set out in paragraph 7(1)(g) of the *Parliamentary Joint Committee on Law Enforcement Act 2010*, the committee will examine Commonwealth law enforcement responses to human trafficking, including slavery, slavery-like practices (such as servitude, forced marriage and forced labour) and people trafficking, to and from Australia.

In particular, the committee will examine:

1. the prevalence of human trafficking in Australia, including in culturally and linguistically diverse communities;
2. the role and effectiveness of Commonwealth law enforcement agencies in responding to human trafficking;
3. practical measures and policies that would address human trafficking;
4. the involvement of organised crime, including transnational organised crime, in human trafficking;
5. the extent to which human trafficking is facilitated by:
 - a. migration visas (including marriage, partner, student and work visas),
 - b. technology, and
 - c. false identities;
6. the effectiveness of relevant Commonwealth legislation and policies; and
7. other related issues.

1.4 The committee received 23 submissions during the 44th Parliament, and 10 submissions in the 45th Parliament (listed at Appendix 1). The committee also received a number of additional documents, answers to questions on notice and supplementary submissions.

1.5 The committee took evidence from representatives of 17 organisations over three days of hearings in Melbourne, Sydney and Canberra. A list of witnesses who appeared at these public hearings is at Appendix 2, and additional information received by the committee is listed at Appendix 3.

Structure of report

1.6 The committee's report is structured around the major themes identified by submitters and witnesses to the inquiry. This introductory chapter provides:

- an outline of the conduct of the inquiry;
- an overview of the domestic legislation that applies to human trafficking, slavery and slavery-like offences;
- Australia's obligations with respect to these practices pursuant to international law; and
- human trafficking in Australia.

1.7 Chapter two provides an overview of the Commonwealth government's response to human trafficking, slavery and slavery-like offences, focusing specifically on the law enforcement response. The chapter also considers the government's international engagement, and examines a number of key policy and law reform proposals that the committee received from submitters and witnesses.

1.8 Chapter three examines the issue of slavery and forced labour, including the exploitation of migrant workers and slavery in supply chains of goods and services.

1.9 Chapter four focuses on sex trafficking, including the debate around criminalisation of the sex industry, whether there are benefits to following the Nordic model of criminalising clients of sex workers, and the emerging issue of cybersex trafficking.

1.10 Chapter five examines the practice of forced marriage, as distinct from arranged marriages, including the introduction of this offence in the *Criminal Code Act 1995* (Criminal Code), the prevalence of forced marriage in Australia, and the response by government to this issue.

Terminology

1.11 Rather than focusing solely on human trafficking, the government, together with the majority of submitters to the inquiry, refer to 'human trafficking, slavery and slavery-like practices' to capture the range of exploitative practices that relate to human trafficking.

1.12 For this reason, unless otherwise specified, the committee will refer to 'human trafficking, slavery and slavery-like' practices throughout this report to capture the range of offences in Divisions 270 and 271 of the Criminal Code.

Domestic legislation

1.13 Australia's laws criminalising human trafficking are contained within Divisions 270 and 271 of the Criminal Code.

1.14 Since 1999, successive Commonwealth governments have progressively implemented a number of legislative initiatives to address human trafficking and slavery:

- in 1999, the government introduced into the Criminal Code offences relating to slavery, sexual servitude and deceptive recruiting for sexual services;¹
- in 2005, the government introduced into the Criminal Code offences relating to trafficking in persons activity, including people trafficking offences, debt bondage offences and specific trafficking in children offences;²
- in 2013, further amendments were made to the Criminal Code with the insertion of offences of forced labour, forced marriage, organ trafficking and harbouring a victim; and amendments were also made to the *Crimes Act 1914* (Crimes Act), the *Migration Act 1958*, the *Proceeds of Crime Act 2002* and the *Telecommunications (Interception and Access) Act 1979*. Amendments were also made to the Criminal Code and the Crimes Act to provide protections for vulnerable witnesses giving evidence in commonwealth criminal proceedings, including victims of human trafficking and slavery;³ and
- in 2015, the definition of ‘forced marriage’ in the Criminal Code was expanded, and corresponding penalties were increased.⁴

1.15 The Criminal Code does not define human trafficking, but does define other terms, including slavery, which is defined in the Criminal Code as:

...the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including where such a condition results from a debt or contract made by the person.⁵

1.16 A slavery-like offence is also defined in the Criminal Code as being an offence against provisions relating to servitude offences, forced labour offences, deceptive recruiting for labour or services, and forced marriage offences.⁶

1 Attorney-General's Department (AGD), *Discussion Paper: The Criminal Justice Response to Slavery and People Trafficking; Reparation; and Vulnerable Witness Protections*, 2011, p. 8.

2 AGD, *Discussion Paper: The Criminal Justice Response to Slavery and People Trafficking; Reparation; and Vulnerable Witness Protections*, 2011, p. 9.

3 *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013* and *Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protection and Other Measures) Act 2013*.

4 AGD, *Human trafficking and slavery legislation*, <https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Pages/Human-trafficking-legislation.aspx> (accessed 6 April 2017).

5 *Criminal Code Act 1995*, s. 270.1.

6 *Criminal Code Act 1995*, s. 270.1A.

1.17 The Criminal Code also defines coercion,⁷ forced labour,⁸ deceptive recruiting for labour or services,⁹ forced marriage,¹⁰ servitude,¹¹ threat,¹² deceive¹³ and exploitation.¹⁴

1.18 These offences have different forms of extended geographic jurisdiction, but none require the victim to be moved across or within Australia's borders.

1.19 The extended geographical jurisdiction that applies to the offence of slavery provides that the law applies whether or not the conduct constituting the alleged offence occurs in Australia; and whether or not a result of the conduct constituting the alleged offence occurs in Australia.¹⁵

1.20 Slavery-like offences also have an extended geographic jurisdiction, but the law can apply where the conduct occurred in Australia, or where the conduct occurred outside Australia but the offender was an Australian corporation, citizen or resident.¹⁶

1.21 The Criminal Code also contains specific offences for trafficking in persons, including trafficking people into, out of, and within Australia;¹⁷ specific provisions for domestic trafficking,¹⁸ organ trafficking¹⁹ and trafficking in children;²⁰ and separate offences for harbouring a victim²¹ and debt bondage.²²

1.22 Penalties for these offences range from four years' to 25 years' imprisonment.

International obligations

1.23 The offences relating to human trafficking in the Criminal Code fulfil Australia's obligations under the *Protocol to Prevent, Suppress and Punish*

7 *Criminal Code Act 1995*, s. 270.1A.

8 *Criminal Code Act 1995*, s. 270.6.

9 *Criminal Code Act 1995*, s. 270.7.

10 *Criminal Code Act 1995*, s. 270.7A.

11 *Criminal Code Act 1995*, s. 270.4.

12 *Criminal Code Act 1995*, s. 270.1A.

13 *Criminal Code Act 1995*, s. 271.1.

14 *Criminal Code Act 1995*, s. 271.1A.

15 *Criminal Code Act 1995*, s. 270.3A.

16 *Criminal Code Act 1995*, s. 270.9.

17 *Criminal Code Act 1995*, s. 271.2, s. 271.5.

18 *Criminal Code Act 1995*, s. 271.5, s. 271.6, s. 271.7 (trafficking in children), s. 271.7D and s. 271.7E (organ trafficking).

19 *Criminal Code Act 1995*, s. 271.7A to s. 271.7E.

20 *Criminal Code Act 1995*, s. 271.4 and s. 271.7.

21 *Criminal Code Act 1995*, s. 271.7F, s. 271.7G.

22 *Criminal Code Act 1995*, s. 271.8, s.271.9.

Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime (Palermo Protocol).

1.24 The definition of ‘trafficking in persons’ at article 3 of the Palermo Protocol sets out the following constituent elements:

- an action, namely recruitment, transportation, transfer, harbouring or receipt of persons;
- the means by which the action is achieved, for example by threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability and the giving of payments or benefits to achieve the consent of a person having control over another person; and
- the purpose of the extended action or means, namely exploitation.²³

1.25 As set out in the Commonwealth government's *National Action Plan to Combat Human Trafficking and Slavery 2015–19* (NAP), Australia also has binding legal obligations in respect of human trafficking and slavery under other international instruments, including:

- the *United Nations Convention against Transnational Organized Crime*;
- the *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*;
- the *Universal Declaration of Human Rights*;
- the *International Covenant on Civil and Political Rights*;
- the *International Covenant on Economic, Social and Cultural Rights*;
- the *Convention on the Elimination of All Forms of Discrimination against Women*;
- the *Convention on the Rights of the Child*, and its Optional Protocols on: the sale of children, child prostitution and child pornography; and on involvement of children in armed conflict;
- the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*;
- the *International Convention on the Elimination of All Forms of Racial Discrimination*;
- the *International Labour Organization Convention No. 29 on Forced or Compulsory Labour*;
- the *Protocol Supplementing the Forced Labour Convention, 1930* (No. 29);
- the *International Labour Organization Convention No. 105 on the Abolition of Forced Labour*; and

23 *Report of the Special Rapporteur on trafficking in persons, especially women and children*, 28 July 2014, UN GAOR 69th sess, Item 69(b) of the provisional agenda, UN Doc A/69/33797, p. 6.

- the International Labour Organization Convention No. 182 on the Worst Forms of Child Labour.²⁴

Human trafficking in Australia

1.26 Each year, the United States (US) Department of State publishes a *Trafficking in Persons Report* (the US report) that analyses international governments' prosecution, protection, and prevention efforts in respect of human trafficking.²⁵

1.27 The 2016 US report classifies Australia as a 'Tier 1' country, which indicates that the Commonwealth government has acknowledged the existence of human trafficking, made efforts to address human trafficking and meets the minimum statutory standards in respect of human trafficking in the US.²⁶

1.28 The following extract from the US report summarises the prevalence of human trafficking in Australia:

Australia is primarily a destination country for women and girls subjected to sex trafficking and for women and men subjected to forced labor. A small number of children, primarily teenage Australian and foreign girls, are subjected to sex trafficking within the country. Some women from Asia and—to a lesser extent—Eastern Europe and Africa migrate to Australia to work legally or illegally in a number of sectors, including the sex trade. After their arrival, some of these women are coerced to enter or remain in prostitution. Some foreign women—and sometimes girls—are held in captivity, subjected to physical and sexual violence and intimidation, manipulated through illegal drugs, obliged to pay off unexpected or inflated debts to traffickers, or otherwise deceived about working arrangements.

Some victims of sex trafficking and some women who migrate to Australia for arranged marriages are subjected to domestic servitude. Unscrupulous employers and labor agencies subject some men and women from Asia and several Pacific Islands, recruited to work temporarily in Australia, to forced labor in agriculture, construction, hospitality, and domestic service. Traffickers often operate independently or are part of small organized crime networks that frequently involve family and business connections between Australians and overseas contacts. Some identified victims are foreign citizens on student visas who pay significant placement and academic fees. Unscrupulous employers coerce students to work in excess of the terms of their visas, making them vulnerable to trafficking due to fears of deportation for immigration violations. Some foreign diplomats allegedly subject domestic workers to forced labor in Australia.²⁷

24 Commonwealth of Australia, *National Action Plan to Combat Human Trafficking and Slavery 2015–19*, 2014, pp 7–8.

25 Department of State (USA), *Trafficking in Persons Report*, June 2016, p. 3.

26 Department of State (USA), *Trafficking in Persons Report*, June 2016, p. 36. That is, the standards set out in the US *Trafficking Victims Protection Act of 2000*.

27 Department of State (USA), *Trafficking in Persons Report*, June 2016, p. 80.

1.29 The United Nations Office on Drugs and Crime (UNODC) also spoke to the committee about human trafficking into Australia:

...abuse of the visa program is probably the easiest way into Australia in terms of trafficking victims. It can be things, such as overstaying on student visas, or it can be visa-related things, such as sham marriages. Those are the two that I have heard are the most typical routes. What I have not heard that much about are things like false documentation being used to enter Australia, partly because Australia, obviously, has quite sophisticated border protection, so things like false documents that would get them through Australia's system are not easy to obtain. Mostly it is abuse of the visa system.²⁸

28 Mr Benjamin Smith, Regional Programme Coordinator, Human Trafficking/Smuggling of Migrants, United Nations Office on Drugs and Crime (UNODC), *Committee Hansard*, 4 May 2017, p. 46.

Chapter 2

Legal and policy framework

2.1 This chapter describes the Commonwealth government's policy response to human trafficking, and looks specifically at the response of law enforcement, as well as the government's international engagement. This chapter concludes by discussing a number of key policy and law reform proposals that the committee received from submitters and witnesses.

Commonwealth policy response

2.2 The Commonwealth government's approach to human trafficking, slavery and slavery-like offences is led by the Interdepartmental Committee on Human Trafficking and Slavery (IDC), and set out in its *National Action Plan to Combat Human Trafficking and Slavery 2015–19* (NAP). The NAP provides the framework for the government agencies to interact with each other, civil society organisations, and state and territory agencies with respect to these offences.

The Interdepartmental Committee on Human Trafficking and Slavery

2.3 The Commonwealth government takes a whole-of-government approach to human trafficking, overseen by the IDC. The Attorney-General's Department (AGD) chairs the IDC, which is comprised of representatives from the Australian Criminal Intelligence Commission (ACIC), the Australian Federal Police (AFP), the Australian Institute of Criminology (AIC), the Commonwealth Director of Public Prosecutions (CDPP), the Department of Employment, the Department of Foreign Affairs and Trade (DFAT), the Department of Immigration and Border Protection (DIBP), the Department of the Prime Minister and Cabinet, the Department of Social Services (DSS), and the Fair Work Ombudsman (FWO).¹

2.4 An Operational Working Group (OWG), established as a subcommittee of the IDC to 'resolve systemic operational issues that arise in the management of individual cases', is chaired by the AGD and includes the AFP, CDPP, DIBP and DSS.² The OWG meets on a six-weekly basis.³

The Commonwealth government's strategy

2.5 The government's strategy to combat human trafficking and slavery was established in 2004 and is founded on the following central pillars:

1. Prevention and deterrence
2. Detection and investigation

1 Commonwealth of Australia, *Trafficking in Persons: The Australian Government Response 1 July 2015–30 June 2016*, 2016, p. 4.

2 Attorney-General's Department (AGD), *Submission 17*, p. 2.

3 AGD, *Submission 17*, p. 2.

3. Prosecution and compliance, and

4. Victim support and protection.⁴

2.6 According to the government, the measures taken under these four pillars 'address the full cycle of human trafficking and slavery from recruitment to reintegration and give equal weight to the critical areas of prevention, enforcement and victim support'.⁵

2.7 Since 2003, the government has spent over \$150 million on domestic, regional and international initiatives to prevent and address human trafficking and slavery, including the establishment of:

- the NAP, that 'sets the strategic framework for Australia's whole-of-community response to human trafficking and slavery'; and
- the *International Strategy to Combat Human Trafficking and Slavery*, launched on 23 March 2016, that 'complements the [NAP] and amplifies [the government's] efforts as a regional leader in preventing and addressing human trafficking and slavery'.⁶

2.8 To assist the government in carrying out such work, the IDC consults with civil society organisations and unions, including through its annual National Roundtable on Human Trafficking and Slavery (Roundtable), and the related Senior Officials' Meeting.

2.9 The NAP notes that civil society organisations and unions 'play an important role in assisting trafficked people, and improving public understanding of trafficking through awareness-raising and education activities'.⁷ The role of business and industry is also considered 'vital' in Australia's efforts in respect of human trafficking and slavery, particularly in developing a response to the issue of labour exploitation in supply chains.⁸ Issues relating to slavery and forced labour, including supply chains, will be explored in more detail in chapter 3.

4 Commonwealth of Australia, *Trafficking in Persons: The Australian Government Response 1 July 2015–30 June 2016*, 2016, p. 4.

5 Commonwealth of Australia, *National Action Plan to Combat Human Trafficking and Slavery 2015–19*, 2014, p. 19.

6 Commonwealth of Australia, *Trafficking in Persons: The Australian Government Response 1 July 2015–30 June 2016*, 2016, p. 4, p. 7. A range of other initiatives are set out in this report at pp 4–5.

7 Commonwealth of Australia, *National Action Plan to Combat Human Trafficking and Slavery 2015–19*, 2014, p. 21.

8 Commonwealth of Australia, *National Action Plan to Combat Human Trafficking and Slavery 2015–19*, 2014, p. 21.

National Action Plan to Combat Human Trafficking and Slavery 2015–19

2.10 The objective of the NAP is that 'Australia works to actively combat all forms of human trafficking and slavery, wherever they occur, including by addressing the impact on trafficked people'.⁹

2.11 There are five principles that underpin the NAP, and 'guide the work being done to achieve [the government's] objective, goals and action items':

Principle One: Australia responds to human trafficking and slavery in a manner that is comprehensive, effective, timely, coordinated and consistent with our international obligations.

Principle Two: Australia provides holistic and victim-centred support to trafficked people, regardless of gender, age, disability, race, ethnicity, immigration status, sex, sexuality or the purpose for which they were exploited, and affords them access to an effective remedy.

Principle Three: Australia strives to be a regional leader in deterring and combating human trafficking and slavery, and works cooperatively with other governments both regionally and internationally towards this end.

Principle Four: Australia encourages and promotes a collaborative response that is built on the participation of government, civil society, business and industry, unions and the community working in partnership to achieve sustainable change.

Principle Five: Australia maintains a strong compliance framework which promotes investigations, prosecutions and the enforcement of civil sanctions, and penalises offenders to the full extent of the law.¹⁰

2.12 The NAP sets out and discusses in some detail seven key areas of focus for the life of the NAP (2015–19), namely: monitoring the 2013 legislative reforms; awareness-raising and education; forced marriage; exploitation in supply chains; operational protocol for minors; strengthening the Commonwealth government's connectedness with states and territories; and international and regional leadership.¹¹

Efficacy of the Commonwealth's policy response

2.13 Some submitters and witnesses raised concerns about the effectiveness of the Commonwealth's approach to responding to human trafficking, slavery and slavery-like offences in Australia. Some criticised, in particular, the lack of coordination and cooperation between IDC members, while others expressed concern about the lack of funding for the NAP.

9 Commonwealth of Australia, *National Action Plan to Combat Human Trafficking and Slavery 2015–19*, 2014, p. 18.

10 Commonwealth of Australia, *National Action Plan to Combat Human Trafficking and Slavery 2015–19*, 2014, p. 18.

11 Commonwealth of Australia, *National Action Plan to Combat Human Trafficking and Slavery 2015–19*, 2014, pp 19–20.

Coordination and engagement

2.14 The issue of the lack of coordination and cooperation across IDC agencies and with states and territories with respect to human trafficking, slavery and slavery-like offences was articulated by Professor Jennifer Burn of Anti-Slavery Australia (ASA) in her evidence to the committee:

There are gaps in Australia's response [to human trafficking, slavery and slavery-like practices]. One clear gap is that, taking into account that there are many organisations, many individuals and many governments across all levels of Australian society engaged in responding to the challenges of human trafficking in Australia, there is a need for clear coordination and oversight. We have many programs, but there is a lack of a coordinating body. That has resulted in inconsistent approaches, duplication of approaches and, in some cases, missed opportunities, particularly when we are focusing on the long-term survival and recovery of people who have been trafficked and enslaved.¹²

2.15 Indeed, a number of other submitters raised the issue of the need for greater communication and coordination between Commonwealth and state government agencies, and civil society.¹³

2.16 For example, in its submission, The Salvation Army—Freedom Partnership to End Modern Slavery (The Salvation Army) stated that '[t]he role and effectiveness of commonwealth law enforcement agencies varies across agencies and functions, including identification and response',¹⁴ and noted that:

In her 2012 mission to Australia, the [Special Rapporteur on trafficking in persons, especially women and children (Special Rapporteur)] made several recommendations for law enforcement agencies across several areas, including resourcing for the specialist anti-trafficking response; the need to build capacity of state-based first responders; the extent of Australia's reliance on immigration compliance monitoring for victim detection; and limited collaboration with mental health professionals to help identify and stabilise victims.¹⁵

2.17 The Echo Project also raised the need for greater coordination and cooperation of frontline services:

We consider that greater targeted responses across multi-disciplines could be achieved by improving cooperation and awareness. This would involve both state and territory police and local community networks and services.

12 Professor Jennifer Burn, Director, Anti-Slavery Australia (ASA), University of Technology Sydney, *Committee Hansard*, 5 May 2017, p. 14.

13 See, for example, Australian Human Rights Commission (AHRC), *Submission 23*, pp 6–7; ASA, *Submission 9*, p. 30.

14 The Salvation Army—Freedom Partnership to End Modern Slavery (The Salvation Army), *Submission 14*, p. 12.

15 The Salvation Army, *Submission 14*, p. 12.

There is also a need for greater cooperation between the AFP and first-response services, such as healthcare, welfare and legal personnel, as well as school personnel and members of religious organisations. Raising awareness about human trafficking and providing these services with a clear plan of action to follow when they identify a potential victim of human trafficking will assist with coordinated responses.¹⁶

2.18 Further, in providing evidence to the committee about the exploitation of migrant workers and the role of government agencies, Dr Mark Zirnsak, Director, Social Justice, Uniting Church in Australia, Synod of Victoria and Tasmania (UCA), highlighted some inconsistencies between frontline agencies that may be detrimental to pursuing a prosecution:

The [FWO] has a role of enforcing the [*Fair Work Act 2009*], so that is their focus. Our understanding is that, if they did think a situation was egregious enough to be considered for slavery, it would be referred to the [AFP]. Our understanding of the [AFP] position is, though, that it is very hard to prosecute these cases, because often people do not want to hang around for the length of time it is going to take to prosecute a forced labour or human trafficking case. So it is difficult to pursue a prosecution from that point of view. I have some very strong concerns about [the Australian Border Force (Border Force)]. If I look at their public statements, they continue to conduct operations where they refer to people as 'illegal migrants' and 'illegals' who need to be removed, yet, if they have just conducted a raid, there is no indication of what investigation they have done to determine there is not actually a forced labour or human-trafficking situation in there and that these people, despite the fact that they might have breached their visa conditions, might actually be victims of human trafficking or forced labour. There appears to be a position on Border Force that says: 'These people just need to be removed, and we treat the exploiter and the victim of exploitation as equally breakers of the law.'¹⁷

Committee view

2.19 The evidence summarised in this section indicates that there is a lack of coordination and engagement across Commonwealth government agencies responding to human trafficking, slavery and slavery-like offences, but also a lack of coordination and engagement of these agencies with their state and territory counterparts.

2.20 The evidence also indicates that there could be greater coordination with non-government organisations (NGOs) working in this space, which would benefit victims and potentially lead to increased prosecution of the perpetrators of these crimes.

16 The Echo Project, *Submission 28*, p. 6.

17 Dr Mark Zirnsak, Director, Social Justice, Uniting Church in Australia, Synod of Victoria and Tasmania (UCA), *Committee Hansard*, 4 May 2017, p. 40.

2.21 The committee therefore shares the concerns raised by some submitters and witnesses that greater coordination and engagement is required between government agencies at both the federal and federal-state levels.

2.22 Greater coordination and engagement would allow for a more streamlined response to human trafficking, slavery and slavery-like offences. This would ultimately assist in the identification and subsequent prosecution of these offences, as well as the protection of victims.

2.23 On the basis of this evidence, the committee considers that there is a need to further strengthen the relationships between IDC member agencies, as well as the relationship between frontline Commonwealth, state and territory agencies that respond to human trafficking, slavery and slavery-like offences.

Recommendation 1

2.24 The committee recommends that member agencies of the Interdepartmental Committee on Human Trafficking and Slavery strengthen their coordination and engagement with each other, and that frontline Commonwealth agencies strengthen existing relationships with state and territory frontline agencies.

Implementation of the NAP

2.25 The majority of submitters commended the establishment of the NAP, and the Law Council of Australia (LCA) also commented positively on the process that led to its development, including engaging with NGOs through the Roundtable.¹⁸ However, submitters also identified the need for the NAP to be 'adequately funded'. For example, the LCA stated that:

...it is imperative that the initiatives of the Roundtable, such as those outlined in the NAP, are adequately funded and Departmental agencies are adequately resourced to implement the practical measures and policies required to address human trafficking.¹⁹

2.26 The Salvation Army also noted:

While an important milestone, the five-year [NAP] is unfunded and it is unclear how it is independently evaluated for success. It was written by the [AGD] Crimes against the Person Section, which is largely responsible for implementing and evaluating the Plan. [IDC] members have respective responsibilities.

Within the current framework, the AGD performs well to meet its obligations to administer the framework. The AGD's team is small, but with huge demands and it should be better resourced.²⁰

18 Law Council of Australia (LCA), *Submission 21*, p. 8.

19 LCA, *Submission 21*, p. 8.

20 The Salvation Army, *Submission 14*, p. 12.

2.27 The Australian Human Rights Commission (AHRC) commented that 'it is necessary to incorporate a human rights based approach' with respect to the implementation of the NAP,²¹ a view echoed by ASA.²²

2.28 Slavery Links Australia Inc (Slavery Links) did not consider that the response to the NAP by government agencies was adequate. Slavery Links observed that although the revised NAP now refers to slavery, 'some government agencies have not begun to implement the 2013 change of language or even some basic aspects' of the NAP.²³

2.29 The Nordic Model Australian Coalition (NorMAC) was more critical and did not consider the NAP itself was adequate, stating:

It is NorMAC's view that the [NAP] fails to recognise the demand for sexual services as a key cause of the trafficking of women to Australia. This seems to be an obvious oversight given that the majority of trafficking in Australia has been for the purposes of sexual slavery/sexual exploitation.²⁴

Committee view

2.30 The committee agrees with the concerns raised by some submitters and witnesses that to be effective in combatting human trafficking, slavery and slavery-like practices, the NAP must be fully funded and take a human rights approach to its implementation.

2.31 Fully funding the NAP and adopting a human rights approach to its implementation would mean that the government could achieve each measure set out in the NAP, corresponding to the four central pillars.

2.32 For example, in respect of the 'prevention and deterrence' pillar of the NAP, if the NAP were fully funded, there could be certainty with respect to funding by DFAT for initiatives 'which build the capacity of vulnerable groups to prevent and protect themselves from human trafficking and slavery through Australia's aid program'.²⁵

2.33 Further, in respect of the 'detection and investigation' pillar of the NAP, the AGD, AFP, DIBP and FWO would have adequate resourcing to '[m]onitor and refine as appropriate existing tools and guidance used by frontline officers for the identification of trafficked people'.²⁶

21 AHRC, *Submission 23*, p. 7.

22 ASA, *Submission 9*, p. 7.

23 Slavery Links Australia Inc (Slavery Links), *Submission 15*, p. 7.

24 Nordic Model Australian Coalition, *Submission 22*, p. 12. This was also the position of the Coalition Against Trafficking in Women Australia (CATWA): *Submission 3*, p. 7.

25 Commonwealth of Australia, *National Action Plan to Combat Human Trafficking and Slavery 2015–19*, 2014, p. 26.

26 Commonwealth of Australia, *National Action Plan to Combat Human Trafficking and Slavery 2015–19*, 2014, p. 35.

2.34 Additionally, in respect of the 'prosecution and compliance' pillar of the NAP, the CDPP, in consultation with state and territory offices of public prosecutions, could adequately '[e]nsure capacity of State and Territory Offices of Public Prosecutions to prosecute Commonwealth human trafficking and slavery offences'.²⁷

2.35 A final example of a measure that would be implemented if the NAP were fully funded and a human rights approach taken to its implementation, which corresponds to the 'victim support and protection' pillar of the NAP, would be that the AFP, CDPP and DIBP could '[e]nsure trafficked people are not detained, charged or prosecuted for status-related offences, or held in immigration detention'.²⁸

2.36 The committee does not consider it necessary to amend the NAP, on the basis it is broad enough to cover all forms of human trafficking, including trafficking for sexual services.²⁹ However, the committee does consider it important that the NAP is funded and that a human rights-based approach is taken to its implementation, to ensure the protection of victims of human trafficking, slavery and slavery-like offences.

Recommendation 2

2.37 The committee recommends that the Commonwealth government funds the *National Action Plan to Combat Human Trafficking and Slavery 2015–19* so that it may be fully implemented, with a human rights-based approach to its implementation.

Law enforcement and human trafficking

2.38 As outlined in chapter 1, the legislation relating to human trafficking, slavery and slavery-like offences is Commonwealth legislation. As such, investigation of these matters is the remit of the AFP. However, as discussed in paragraphs 2.60 – 2.69, state and territory legislation also covers some of these offences.

The role of federal law enforcement agencies

2.39 The AFP has dedicated Human Trafficking Teams in Sydney and Melbourne, and a National Coordination Team in Canberra.³⁰ AFP officers trained in human

27 Commonwealth of Australia, *National Action Plan to Combat Human Trafficking and Slavery 2015–19*, 2014, p. 46.

28 Commonwealth of Australia, *National Action Plan to Combat Human Trafficking and Slavery 2015–19*, 2014, p. 59.

29 See, for example, Commonwealth of Australia, *National Action Plan to Combat Human Trafficking and Slavery 2015–19*, 2014, p.6, where it is noted that 'Australia is primarily a destination country for human trafficking and slavery, with the majority of trafficked people identified by Australian authorities to date being women from Asia who have been exploited within the sex work industry'.

30 Commonwealth of Australia, *National Action Plan to Combat Human Trafficking and Slavery 2015–19*, 2014, p. 22.

trafficking investigations are also located in Brisbane, Canberra and Perth, where they work with state and territory policing partners.³¹

2.40 In relation to the Human Trafficking Teams in Sydney and Melbourne, the AGD told the committee:

There are currently 21 AFP investigators dedicated to human trafficking investigations. The experience levels range from two years through to 36 years' investigative experience. The average experience across the dedicated members is 14 years' investigative experience.

In AFP offices where there is no dedicated Human Trafficking Team, the AFP have the ability to utilise over 70 members within Crime Operations to assist.³²

2.41 Submitters and witnesses were generally supportive of the AFP's work in this area.³³ However, The Salvation Army expressed concerns with the level of resourcing in the AFP and noted:

While the AFP posts officers with training in human trafficking in most or all capital cities, these officers must split their time with other demanding crime types. Cases that occur in regional or remote areas may require the AFP to send a member of a specialist team to investigate or provide technical assistance to local authorities; in other cases, state police or other Commonwealth authorities might respond.³⁴

Referrals and prosecutions

2.42 According to the *Trafficking in Persons: The Australian Government Response 1 July 2015–30 June 2016* report, in the period from 2004 to 30 June 2016, the AFP received 691 referrals relating to human trafficking and slavery-related offences, and referred these to the CDPP in those instances where there was sufficient evidence to pursue a prosecution.³⁵ Referrals were received from various sources, including official state, territory, and Australian government activities; industry representatives or NGOs; concerned individuals or co-workers of suspected victims; and people working at, or connected to, various embassies and diplomatic missions located in Australia.³⁶

31 Commonwealth of Australia, *National Action Plan to Combat Human Trafficking and Slavery 2015–19*, 2014, p. 22.

32 AGD, answers to questions on notice, 10 May 2017 (received 26 June 2017), p. 11.

33 See, for example, The Salvation Army, *Submission 14*, pp 14–15, discussing the AFP's response to forced marriage in particular; The Echo Project, *Submission 28*, p. 6; Professor Burn, ASA, *Committee Hansard*, 5 May 2017, p. 15.

34 The Salvation Army, *Submission 14*, p. 12.

35 Commonwealth of Australia, *Trafficking in Persons: The Australian Government Response 1 July 2015–30 June 2016*, 2016, p. 20.

36 Commonwealth of Australia, *Trafficking in Persons: The Australian Government Response 1 July 2015–30 June 2016*, 2016, p. 22.

2.43 According to the same report, in 2015–16, the AFP received 169 new referrals, the majority of which (69) related to forced marriage, 39 to sexual exploitation, 36 to labour exploitation, and the remainder of which related to other forms of human trafficking and slavery.³⁷ Labour exploitation referrals to date have mostly related to individuals working as domestic workers, however, such referrals to the AFP have increasingly related to the hospitality, agriculture and construction industries.³⁸

2.44 Since 2004, 55 people have been prosecuted for human trafficking, slavery and slavery-like offences.³⁹ However, according to the AGD:

In a number of these cases, charges relating to human trafficking, slavery or slavery-like offences under the Commonwealth Criminal Code were withdrawn and the alleged offenders were prosecuted for related charges, including migration offences.⁴⁰

2.45 As a result, since 2004 up to May 2017, '20 people have actually been convicted of human trafficking and slavery related offences in Australia'.⁴¹

2.46 In 2015–16, the CDPP discontinued the prosecution of three people who had been charged with trafficking in persons, on the basis that there was insufficient admissible evidence for there to be a reasonable prospect of conviction for those charges.⁴² However, the CDPP also successfully prosecuted the second conviction for an offence of trafficking in children (which was the first trafficking in children offence prosecuted by the CDPP).⁴³

2.47 The low number of prosecutions with respect to human trafficking, slavery and slavery-like offences was a source of concern for a number of submitters and witnesses. For example, in respect of sex trafficking, Mr Alan Murnane, General Manager, Inner South Community Health Service Ltd (ISCH), stated:

We do not see many prosecutions. When we look at the federal data, we do not see prosecutions. That is an area that maybe needs to be researched

37 Commonwealth of Australia, *Trafficking in Persons: The Australian Government Response 1 July 2015–30 June 2016*, 2016, p. 20.

38 Commonwealth of Australia, *Trafficking in Persons: The Australian Government Response 1 July 2015–30 June 2016*, 2016, p. 20.

39 AGD, answer to question taken on notice, 10 May 2017 (received 23 June 2017), p. 1.

40 AGD, answer to question taken on notice, 10 May 2017 (received 23 June 2017), p. 1.

41 Ms Catherine Hawkins, First Assistant Secretary, Criminal Justice Policy and Programme Division, AGD, *Committee Hansard*, 10 May 2017, p. 3.

42 Commonwealth of Australia, *Trafficking in Persons: The Australian Government Response 1 July 2015–30 June 2016*, 2016, p. 25.

43 Commonwealth of Australia, *Trafficking in Persons: The Australian Government Response 1 July 2015–30 June 2016*, 2016, p. 25.

more [so that] we actually know what the level of trafficking is within sex work.⁴⁴

2.48 Also speaking on the topic of sex trafficking, Dr Caroline Norma of Collective Shout opined that the incidence of sex trafficking is higher than indicated by the current levels of prosecutions, which are impeded by the existing visa regime, as:

...victims who have student visas or working holiday visas are automatically seen as legitimate in terms of having legitimately entered the industry as migrants in some way. It establishes a mythical kind of construction for them so that their victimhood cannot be seen. I think having visa holders in the industry is fundamentally a problem. As I have said, the strong notions of migrant sex work in Australia block a lot of recognition of sex-trafficking victims, both inside and outside the courts. Resourcing of the AFP, the lead agency in relation to the trafficking act, makes it difficult.⁴⁵

2.49 The UCA suggested that a lack of resourcing impeded prosecutions by the FWO with respect to the exploitation of migrant workers:

You will notice, if you look at their annual report, that the [FWO] do 50 prosecutions a year...I am going to suggest to you that that is the scale of resources that they can afford to allocate to prosecutions. I think that law enforcement agencies are going to find that the scale of the problem is always going to outmatch their prosecution and investigative resources. Deterring the behaviour in the first place is better. Prosecution does help to deter—it is a general deterrence measure—but other measures, such as empowering people, may deter the behaviour as well.⁴⁶

2.50 The Australian Catholic Religious Against Trafficking in Humans (ACRATH) also discussed the issue of migrant workers, and the barriers faced with respect to law enforcement pursuing these cases. ACRATH was concerned about the availability of information for migrant workers about their legal rights:

There are numbers of people being found. Just taking the blueberry pickers, there have been a whole lot of blueberry pickers found by Border Force or the [AFP] while in uniform. The pickers are frightened. They do not speak English. They are told that they have a chance to report that they have been trafficked, but they are frightened. Some of them have been what Immigration wants to call repatriated but are deported the very next day. So we are saying: 'Open that gate. Let the people into the support program. Get the Red Cross to talk to them and say, "These are your rights."' In fact, a senior Immigration official said, 'Yes, of course people have a right to a lawyer and legal advice; we hand them the phone book.' I asked, 'How does

44 Mr Alan Murnane, General Manager, Inner South Community Health Service Ltd (ISCH), *Committee Hansard*, 4 May 2017, p. 2.

45 Dr Caroline Norma, Consultant, Collective Shout, *Committee Hansard*, 4 May 2017, p. 6.

46 Dr Zirnsak, UCA, *Committee Hansard*, 4 May 2017, p. 42.

somebody who does not speak English have any idea of how to access an appropriate lawyer in that phone book?' They said, 'We can't recommend a lawyer because that would be contravening some sort of competition policy.' I said, 'Some things are silly, and that is just silly.' They said, 'Yes, we get that.'⁴⁷

2.51 In contrast, ASA stated that the number of prosecutions in Australia is 'not that low' when compared with other countries, but did identify potential barriers to prosecutions:

It is a complex process, to investigate and prosecute crimes of human trafficking and slavery. There can be enormous barriers. And some of those barriers are tied up with the barriers that exist at the very beginning of a process, where exploited people are unaware of the supports that are available to them and are unsure about what their life might look like if they do engage with a law-enforcement process. But just looking at the number of prosecutions, I think it may have gone up to 19 now since 2004.

There has been a steady increase in prosecutions, including, quite recently, Australia's first prosecution and conviction, in relation to the crime of servitude...

I think it is important to remember that a lot of our offences are still quite new. The forced labour offence was just introduced in 2013. There is more to be done around awareness in the community, distinguishing between breach of labour standards and crime, and informing people across a range of industries about these offences, but it is still new. I think the question is how to measure [the effectiveness of prosecutions].⁴⁸

2.52 The AGD acknowledged difficulties both with identifying all cases involving human trafficking and slavery, as well as barriers to prosecutions. The committee heard that '[w]ithout manually reviewing each relevant prosecution to determine whether human trafficking and slavery-related conduct was involved, the [CDPP] is unable to provide an exact breakdown'⁴⁹ of all cases involving human trafficking and slavery-related cases where specific charges of human trafficking, slavery and slavery-like practices were not brought.

2.53 The AGD discussed barriers to prosecution, largely related to people's unwillingness to or anxiety about coming forward and also articulated the following procedural barriers to prosecution:

The investigation of matters involving human trafficking and slavery can be protracted, complex and resource intensive, particularly given their often transnational nature. There are significant practical challenges in investigating crime across international borders, including the challenges of

47 Ms Christine Carolan, Executive Officer, Australian Catholic Religious Against Trafficking in Humans (ACRATH), *Committee Hansard*, 4 May 2017, p. 20.

48 Professor Burn, ASA, *Committee Hansard*, 5 May 2017, p. 18.

49 AGD, answer to question taken on notice, 10 May 2017 (received 23 June 2017), p. 1.

communication, and differences in the role of national institutions, legal and political systems. Victims, offenders and evidence can be located in more than one country, and the same set of circumstances can generate investigations and prosecutions in more than one jurisdiction.⁵⁰

2.54 The AGD also informed the committee that work was underway to address these barriers:

...the issue of human trafficking is that there have, of course, been many barriers to people actually coming forward. It has been hard for victims to be able to work out how they actually come forward. They are, obviously, vulnerable people, which is why we have tried to have this integrated approach, such as the work that our colleagues in DSS do, to make sure that there is a good support package for people and incentives for people to come forward.

I think this issue of the intersection between human trafficking and labour exploitation goes to the chair's question as well as yours, Senator Singh. The fact that we know that this is a tricky area is why Taskforce Cadena has been set up so we have got Immigration working really closely with Border Force and the Fair Work Ombudsman. There is also the Migrant Workers' Taskforce, which Allan Fels is chairing at the moment, to look broadly at those issues around vulnerable migrant workers. There is also a labour exploitation working group that Fiona McLeod, the current president of the Law Council, is working on. So they are very live issues about us continuing to look at these policy settings to see what more we can do.⁵¹

2.55 With specific reference to forced marriage, the AGD and AFP explained that the absence of mutual assistance legislation and universal jurisdiction for forced marriage offences were a hindrance to prosecuting cases in which an Australian citizen was forced into a marriage overseas.⁵²

2.56 The committee was also informed by the LCA that a lack of awareness amongst state and territory police could lead to the prosecution of an offence for a lesser state or territory crime, and for this reason, training of these officers on indicators of human trafficking, slavery and slavery-like offences was important:

...local police might respond to a situation thinking, for example, it is a domestic violence case and then come and realise that there was something fishy in terms of the person's capacity to leave or negotiate leaving, or their language skills or their financial wherewithal. Once they are aware of those indicators, hopefully, if the system is working properly, they will refer it either to Border Force or the AFP.⁵³

50 AGD, *Submission 17*, p. 6.

51 Ms Hawkins, AGD, *Committee Hansard*, 10 May 2017, p. 4.

52 Ms Hawkins, AGD and Commander Lesa Gale, Manager, Victim Based Crime, Australian Federal Police (AFP), *Committee Hansard*, 10 May 2017, pp 8-9.

53 Ms Fiona McLeod SC, President, LCA, *Committee Hansard*, 5 May 2017, p. 4.

2.57 The committee was informed that, to overcome such issues, at times the AFP 'will work collaboratively with our state law enforcement partners to explore opportunities to prosecute against state offences' in instances where 'there is nothing that we can do at the Commonwealth level'.⁵⁴ Furthermore, the AFP may look to other Commonwealth offences, 'particularly in the financial sector, where there may be opportunities for us to prefer charges throughout the Criminal Code'.⁵⁵

2.58 In the context of barriers to prosecution, DIBP explained the Human Trafficking Visa Framework and support offered to victims and alleged victims assisting in an investigation:

...the Human Trafficking Visa Framework...provides mechanisms so that victims or alleged victims of human trafficking can be supported through an initial period of rest and recovery. That can go for up to 90 days. Beyond that, through that trafficking framework, when a victim or alleged victim is providing support through an investigation they can continue to be supported through both a visa framework and other support that colleagues from [DSS] provide, through to permanent visa outcomes for some victims.⁵⁶

2.59 Since 2004, DIBP has:

...granted 272 bridging visa Fs, 211 criminal justice stay visas and 132 permanent visas. There was reference at the beginning to some changes made to the framework in 2015. Those changes have simplified the process, so that for victims or alleged victims who move from a bridging visa F, if they progress to a permanent visa it will be a referred stay visa that is granted. To give you figures for this year so far, the department has granted 12 bridging visa Fs and eight referred stay (permanent) visas—that is from 1 July 2016...The trigger point is where AFP, through the [AGD], provide notice that somebody has assisted with an investigation. That is a trigger point for somebody to progress, and then we will do standard visa processing and make assessments around the other criteria for the permanent visa.⁵⁷

2.60 However, some submitters and witnesses suggested that the existing mechanisms to encourage cooperation with law enforcement agencies were inadequate,⁵⁸ and that more could be done to encourage further cooperation, such as:

54 Commander Gale, AFP, *Committee Hansard*, 10 May 2017, p. 5.

55 Commander Gale, AFP, *Committee Hansard*, 10 May 2017, p. 5.

56 Mr Peter Richards, Acting First Assistant Secretary, Department of Immigration and Border Protection (DIBP), *Committee Hansard*, 10 May 2017, pp 4–5.

57 Mr Richards, DIBP, *Committee Hansard*, 10 May 2017, p. 5.

58 See, for example, LCA, *Submission 21*, p. 7; Professor Burn, ASA, *Committee Hansard*, 5 May 2017, p. 18.

13.1. Facilitating temporary visas for victims' immediate family members who are in danger. Such family members should have access to the STPP and, where eligible, the opportunity to apply for permanency.

13.2. Building accountability and reducing periods in temporary status by setting clear, transparent time-limited triggers that progress a victim towards safety and permanency. For example, victims should be referred for permanent visa within six months of being identified as a victim.

13.3. Establishing a self-petitioning process within the migration system, like that of Belgium, Italy, and the U.S., where participation rates in criminal justice process are high.

13.4. Establishing an independent review process for negative decisions regarding access to the [Support for Trafficked People Program (STPP)] and Referred Stay visa.

13.5. Providing guaranteed access to trusted, independent legal advice through resourcing legal aid programs across the country.⁵⁹

Training

2.61 The adequacy and extent of training for police and other frontline government officers in relation to human trafficking and slavery-related offences was the subject of discussion during the course of the inquiry.

2.62 In response to questions on notice, the AGD provided the following information about the number of law enforcement officers who have completed the AFP's human trafficking training programme:

The AFP Human Trafficking Investigations Course (HTIC) was first delivered in 2004. Since that time, 127 members of the AFP, state and territory police and members from the Department of Immigration and Border Protection have completed the training. A further 18 participants will take part in the HTIC in June 2017 with an additional two HTIC scheduled for the 2017/18 financial year.⁶⁰

2.63 However, The Salvation Army identified 'several problems' with Goal One of Pillar One of the NAP, which requires that 'frontline officers are trained and equipped to detect and respond to human trafficking and slavery':⁶¹

1. The training of frontline professionals is concentrated on federal agencies, with the exception of marriage celebrants;
2. Only two representatives from state policing agencies attended the training in 2015 and no information is provided about the numbers of trainees in DIBP and FWO trainings;

59 The Salvation Army, *Submission 14*, p. 6.

60 AGD, answers to questions on notice, 10 May 2017 (received 26 June 2017), p. 11.

61 The Salvation Army, *Submission 25*, pp 30–31.

3. There are no specific targets for numbers and type of officers to be trained by any of the agencies;
4. There is no information on the evaluation of the training demonstrating an improvement in knowledge and capability as a result of completing the training;
5. There are no indicators to associate the training to specific outcomes, such as an increase in identification and referral of potential cases, thus the status report simply states the trainings occurred.⁶²

2.64 Similarly, ASA suggested that more training would result in more cases of exploitation being identified:

The task for us is to make sure that all levels of government and that all frontline government officers are aware of the indicators of forced labour and human trafficking. I do not believe that they are aware, yet; there is work being done around training, but more needs to be done.⁶³

2.65 The AFP informed the committee that it had begun to work with state and territory officers on specialist training:

One of the things that the AFP have been doing in particular is developing some specialised training for our state law-enforcement colleagues. Part of that specialised training is about what indicators to look for when they are responding to community policing-type incidents. As an example, the greater awareness that they hold in terms of what indicators to be looking for then means there will be earlier interdiction, greater awareness and more likelihood that people might come forward and trust that there will be an appropriate response.⁶⁴

2.66 Further, it was noted that the AFP:

...have specialised training now so that it is not just solely reliant on those members in the dedicated teams but all AFP investigators on how to identify and investigate human-trafficking related offences. We are investing heavily in that training. We have just recently undertaken the last human-trafficking investigation course. That is a collaborative course with state and territory jurisdictions in addition to us. That was only a matter of weeks ago. We are also looking to expand that in terms of interviewing vulnerable witnesses and people. We are trying to expand the number of people across our investigative cohort who can deal better with vulnerable people.⁶⁵

62 The Salvation Army, *Submission 25*, p. 31.

63 Professor Burn, ASA, *Committee Hansard*, 5 May 2017, pp 15–16.

64 Commander Gale, AFP, *Committee Hansard*, 10 May 2017, p. 9.

65 Commander Gale, AFP, *Committee Hansard*, 10 May 2017, p. 11.

The role of state and territory law enforcement agencies

2.67 The NAP identifies a range of state and territory responsibilities that intersect with the strategy to combat human trafficking and slavery, including child protection; workers' compensation, and occupational health and safety; regulation of the sex work industry; enforcement of state and territory legislation on sexual servitude; and victims of crime financial assistance schemes.⁶⁶

2.68 The AGD explained the responsibilities of states and territories in respect of human trafficking as follows:

State and territory governments are responsible for regulating the sex work industry in Australia. Most jurisdictions have enacted legislation relating to sexual servitude and deceptive recruiting which would allow for the prosecution of cases involving sexual exploitation. However, in practice, state and territory police services generally refer human trafficking and slavery-related matters to the AFP. All jurisdictions have a range of offence provisions to cover related crimes such as assault, sexual assault, forced prostitution, kidnapping and deprivation of liberty.⁶⁷

2.69 The AGD also noted that state offences may be used in conjunction with Commonwealth offences to prosecute human trafficking and slavery-related crimes.⁶⁸

2.70 The Commonwealth government's commitment under the NAP to increase cooperation between Commonwealth, state and territory governments and between government agencies, is intended to 'ensure a joined-up and holistic response to human trafficking and slavery including in prevention, victim identification, referral and support, and both civil and criminal investigations, prosecutions and compliance'.⁶⁹

2.71 On 4 May 2011, the AFP, together with state and territory police, endorsed the *Australian Policing Strategy to Combat Trafficking in Persons*. This agreement set out these stakeholders' commitment to ensuring that Australia's anti-trafficking strategy remains relevant and responsive to emerging trends and issues and outlined a number of obligations for the AFP as well as state and territory police forces.⁷⁰

2.72 Following feedback received from stakeholders that 'interagency arrangements may now be better served by a business-as-usual protocol', the AFP has drafted a new agreement, the *National Policing Protocol to Combat Human*

66 Commonwealth of Australia, *National Action Plan to Combat Human Trafficking and Slavery 2015–19*, 2014, p. 21.

67 AGD, *Submission 17*, p. 5.

68 AGD, *Submission 17*, p. 5.

69 Commonwealth of Australia, *National Action Plan to Combat Human Trafficking and Slavery 2015–19*, 2014, p. 21.

70 Commonwealth of Australia, *Trafficking in Persons: The Australian Government Response 1 July 2011–30 June 2012*, 2016, p. 19.

*Trafficking, Slavery and Slavery-like Practices.*⁷¹ The NAP states that once endorsed by states and territories, the new agreement will provide the national framework for Australian police agencies to combat human trafficking, slavery and slavery-like practices in the future.⁷²

Cooperation between the AFP and state and territory police

2.73 On 9 November 2016, the Legislative Council Select Committee on human trafficking in New South Wales (NSW) was established to inquire into and report on human trafficking in that state.⁷³ Some of the evidence heard by the NSW committee serves as an example of cooperation between the AFP and state police forces on human trafficking and slavery-related matters. For example, the NSW committee heard from a representative of the NSW Police Force, who provided the following explanation of work and training undertaken with the AFP:

Basically we provide officers who attend the AFP human trafficking course. We have quarterly meetings, formal meetings with the AFP, and discuss exchange of information. However, we have ad hoc information exchange between both our agencies in regard to any new information that comes to light, so we do not wait until the quarterly meetings to actually deal with the information. We also have the AFP embedded with us in regard to our child exploitation side of things. In regard to that side of things we speak to them almost on a daily basis and we do joint operations with the AFP in regard to child exploitation investigations.⁷⁴

2.74 Detective Superintendent Howlett also explained how the AFP and NSW Police determine whether a matter under investigation falls under state or Commonwealth jurisdiction:

We usually do a combined operation with the AFP if that is the case and we will attend the premises and speak to the victim if they wish to report to the police or we would try and pull them aside and actually speak to them and find out the circumstances of them coming into Australia and then, depending on the information they tell us, whether Commonwealth offences

71 Commonwealth of Australia, *National Action Plan to Combat Human Trafficking and Slavery 2015–19*, 2014, p. 22.

72 Commonwealth of Australia, *National Action Plan to Combat Human Trafficking and Slavery 2015–19*, 2014, p. 22.

73 Parliament of New South Wales, *Legislative Council Select Committee on human trafficking in New South Wales*, <https://www.parliament.nsw.gov.au/committees/listofcommittees/Pages/committee-details.aspx?pk=250#tab-termsofreference> (accessed 19 June 2017).

74 Legislative Council Select Committee on human trafficking in New South Wales, Ms Linda Jane Howlett, Detective Superintendent, State Crime Command, Sex Crimes Squad, NSW Police, *Committee Hansard*, 6 March 2017, p. 10.

have been committed that fall under the jurisdiction of the AFP or whether State offences have taken place.⁷⁵

2.75 As indicated by the AGD, it was also noted that the majority of work done by the NSW Police Sex Crimes Squad relates to sexual offences against victims in NSW, rather than other forms of human trafficking, slavery and slavery-like offences.⁷⁶

2.76 As discussed above, further efforts are being made by the AFP to train their state and territory counterparts in identifying potential human trafficking, slavery and slavery-like offences. Further, the AGD noted that '[a]s state and territory police may identify human trafficking and slavery matters before the AFP, and investigations may overlap, the AFP collaborates closely with state and territory police'.⁷⁷

Committee view

2.77 The committee is concerned by the apparently low number of prosecutions for human trafficking, slavery and slavery-related offences; however, the committee is also aware—on the basis of evidence given by the AGD and AFP—that it can be difficult to pursue such offences or to clearly identify all relevant cases as alternative offences may be pursued.

2.78 While acknowledging these difficulties, the absence of clear information about the number of cases involving human trafficking, slavery and slavery-like offences makes it difficult to accurately comprehend the size of the problem and assess the adequacy of the Commonwealth's response to it. Improving the quality of this information is not something the committee explored in depth during the course of the inquiry, and the committee appreciates the resources required to do so; however, the committee suggests that the AGD, AFP and CDPP may wish to consider whether it is possible to improve the collection of this data.

2.79 The committee is pleased by the AGD's evidence that barriers to prosecutions for human trafficking, slavery and slavery-like offences are under active consideration and the subject of various pieces of work by the Commonwealth. The committee supports this work and urges the Commonwealth government to consider what else might be done to improve prosecution rates for human trafficking, slavery and slavery-like offences.

2.80 The committee is of the view that it is vitally important to ensure that police officers are provided with specialist training in human trafficking, slavery and slavery-like offences, and that officers with this expertise are located across Australia. The committee is therefore supportive of more AFP officers receiving specialised

75 Legislative Council Select Committee on human trafficking in New South Wales, Detective Superintendent Howlett, NSW Police, *Committee Hansard*, 6 March 2017, p. 11.

76 Legislative Council Select Committee on human trafficking in New South Wales, Detective Superintendent Howlett, NSW Police, *Committee Hansard*, 6 March 2017, p. 11.

77 AGD, *Submission 17*, p. 6.

training in human trafficking, slavery and slavery-like offences and being based outside Sydney and Melbourne.

2.81 The committee also acknowledges the evidence presented that illustrates the need for frontline officers in a variety of Commonwealth and state and territory agencies to be aware of the suite of offences at Divisions 270 and 271 of the Criminal Code. It is these officers who are, in many instances, most likely to encounter and best placed to identify suspected victims of human trafficking, slavery and slavery-like offences, and refer those people to the relevant authority and support as appropriate.

2.82 The committee therefore recommends that the Commonwealth expands existing training for AFP, DIBP and FWO officers to ensure they are appropriately trained to identify suspected victims of human trafficking, slavery and slavery-like offences, and refer those people to the relevant authority and support. Given state and territory police often have contact with suspected victims of human trafficking, slavery and slavery-like offences before the AFP, the committee believes it is also important that training on the suite of offences at Divisions 270 and 271 of the Criminal Code continues to be offered to state and territory police officers.

2.83 As discussed at paragraphs 2.8–2.10, some submitters and witnesses stated that suspected victims and victims of human trafficking, slavery and slavery-like offences should be provided with adequate information about NGOs working in this sector, so that victims can be provided with appropriate support and assistance. The committee agrees and recommends that training on human trafficking, slavery and slavery-like offences for police and other governmental officers includes information on the work of relevant NGOs to which suspected victims and victims can be referred.

Recommendation 3

2.84 **The committee recommends that the Commonwealth government increases the number of Australian Federal Police officers with specialised human trafficking and anti-slavery training in all states and territories.**

Recommendation 4

2.85 **The committee recommends that the Commonwealth government:**

- **expands training for frontline staff employed by the Australian Federal Police, the Department of Immigration and Border Protection and the Fair Work Ombudsman with respect to the Commonwealth offences at Divisions 270 and 271 of the *Criminal Code Act 1995*;**
- **works with its state and territory counterparts to ensure that state and territory police also receive adequate training with respect to the Commonwealth offences at Divisions 270 and 271 of the *Criminal Code Act 1995*; and**
- **ensures that this training includes reference to non-government organisations working on human trafficking, slavery and slavery-like practices so that they can refer victims for support and assistance offered through non-government organisations.**

International engagement

2.86 On 23 March 2016, the Minister for Foreign Affairs, the Hon Julie Bishop MP, launched Australia's *International Strategy to Combat Human Trafficking and Slavery*. The strategy provides that 'Australia's international engagement to combat human trafficking and slavery is substantial and varied' and identifies three steps to 'better realise the vision of Australia as a regional leader in combating human trafficking and slavery':

1. setting strategic priorities for our engagement;
2. enhancing our leadership and coordination; and
3. enhancing our advocacy, to promote regional and international cooperation in response to human trafficking and slavery.⁷⁸

2.87 The strategy outlines that the principal focus of Australia's bilateral, regional and multilateral engagement on human trafficking and slavery will be in Southeast Asia.⁷⁹

2.88 Regionally, the strategy discusses the work of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (Bali Process) and the Australia-Asia Program to Combat Trafficking in Persons (AATIP). Through the Bali Process, which Australia chairs jointly with Indonesia, regional policy guides have been developed that provide 'practical tips for policymakers on how to effectively criminalise people smuggling and human trafficking, and how to identify and protect victims'.⁸⁰ In respect of the AATIP, the strategy provides that '[t]his assistance has been instrumental in shaping the recently-signed *ASEAN Convention Against Trafficking In Persons*'.⁸¹

2.89 The strategy also outlines that multilateral engagement includes: partnering with the International Organization for Migration (IOM) to support the Indonesian Government's efforts to prosecute human trafficking and related transnational crime;⁸² supporting work by the International Labour Organization (ILO) to prevent the exploitation of migrant workers within and from the region;⁸³ and providing

78 Commonwealth of Australia, *Amplifying Our Impact: Australia's International Strategy to Combat Human Trafficking and Slavery*, 23 March 2016, p. 6.

79 Commonwealth of Australia, *Amplifying Our Impact: Australia's International Strategy to Combat Human Trafficking and Slavery*, 23 March 2016, p. 7.

80 Commonwealth of Australia, *Amplifying Our Impact: Australia's International Strategy to Combat Human Trafficking and Slavery*, 23 March 2016, p. 9.

81 Commonwealth of Australia, *Amplifying Our Impact: Australia's International Strategy to Combat Human Trafficking and Slavery*, 23 March 2016, p. 11.

82 Commonwealth of Australia, *Amplifying Our Impact: Australia's International Strategy to Combat Human Trafficking and Slavery*, 23 March 2016, p. 13.

83 Commonwealth of Australia, *Amplifying Our Impact: Australia's International Strategy to Combat Human Trafficking and Slavery*, 23 March 2016, p. 15.

US\$3 million over three years to the ILO's Better Work Programme to address issues associated with exploitation in supply chains.⁸⁴

2.90 However, a number of submitters suggested that there is room for improvement with respect to Australia's international engagement to combat human trafficking. For example, ACRATH stated:

It is essential that a holistic approach be taken to combat trafficking in persons that addresses these underlying factors, and this includes setting considerable foreign aid targets. Australian aid can assist and help improve education for girls, healthcare and access to basic services, and in turn reduce the number of young women and men vulnerable to trafficking. Australia's Overseas Development Assistance is also vital for the continuation of counter human trafficking initiatives and projects of ACRATH's partner organisations, particularly throughout the Asia Pacific region.⁸⁵

2.91 The LCA recommended continued and increased support for aid and other programs in the Asia Pacific, including the ILO's GMS TRIANGLE Project, AATIP and the Bali Process.⁸⁶ It was submitted that Australia's ongoing leadership role globally and regionally 'can only be sustained by continued and increased support for aid and other programs that combat human trafficking, particularly in the Asia Pacific region'.⁸⁷

2.92 Ms Randle, Director, Corporate and Legal, International Justice Mission Australia, also considered there could be further expansion of the work of the Bali Process, noting that '[i]ncluding cybersex trafficking on the agenda for the Bali Process, whereby international cooperation is further resourced, would be very effective'.⁸⁸

2.93 The United Nations Office on Drugs and Crime held a similar view, suggesting that Australia could play a greater role regionally:

Australia could act as a champion for improving data on trafficking, and the collection and sharing of it in the region...We think Australia should continue to support [anti-trafficking] development work, including through APTIC [an anti-trafficking program run by the AFP], and should potentially look at supporting interventions that target policy level and high-level

84 Commonwealth of Australia, *Amplifying Our Impact: Australia's International Strategy to Combat Human Trafficking and Slavery*, 23 March 2016, p. 16.

85 ACRATH, *Submission 18*, p. 10.

86 LCA, *Submission 21*, p. 12.

87 LCA, *Submission 21*, p. 8.

88 Ms Kimberly Randle, Director, Corporate and Legal, International Justice Mission Australia (IJM), *Committee Hansard*, 5 May 2017, p. 10.

institutional change through multilateral organisations in support of the UN convention.⁸⁹

2.94 With regards to the government's international engagement, the AGD stated:

We also cemented our position as a regional leader on human trafficking and slavery through our international work, and that has been brought together in an international strategy to combat human trafficking that was released last year.

We also take a leading role in work through the [Bali Process]. The Australian government plays quite a role there, including co-chairing the Bali Process. Through the Bali Process, Australia has been at the forefront of developing a range of Bali Process policy guides on human trafficking, which people are finding quite useful, and a fourth one of those Bali Process guides is being worked on, to focus on following the money in human trafficking cases.⁹⁰

Committee view

2.95 The committee acknowledges the significant role that Australia plays in combatting human trafficking, slavery and slavery-like practices in the region, including as a co-chair of the Bali Process.

2.96 However, a number of submitters and witnesses have suggested that Australia could play a bigger role to combat these offences, specifically by providing additional and more secure funding to organisations working in the region.

2.97 The committee acknowledges that providing further financial assistance to such organisations will positively contribute to combatting human trafficking, slavery and slavery-like practices in the region, and will also reduce the prevalence of these practices in Australia. Further, in order for these organisations to effectively continue their work, they must be provided with financial security.

2.98 The committee therefore considers that AATIP and the ILO's projects on migrant workers in ASEAN member states should continue to be funded by the government, in order to combat these offences. Further, the committee recognises the importance of continuous funding to ensure financial stability for NGOs that partner with government to undertake this work in the region.

Recommendation 5

2.99 The committee recommends that the Commonwealth government commits to continuous funding of overseas anti-trafficking programs, including AATIP and the work undertaken by the International Labour Organization with respect to migrant workers in the ASEAN member states.

89 Mr Jeremy Douglas, Regional Representative, Southeast Asia and the Pacific, United Nations Office on Drugs and Crime, *Committee Hansard*, 4 May 2017, p. 46.

90 Ms Hawkins, AGD, *Committee Hansard*, 10 May 2017, p. 2.

Further proposals for policy and law reform

2.100 The committee received a number of recommendations in respect of practical measures and policies that would address human trafficking. Many submitters and witnesses made the same or substantially similar recommendations.

2.101 The following sections therefore address four recommendations that were addressed by a range of submitters and witnesses with respect to further proposals for policy and law reform: a modern slavery act; changes to the STPP; the establishment of a national compensation scheme for victims of human trafficking, slavery and slavery-like offences; and the establishment of an anti-slavery and trafficking commissioner.

Modern Slavery Act

2.102 The committee received a number of submissions that raised and supported the adoption of a Modern Slavery Act in Australia, similar to the United Kingdom (UK) *Modern Slavery Act 2015*.⁹¹ Some witnesses also gave evidence in support of this proposal.⁹² No submitters or witnesses explicitly opposed such a development.

Committee view

2.103 The committee notes that the Parliamentary Joint Standing Committee on Foreign Affairs, Defence and Trade is currently examining whether Australia should adopt a Modern Slavery Act comparable to that in the UK.⁹³ As such, this committee has not explored this issue. The committee supports the inquiry being conducted by the Joint Standing Committee on Foreign Affairs, Defence and Trade, and looks forward to its recommendations.

Support for Trafficked People Program

2.104 The Commonwealth government's STPP is administered by the DSS, which has engaged the Australian Red Cross to provide support services to certain victims of human trafficking and slavery offences.⁹⁴ Services offered through the program include allocating an individual case manager to each client referred to the program, and may also include other services such as accommodation, counselling and referral to legal and migration advice.⁹⁵

91 See, for example, Walk Free Foundation, *Submission 29*, p. 4; IJM, *Submission 31*, pp 24–25; and UCA, *Submission 33*, p. 2.

92 See, for example, Most Reverend Terence John Brady, Chair, Bishops Commission for Pastoral Life, Australian Catholic Bishops Conference, *Committee Hansard*, 5 May 2017, p. 40.

93 Foreign Affairs and Aid Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade, *Inquiry into establishing a Modern Slavery Act in Australia*, http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/ModernSlavery (accessed 16 June 2017).

94 AGD, *Submission 17*, p. 8.

95 AGD, *Submission 17*, pp 8–9.

2.105 Eligibility for the STPP is determined by the AFP, and requires that a person is, or may have been the victim of a human trafficking or slavery-related offence, and is an Australian citizen or holds a valid visa.⁹⁶ The AGD provided the following figures relating to referrals to the program in its submission made on behalf of the IDC:

Between 1 January 2004 and 31 December 2015, the AFP referred 293 suspected trafficked people to the Support Program. Of these referrals, 188 people (0 m/188 f) were exploited in the sex work industry, and 105 (37 m/68 f) were subject to exploitation outside the sex work industry. Of the 105, 16 (1 m/15 f) were identified as being in, or at risk of, forced marriage.⁹⁷

2.106 The committee heard from a number of submitters and witnesses that access to the program should not be contingent upon victims assisting the AFP with a criminal investigation.⁹⁸ For example, ASA identified that:

When the former Special Rapporteur on trafficking in persons visited Australia in 2011, she expressed concern that, “all ongoing support services are dependent on a contribution to criminal justice process or investigation”.⁹⁹

2.107 In its submission to the committee, ACRATH advocated for:

...a flexible entry pilot project with referrals by certified agencies, including DIBP, the Red Cross, and a few registered NGOs. Since 2006 ACRATH & other NGOs have been asking for a flexible entry to the Support for Trafficked People Program for all trafficked people, but this year we are asking for flexible entry only for those facing a forced marriage.¹⁰⁰

2.108 A similar suggestion was put forth by ASA,¹⁰¹ as well a recommendation for extension of the initial 45-day period of reflection and recovery to 90 days, regardless of whether a victim is willing to assist the AFP in its investigation.¹⁰²

2.109 Submitters and witnesses also emphasised the importance of victims establishing relationships based on trust with officials, the absence of which could inhibit a victim's willingness to engage in the criminal process.¹⁰³ Dr Zirnsak stated:

96 AGD, *Submission 17*, p. 10.

97 AGD, *Submission 17*, p. 10.

98 See, for example, Scarlet Alliance, *Submission 5*, p. 6; The Salvation Army, *Submission 25.1*, p. 8.

99 ASA, *Submission 9*, p. 23.

100 ACRATH, *Submission 18*, p. 8.

101 ASA, *Submission 9*, p. 25.

102 ASA, *Submission 9*, p. 24.

...when exploitation has been detected in Australia it often takes quite a bit of time to build up a relationship of trust, where the person will actually reveal what is really happening and the kinds of threats they might be under and the actual exploitation that is taking place.¹⁰⁴

2.110 The Salvation Army identified a number of ways in which to create incentives and reduce barriers to cooperating with criminal justice authorities, for example:

Facilitating temporary visas for victims' immediate family members who are in danger. Such family members should have access to the STPP and, where eligible, the opportunity to apply for permanency.¹⁰⁵

2.111 Similarly, ASA stated:

I would like to see a system developed where a survivor of human trafficking and slavery who is assisting in a law enforcement process is able to bring their family here... We believe that family contact would go a long way towards ensuring that they are more established in the community, that their wellbeing is more assured and that they can, therefore, work and continue to work with law enforcement authorities from a safe place where they are more secure.¹⁰⁶

2.112 Scarlet Alliance also recommended that 'support for sex workers who have experienced labour exploitation or trafficking must not be contingent on the participation of that person in a trafficking investigation and prosecution'.¹⁰⁷ Scarlet Alliance argued that '[m]aking support conditional upon assisting police limits the willingness and ability of exploited people to access support and justice, undermines the effectiveness of trafficking prevention policies, and compromises trafficking cases'.¹⁰⁸

2.113 Similar recommendations were also made with respect to victims of forced marriage,¹⁰⁹ a slavery-like offence discussed in chapter 5.

Committee view

2.114 The committee acknowledges the significant support that victims of trafficking, slavery and slavery-like offences receive through the STPP.

103 See, for example, The Salvation Army, *Submission 14*, p. 10, p. 15; The Echo Project, *Submission 28*, p. 5.

104 Dr Zirnsak, UCA, *Committee Hansard*, 4 May 2017, p. 40.

105 The Salvation Army, *Submission 14*, p. 22.

106 Professor Burn, ASA, *Committee Hansard*, 5 May 2017, pp 14–15.

107 Scarlet Alliance, *Submission 5*, p. 19.

108 Scarlet Alliance, *Submission 5*, p. 19.

109 For example, The Salvation Army recommended that the government 'Remove the requirement to cooperate with law enforcement for victims of trafficking. As a minimum, remove the requirement for victims of child and forced marriage and for all children' – see: The Salvation Army, *Submission 25*, p. 7.

2.115 However, evidence to the committee illustrates the various barriers faced by victims—including separation from their families at a time when they are particularly vulnerable, or concern for their families who remain in their home country—which may prevent them from engaging with law enforcement agencies. The committee notes that these vulnerable people are consequently precluded from receiving ongoing assistance through the STPP, and may subsequently be placed in a position of increased vulnerability.

2.116 The committee therefore considers that access to the STPP should not be contingent upon victims' cooperation with law enforcement. Further, the committee considers that family reunification is important not only for victims, but also for the protection of the victims' families.

Recommendation 6

2.117 The committee recommends the Commonwealth government de-links access to the Support for Trafficked People Program from compliance with criminal investigations.

2.118 The committee recommends that the Commonwealth government facilitates and expedites family reunification for victims of trafficking, slavery and slavery-like offences.

National Compensation Scheme

2.119 A number of submitters and witnesses advocated for the establishment of a national compensation scheme for victims of trafficking, slavery and slavery-like offences.¹¹⁰ A joint report by the ASA and LCA advocating for this mechanism was provided to the committee, and argued that such a scheme could be funded by proceeds of crime (PoC) or through the establishment of a specific fund.¹¹¹

2.120 The LCA told the committee that this proposal has been under consideration at the Roundtable for a number of years, and has received support from the Joint Standing Committee on Foreign Affairs, Defence and Trade, and the Special Rapporteur.¹¹²

2.121 Further, ASA informed the committee that, after liaising with states and territories on this issue, 'the majority of the states saw that there could be some benefit in having a national compensation scheme'.¹¹³

110 See, for example, CATWA, *Submission 3*, p. 3; The Salvation Army, *Submission 14*, p. 4; AHRC, *Submission 23*, p. 5.

111 ASA, *Submission 27, Additional Information*; LCA, *Submission 32, Additional Information*.

112 Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of the Commonwealth of Australia, *Trading Lives: Modern Day Human Trafficking*, June 2013, Recommendation 6; Report of the Special Rapporteur on trafficking in persons, especially women and children, 28 July 2014, UN GAOR 69th sess, Item 69(b) of the provisional agenda, UN Doc A/69/33797, Recommendation 82(g).

113 Professor Burn, ASA, *Committee Hansard*, 5 May 2017, p. 17.

2.122 In her evidence to the committee, Ms Fiona McLeod SC, President, LCA outlined the inadequacy of existing state and territory victims of crime compensation schemes for these offences:

The key concerns about those schemes are: they have different thresholds; they have different caps for payments—so, for example, if you were trafficked into Sydney you would receive less than if you were trafficked into Queensland for exactly the same offence—you have a limitation in terms of if there is a series of assaults or a false imprisonment, the sorts of events that often go with trafficking, you can only claim for the one act because it is treated as a course of conduct...¹¹⁴

2.123 ASA told the committee that without a national compensation scheme for these victims, 'we are not honouring our international law responses and we are not honouring the specific expressions that we have stated within our national action plan—to provide support and redress at an appropriate level for trafficked and enslaved people'.¹¹⁵

2.124 ASA also informed the committee about developments in other jurisdictions:

...very recently in Ottawa, Canada, a bill was presented to parliament that I think we could learn from. That bill sets out a statutory course of action specifically for victims of human trafficking and slavery. If that bill is passed, that would allow a victim to be able to prove, on the balance of probabilities, that they have been trafficked or enslaved. Currently, to take a civil action they need to prove that they meet one of the other elements of tortious conduct, such as that they have been falsely imprisoned or they have suffered assault. But, by recognising human trafficking and slavery as a specific cause of action, a plaintiff victim would prove that the defendant has trafficked them, and the test would be on the balance of probabilities.¹¹⁶

2.125 In response to questioning on this issue, the AGD advised that 'it is an issue that is on our radar but, at the moment, in terms of an answer to your question, court-ordered reparation orders are available in addition to the state and territory [victims of crime compensation schemes]'.¹¹⁷

Committee view

2.126 The committee notes the significant work undertaken by NGOs over a number of years in investigating the merits of establishing a national compensation scheme for victims of human trafficking, slavery and slavery-like offences.

2.127 The committee recognises the significant variation across states and territory victims of crime compensation schemes with respect to time limits, categories of harm

114 Ms McLeod SC, LCA, *Committee Hansard*, 5 May 2017, p. 3.

115 Professor Burn, ASA, *Committee Hansard*, 5 May 2017, p. 17.

116 Professor Burn, ASA, *Committee Hansard*, 5 May 2017, p. 15.

117 Ms Hawkins, AGD, *Committee Hansard*, 10 May 2017, p. 6.

and levels of award.¹¹⁸ The committee acknowledges, for example, that victims could receive an amount of compensation as little as \$10,000 in one jurisdiction, but as much as \$100,000 in another for a substantially similar state or territory offence.¹¹⁹ The committee considers that it is fundamentally unfair for victims of the same Commonwealth offence to receive such substantially different awards of compensation based on their location.

2.128 Further, the committee recognises that although crimes against the person have historically fallen within the jurisdiction of states and territories, the introduction of crimes against the person offences in respect of human trafficking, slavery and slavery-like offences into the Criminal Code has not yet led to the establishment of compensation corresponding to these particular offences.¹²⁰

2.129 Based on the evidence presented to it, the committee considers a national compensation scheme for victims of trafficking, slavery and slavery-like offences should be established, funded by PoC.

Recommendation 7

2.130 The committee recommends the establishment of a national compensation scheme for victims of trafficking, slavery and slavery-like offences to be funded by proceeds of crime.

2.131 The committee is also aware that, pursuant to section 21B of the Crimes Act:

...the court may, in addition to the penalty, if any, imposed upon the person, order the offender:

(c) to make reparation to the Commonwealth or to a public authority under the Commonwealth, by way of money payment or otherwise, in respect of any loss suffered, or any expense incurred, by the Commonwealth or the authority, as the case may be, by reason of the offence; or

(d) to make reparation to any person, by way of money payment or otherwise, in respect of any loss suffered, or any expense incurred, by the person by reason of the offence.¹²¹

2.132 The committee acknowledges that this mechanism is difficult for victims of human trafficking, slavery and slavery-like practices to access, as it requires successful prosecution of an offence. As the ASA and LCA note in their *Report on*

118 ASA and LCA, *Report on Establishing a National Compensation Scheme for Victims of Commonwealth Crime*, 2016, p. 4.

119 ASA and LCA, *Report on Establishing a National Compensation Scheme for Victims of Commonwealth Crime*, 2016, p. 4.

120 ASA and LCA, *Report on Establishing a National Compensation Scheme for Victims of Commonwealth Crime*, 2016, p. 6.

121 *Crimes Act 1914*, s. 21B.

Establishing a National Compensation Scheme for Victims of Commonwealth Crime, there have been low numbers of convictions for human trafficking.¹²² Further:

The LCA and ASA are unaware of any case where an application for reparation orders under section 21B of the Crimes Act has been sought in the context of proceedings relating to human trafficking. This demonstrates that reparation orders are an unlikely remedy for trafficked people under the current framework.

The procedures relating to reparation applications and adjudication of applications also lacks clarity, particularly with respect to the manner in which applications should be made.

Furthermore, there is no guarantee that any orders will be made – reparation orders are discretionary and dependent on the financial capacity of the offender to make reparations.¹²³

2.133 The ASA and LCA do note that in the UK, 'reparation orders complement the national compensation scheme' as:

A trafficked person can receive a reparation order under the *Modern Slavery Act 2015* (UK), or compensation under the *Criminal Injuries Compensation Scheme* (CICS). A person cannot receive both a reparation order and a compensation order for the same offence. The UK approach recognises that although reparation orders are not suitable as the only remedy for survivors of trafficking, they remain a useful avenue in situations where the defendant has been identified, convicted, and has sufficient assets to be able to pay for the harm caused.¹²⁴

2.134 The committee therefore considers that there is scope to make the existing reparation scheme under the Crimes Act more accessible to victims of trafficking, slavery and slavery-like offences, and encourages the government to consider how the existing scheme may be amended.

2.135 The committee also encourages the Joint Standing Committee on Foreign Affairs, Defence and Trade to consider this issue in more detail in its inquiry into a Modern Slavery Act.

Recommendation 8

2.136 The committee recommends that the Commonwealth government considers ways in which to make the existing reparation orders available under section 21B of the *Crimes Act 1914* more accessible to victims of trafficking, slavery and slavery-like offences.

122 ASA and LCA, *Report on Establishing a National Compensation Scheme for Victims of Commonwealth Crime*, 2016, p. 8.

123 ASA and LCA, *Report on Establishing a National Compensation Scheme for Victims of Commonwealth Crime*, 2016, p. 8 (footnotes omitted).

124 ASA and LCA, *Report on Establishing a National Compensation Scheme for Victims of Commonwealth Crime*, 2016, p. 8 (footnotes omitted).

Anti-Slavery and Trafficking Commissioner

2.137 A number of submitters and witnesses recommended the establishment of an anti-slavery and trafficking commissioner.¹²⁵ For example, Slavery Links stated:

I think some organisation, perhaps a slavery commissioner—who could be located either in the Human Rights Commission or in the [Australian Crime Commission]—would be a very useful reform to collect data on how many slaves are here and should be subject to the full force of a very serious penalty under the [Criminal Code].¹²⁶

2.138 In its submission, ASA identified that a key challenge to the successful implementation of Australia's strategy to combat human trafficking is the 'multiplicity of stakeholders' in this space.¹²⁷ It was submitted that the appointment of an independent anti-slavery and trafficking commissioner, with responsibility to monitor and review the effectiveness of commonwealth law enforcement responses and identify any areas for improvement, would strengthen the existing framework.¹²⁸

2.139 The particular benefits of such an officer, outlined by ASA in its submission, included that:

...a Commissioner could identify any duplication of efforts across Commonwealth law enforcement agencies, identify gaps in the effectiveness of the Commonwealth response, including law enforcement responses and make recommendations to ensure that the Australian response is best practice.¹²⁹

2.140 Many submitters who supported the establishment of a commissioner suggested Australia look to the UK model.¹³⁰ Speaking to the committee about the differences between the role of the UK commissioner and a proposed Australian commissioner, ASA stated:

One of the key differences between what I would like to see in Australia compared with the UK is that in Australia I would like our [ombudsman/commissioner] to have the power to take inquiries and complaints related to specific cases, rather than solely monitor the [NAP] and assess the effectiveness of legislation and so on but also be a place

125 See, for example, LCA, *Submission 21*, p. 6; ASA, *Submission 9*, p. 4; The Salvation Army, *Submission 14*, p. 4; ACRATH, *Submission 26*, p. 8.

126 Mr Robert Charles Evans, Former Chair, Slavery Links, *Committee Hansard*, 4 May 2017, p. 26.

127 ASA, *Submission 9*, p. 5.

128 ASA, *Submission 9*, p. 5.

129 ASA, *Submission 9*, pp 6–7.

130 See, for example, LCA, *Submission 21*, p. 6; ASA, *Submission 9*, p. 4; The Salvation Army, *Submission 14*, p. 4; ACRATH, *Submission 26*, p. 8 p; Mr Evans, Slavery Links, *Committee Hansard*, 4 May 2017, p. 27.

where we can take issues of concern around the implementation of the legislative response.¹³¹

2.141 The ASA suggested that an Australian commissioner could have the following core functions:

- a) monitoring the implementation of the [NAP] and ensuring compliance with human rights obligations;
- b) an appointment to the membership of the IDC, the [OWG], the [Roundtable] and other working groups set up under these bodies;
- c) reporting annually to the Australian Parliament on the exercise of the Commissioner's functions, which are made publicly available;
- d) providing recommendations, advice and guidance to government agencies on the exercise of their relevant functions;
- e) assessing the effectiveness of relevant Commonwealth legislation and policies as well as the impact of any proposed relevant Commonwealth legislation and policies;
- f) possessing statutory powers to collect and request data and information on human trafficking, slavery and slavery-like practices; and
- g) consulting and engaging with government agencies, non-governmental bodies, business and industry, unions and other persons.¹³²

2.142 Indeed, with reference to the ASA's recommended function (f), the LCA similarly identified the importance of undertaking or funding 'publically [sic] available primary research into the extent to which organised criminal groups are involved in human trafficking crimes in Australia...as a matter of priority'.¹³³

2.143 Further, in evidence to the committee, the LCA stated that oversight or regulation of labour hire companies with respect to labour exploitation—discussed further in chapter 3—could be within the remit of an anti-slavery and trafficking commissioner.¹³⁴

2.144 Whilst supporting the establishment of an independent anti-slavery and trafficking commissioner in Australia, the UCA opined:

...I do not think it is going to be resourced at a level that can cope with the size of the number of people coming in on temporary work visas to provide that point of contact.¹³⁵

2.145 On the question of an Australian anti-slavery and trafficking commissioner, the AGD noted that:

131 Professor Burn, ASA, *Committee Hansard*, 5 May 2017, p. 18.

132 ASA, *Submission 9*, p. 8 (footnotes omitted).

133 LCA, *Submission 21*, p. 12.

134 Ms McLeod SC, LCA, *Committee Hansard*, 5 May 2017, p. 2.

135 Dr Zirnsak, UCA, *Committee Hansard*, 4 May 2017, p. 40.

It is a matter for the government as to what they would want to do, but in terms of what we do at the moment, we are quite well set up in the way we are coordinating whole-of-government efforts. We are linking in with civil society through our national roundtable, as many civil society organisations are part of that. The government gives grants to civil society organisations, and all of that is happening under the current, I would say, very well coordinated set of activities we are doing.¹³⁶

2.146 In response to whether such a commissioner would be necessary in Australia, it was also noted by the AGD that:

Government has a combination of measures—our [DFAT] colleague, Andrew Goledzinowski, is Australia's Ambassador for People Smuggling and Human Trafficking and, in terms of the [AGD], we play the role of chairing this IDC that brings together all of the whole-of-government partners.

...

We have strong criminal offences, we can do reparation orders, there is already a range of things that the anti-slavery commissioner is involved in and many functions that we already can, and do, do here.¹³⁷

2.147 The Ambassador for People Smuggling and Human Trafficking, formerly the Ambassador for People Smuggling Issues, assumed the responsibility for human trafficking issues in March 2016.¹³⁸ Although the Ambassador had previously worked to 'advance a strong anti-human trafficking agenda, including as Co-chair of the Bali Process', this change in title:

...reflects Australia's ongoing commitment to combating human trafficking and slavery as a transnational crime, an irregular migration issue, and a domestic human rights concern where trafficking occurs within country borders.¹³⁹

Committee view

2.148 The committee considers there may be merits in establishing an anti-slavery and trafficking commissioner, independent from government. The committee notes that such an office could be responsible for collecting data, currently lacking, on the prevalence of human trafficking, slavery and slavery-like practices in Australia.

2.149 The committee also considers that there would be merit in the commissioner performing those functions set out by ASA that do not appear to be adequately addressed by any government agency, such as monitoring the implementation of the

136 Ms Hawkins, AGD, *Committee Hansard*, 10 May 2017, p. 13.

137 Ms Hawkins, AGD, *Committee Hansard*, 10 May 2017, p. 13.

138 Commonwealth of Australia, *Trafficking in Persons: The Australian Government Response 1 July 2015–30 June 2016*, 2016, p. 76.

139 Commonwealth of Australia, *Trafficking in Persons: The Australian Government Response 1 July 2015–30 June 2016*, 2016, p. 76.

NAP; providing recommendations, advice and guidance to government agencies on the exercise of their functions; and overseeing the effectiveness of Commonwealth legislation and policies intended to reduce the prevalence of human trafficking, slavery and slavery-like practices and respond to corresponding offences.

2.150 The committee therefore suggests that the Commonwealth government considers appointing an Anti-Slavery and Trafficking Commissioner in Australia, taking into account the role and work of the Australian Ambassador for People Smuggling and Human Trafficking.

Recommendation 9

2.151 The committee recommends that the Commonwealth government considers appointing an Anti-Slavery and Trafficking Commissioner, to:

- **monitor the implementation of the *National Action Plan to Combat Human Trafficking and Slavery 2015–19*;**
- **provide recommendations, advice and guidance to government agencies on the exercise of their functions;**
- **oversee the effectiveness of Commonwealth legislation and policies intended to reduce the prevalence of human trafficking, slavery and slavery-like practices and respond to corresponding offences; and**
- **collect and request data and information on these practices.**

Chapter 3

Slavery and forced labour

3.1 This chapter considers slavery and forced labour in Australia. In particular, it addresses two distinct issues in respect of these: migrant workers and supply chains.

3.2 The Commonwealth government's most recent Interdepartmental Committee on Human Trafficking and Slavery (IDC) report sets out the government's priorities over the next financial year with respect to slavery and forced labour. Relevantly, the report provides:

In the year ahead, we will...convene a Labour Exploitation Working Group to develop recommendations on measures to address serious forms of labour exploitation in Australia. We will respond to the recommendations of the Supply Chains Working Group convened in 2015–16 to investigate exploitative practices in industry supply chains.¹

3.3 The implementation of some of these plans has already commenced.

Migrant workers

3.4 The committee heard a significant amount of evidence from submitters and witnesses with respect to migrant workers. The following sections discuss this evidence, focusing in particular on the rights of migrant workers and their knowledge of them, visa protections and exploitation by some labour hire companies.

Information for migrant workers

3.5 A recurring theme throughout the course of the inquiry was the rights of migrant workers and the extent to which migrant workers are aware of them. As a number of submitters and witnesses highlighted, if migrant workers are unaware of their legal rights and obligations, they may have difficulty identifying if they are being exploited or may not know where to take their complaint if they suspect they are.²

3.6 The Commonwealth government already requires that pre-departure briefings are conducted for seasonal workers in countries party to the Memorandum of Understanding (MOU) in support of Australia's Seasonal Worker Programme (SWP).

3.7 Where the government has approved an employer to recruit seasonal workers under the SWP, the employer must sign a deed with the government, setting out the terms of the agreement.

3.8 The deed provides that, pursuant to the MOU between the Commonwealth and participating countries, the Department of Employment (DOE) publishes

1 Commonwealth of Australia, *Trafficking in Persons: The Australian Government Response 1 July 2015–30 June 2016*, 2016, p. iv.

2 See, for example, Anti-Slavery Australia (ASA), *Submission 9*, p. 33; Uniting Church in Australia, Synod of Victoria and Tasmania (UCA), *Submission 33*, p. 1; Ms Fiona McLeod SC, President, Law Council of Australia (LCA), *Committee Hansard*, 5 May 2017, p. 6.

'Implementation Arrangements'—a 'subsidiary document' to the MOU in support of the SWP—that are made available to an approved employer. A sample deed and implementation arrangements document is available on the DOE website.³

3.9 As set out in the 2016 Joint Standing Committee on Migration report, *Seasonal change: Inquiry into the Seasonal Worker Programme*, the implementation arrangements for the SWP provide that:

In order to maximise the benefits, and minimise the risks to Seasonal Workers of employment in Australia and the adjustments involved, each Participating Country's nominated Ministry will ensure Seasonal Workers receive a pre-departure briefing.⁴

3.10 The implementation arrangements state that the briefing will include information such as wages and conditions offered to seasonal workers; the role of the Fair Work Ombudsman (FWO); taxation; superannuation and details of a payslip.⁵ The implementation arrangements also provide that a participating country will invite representatives with relevant expertise to participate in these pre-departure briefings, which may include representatives from unions and returned seasonal workers.⁶

3.11 Section 124 of the *Fair Work Act 2009* (FW Act) requires the FWO to prepare and publish the Fair Work Information Statement which provides information about a variety of issues, including modern awards, the role of the FWO and the Fair Work Commission, and the right to freedom of association. Further, section 125 of the FW Act requires employers to provide the Fair Work Information Statement to employees before, or as soon as practicable after, the employee starts employment.

3.12 The FWO website also has free fact sheets on working in Australia in 27 different languages, as well as YouTube videos in 14 different languages, and a free interpreter service.⁷

3.13 Despite the government's current work in this area, the committee heard evidence in support of allocating more resources to pre-departure education for migrant workers about their rights, including from the chair of the newly established

3 Department of Employment (DOE), *Seasonal Worker Programme Deed of Agreement*, <https://docs.employment.gov.au/documents/seasonal-worker-programme-deed-agreement> (accessed 7 July 2017); DOE, *SWP Implementation Arrangements – effective 1 August 2015*, <https://docs.employment.gov.au/documents/swp-implementation-arrangements-effective-1-august-2015> (accessed 7 July 2017).

4 Joint Standing Committee on Migration, *Seasonal change: Inquiry into the Seasonal Worker Programme*, May 2016, Appendix D, p. 12.

5 Joint Standing Committee on Migration, *Seasonal change: Inquiry into the Seasonal Worker Programme*, May 2016, Appendix D, pp 12–13.

6 Joint Standing Committee on Migration, *Seasonal change: Inquiry into the Seasonal Worker Programme*, May 2016, Appendix D, p. 13.

7 Senate Standing Committee on Education and Employment, *A National Disgrace: The Exploitation of Temporary Work Visa Holders*, March 2016, p. 273.

Labour Exploitation Working Group,⁸ Ms Fiona McLeod SC, President of the Law Council of Australia (LCA).⁹

3.14 The Salvation Army—Freedom Partnership to End Modern Slavery recommended that the government:

...provide information directly to all migrant workers prior coming to Australia about their rights and responsibilities in a language they understand, including how to seek help from both relevant government authorities and non-government organisations. This should also include access to free, confidential legal advice by phone.¹⁰

3.15 Professor Jennifer Burn, Director, Anti-Slavery Australia also saw the need for further information to be provided to migrant workers, as illustrated by the following exchange:

CHAIR: Do you think there should be more information and education for people migrating to Australia for work purposes or on holiday visas so that they are actually aware of their rights in this respect?

Prof. Burn: Yes. Information should be provided pre-departure and on arrival in an appropriate language. Additionally, where we know that there are countries which may give rise to cohorts of exploited people, perhaps there needs to be an even greater focus in those countries. There are challenges because many visas can now be applied for online. It is no longer the day that people go to an Australian embassy or consulate to apply for a visa. Processes are online. Getting information to people is something that can be a challenge, but it could be incorporated within an online process. Giving people information on arrival is also critical, as is connecting people in high-risk areas to other support agencies...it is important that, where we know there are vulnerabilities and where we know that there are exploited people coming to Australia holding various visas, including working holiday visas, for example, we do have a responsibility to make sure that there is extra oversight in those cases.¹¹

3.16 Dr Mark Zirnsak, Director, Social Justice, Uniting Church in Australia, Synod of Victoria and Tasmania (UCA) suggested that exploitation could be reduced by ensuring that pre-departure briefings are conducted by a party independent from the employer, such as a trade union, with the same approach applying to post-arrival briefings and pastoral care.¹² Such information sessions and care could also be given to other visa holders:

8 Ms McLeod SC, LCA, *Committee Hansard*, 5 May 2017, p. 1.

9 Ms McLeod SC, LCA, *Committee Hansard*, 5 May 2017, p. 6.

10 The Salvation Army—Freedom Partnership to End Modern Slavery (The Salvation Army), *Submission 14*, p. 7.

11 Professor Jennifer Burn, Director, Anti-Slavery Australia (ASA), University of Technology Sydney, *Committee Hansard*, 5 May 2017, p. 16.

12 Dr Mark Zirnsak, Director, Social Justice, UCA, *Committee Hansard*, 4 May 2017, p. 41.

...for those that are particularly work focused, having those pre- and post-departure briefings would be a better model to go for people. The face to face for many of the countries in our region is much more culturally aligned and is much more effective than simply giving people a piece of paper or sending them a file and saying, 'If you get into trouble, phone this number.' Our experience is that generally the workers do not do that. They will put up with stuff until, really, they feel that there is no option and they feel that threat of removal. Often, the biggest threat over them is that they feel that the employer has the ability to remove them.¹³

Committee view

3.17 The committee shares the view of submitters and witnesses that exploitation of migrant workers in Australia could be decreased by ensuring that these workers are better aware of their legal rights and obligations, and are provided with accurate information in their own language both before leaving their home country and after arriving in Australia.

3.18 The committee acknowledges the work already undertaken by the Commonwealth government in this area, particularly in relation to the SWP; however, the committee sees value in expanding this work to a wider range of pre-departure countries and visa holder categories. In the committee's opinion, there is also merit in engaging with NGOs in contact with particular types of workers in pre-departure countries and leveraging off their connections with migrant workers. A particular example of this, in relation to sex workers, is discussed at paragraph 4.22.

3.19 Similarly, the committee suggests that more could be done to ensure that migrant workers are provided with the information produced by the FWO, for example via post-arrival briefings.

3.20 The committee therefore recommends that the pre-departure briefings and information currently available through the SWP are expanded to include a wider range of pre-departure countries and other categories of visa holders who may engage in work in Australia, and that post-arrival briefings are conducted to ensure migrant workers are provided with relevant information from the FWO.

Recommendation 10

3.21 **The committee recommends that the Commonwealth government:**

- **expands the pre-departure briefings and information currently available through the Seasonal Worker Program to a wider range of pre-departure countries and other categories of visa holders eligible to work in Australia, and**
- **introduces post-arrival briefings to ensure migrant workers are provided with relevant information from the Fair Work Ombudsman.**

13 Dr Zirnsak, UCA, *Committee Hansard*, 4 May 2017, p. 41.

Visa protections

3.22 The committee heard that, without adequate visa support and protection, some victims of human trafficking, slavery and slavery-like practices may 'experience great hardship and uncertainty about their future.'¹⁴ As discussed in chapter 2, support and protection offered through the visa program is contingent upon victims contributing to police investigations.

3.23 Submitters and witnesses identified this as a particular problem faced by migrant workers, who may have been coerced into working illegally by their employer and therefore need such protection, but may be unwilling to engage with authorities for fear of visa cancellation.

3.24 The Department of Immigration and Border Protection (DIBP) explained its role in addressing labour exploitation, including visa cancellations and application refusal powers:

DIBP works closely with the FWO to support its enforcement role. As part of this relationship, Taskforce Cadena has been established to target entities involved in unscrupulous labour hire practices. Suspected instances of human trafficking and slavery uncovered by this initiative are referred to the AFP for investigation.

DIBP's approach to reducing instances of illegal work is through: building awareness of the consequences of employing illegal workers; creating a credible threat of the consequences for employers and employees engaging in illegal work activity; and sanctioning businesses that commit work related breaches of the Migration Act or persist in employing illegal workers. The aim of all prevention, deterrence, detection and enforcement activity is to encourage voluntary compliance with migration laws.

There are various safeguards under migration legislation and policy to mitigate and address the risks of labour market exploitation depending on the circumstances of the case. Criminal, civil and administrative sanctions, as well as visa cancellation and application refusal powers are used under these frameworks to address breaches of the Migration Act.¹⁵

3.25 Some submitters raised the issue of the power of the Minister for Immigration and Border Protection to cancel visas, and the adverse impact that this may have on victims of trafficking, slavery and slavery-like offences. For example, the LCA stated that:

The most significant cancellation powers for the purposes of this Inquiry fall under sections 109, 116 and 501. Recent and proposed amendments to these sections serve to further increase the Minister's already broad discretionary powers to cancel visas. The [LCA] understands that the result of these changes has served to undermine Australia's anti-slavery policy, by often penalising the visa holder and preventing or inhibiting the visa

14 ASA, *Submission 9*, p. 17.

15 Attorney-General's Department (AGD), *Submission 17*, p. 2.

holder's ability to review an adverse decision and/ or seek legal advice prior to deportation.¹⁶

3.26 The LCA therefore recommended:

...an independent review of the power of the Minister of Immigration and Border Protection to cancel visas to examine the effect of these powers on victims of human trafficking, including slavery, slavery-like practices and people trafficking offences...¹⁷

3.27 The UCA raised similar concerns, stating that the threat of cancellation of a visa:

...is likely to have the perverse outcome of assisting those engaged in human trafficking and egregious workplace exploitation by further deterring victims of such crimes from reporting the crimes against them if they have been offered a sponsorship related event.¹⁸

3.28 The UCA therefore recommended that:

The [*Migration Act 1958* (Migration Act)] be amended so that the Minister for Immigration and Border Protection is unable to cancel the visa of a person who has been subjected to human trafficking, forced labour or slavery offences under the [*Criminal Code Act 1995*] (Sections 270 and 271). Further, the Minister should be unable to cancel a visa while any investigation is being conducted into such offences that involve the visa holder as a likely victim of such offences. The Minister should not have the power to cancel the visa where the visa holder is of material relevance to any legal action being taken by relevant law enforcement authorities against the employer or sponsor of the visa holder.¹⁹

3.29 UnionsWA recounted evidence from the Employment Law Centre of WA (ELC) to the 2015 Senate Education and Employment References Committee inquiry into the impact of Australia's temporary work visa programs on the Australian labour market and on the temporary work visa holders. The ELC's evidence demonstrated that some victims were missing out on entitlements for fear of deportation:

...the ELC...informed the committee about the employment law issues that their clients who are work visa holders continue to face in WA. Those cases

...

- Temporary work visa holders have been exploited on threat of deportation – e.g. they have been required to pay for vehicle damage for which they were not responsible or which could have been recovered on insurance.
- Temporary work visa holders have been subjected to assaults, underpayment of entitlements, threats of deportation, unreasonable working hours and other forms of mistreatment;

16 LCA, *Submission 21*, p. 19.

17 LCA, *Submission 21*, p. 6.

18 UCA, *Submission 33*, p. 19.

19 UCA, *Submission 33*, p. 2.

...

- Clients on temporary work visas decided against enforcing their entitlements or making a claim because they were concerned about losing their job and being deported.²⁰

3.30 The Senate Education and Employment References Committee made the following relevant recommendations in its 2016 report, *A National Disgrace: The Exploitation of Temporary Work Visa Holders*:

Recommendation 18

6.95 The committee recommends that the *Fair Entitlements Guarantee Act 2012* be amended to make temporary visa holders eligible for entitlements under the Fair Entitlements Guarantee.

Recommendation 19

6.96 The committee recommends that the immigration program be reviewed and, if necessary, amended to provide adequate bridging arrangements for all temporary visa holders to pursue meritorious claims under workplace and occupational health and safety legislation.

...

Recommendation 23

8.263 The committee recommends that the *Migration Act 1958* and the [FW Act] be amended to state that a visa breach does not necessarily void a contract of employment and that the standards under the [FW Act] apply even when a person has breached their visa conditions or has performed work in the absence of a visa consistent with any other visa requirements.

Recommendation 24

8.269 The committee recommends that Section 116 of the [Migration Act] be reviewed with a view to amendment such that visa cancellation based on noncompliance with a visa condition amounts to serious noncompliance. The committee further recommends that Section 235 of the [Migration Act] be reviewed with a view to amendment such that a contravention of a visa condition amounts to a serious contravention before a non-citizen commits an offence against the section.

...

Recommendation 29

9.239 The committee recommends that the identities of migrant workers who report instances of exploitation to the Fair Work Ombudsman or to any other body should not be provided to the Department of Immigration and Border Protection. The committee further recommends that this prohibition should be written into the Memorandum of Understanding between the Fair

20 Unions WA, *Submission 13*, p. 3 (citations omitted).

Work Ombudsman and the Department of Immigration and Border Protection.²¹

Committee view

3.31 The evidence before the committee demonstrates that there are significant concerns that victims of human trafficking, slavery and slavery-like offences may be subject to visa cancellation, potentially preventing these victims from assisting police with their investigations, but also placing these victims in an increased position of vulnerability, including in respect of recovering entitlements.

3.32 Noting that the issue of visa protections has previously been examined by the Senate Education and Employment References Committee, which made a number of recommendations on this issue, the committee does not consider it necessary to examine this issue further.

3.33 However, in light of the recommendations by the Senate Education and Employment References Committee, and those made to this committee by submitters and witnesses, this committee recommends the strengthening of visa protections for people who have been subject to trafficking, slavery and slavery-like offences.

Recommendation 11

3.34 The committee recommends that the Commonwealth government strengthens visa protections where a visa holder has been subject to trafficking, slavery and slavery-like offences.

Labour hire companies

3.35 Some submitters and witnesses raised concerns about the prevalence of exploitation of migrant workers by labour hire companies.²² As a result, a number of submitters and witnesses supported the establishment of a licensing regime for labour hire companies.²³

3.36 In the experience of the UCA, 'both in Australia and internationally, labour hire businesses appear to carry a higher risk of being involved in human trafficking than other employers, especially in weakly regulated environments'.²⁴ The UCA identified that:

Licensing regimes for labour hire businesses exists in most European Union countries, where licensing has gone hand-in-hand with implementation of

21 Senate Standing Committee on Education and Employment, *A National Disgrace: The Exploitation of Temporary Work Visa Holders*, March 2016.

22 See, for example, The Salvation Army, *Submission 14*, pp 23–24; Ms Christine Carolan, Executive Officer, Australian Catholic Religious Against Trafficking in Humans (ACRATH), *Committee Hansard*, 4 May 2017, p. 17.

23 See, for example: ACRATH, *Submission 18*, p. 5; Australian Human Rights Commission (AHRC), *Submission 23*, p. 5; UCA, *Submission 33*, p. 1.

24 UCA, *Submission 33*, p. 16.

the EU Directive on Temporary Agency Workers, as well as Japan, Singapore and South Korea.²⁵

3.37 The UCA considered that the introduction of a licencing system for labour hire companies would be welcomed by many businesses that rely on labour hire services, businesses that purchase from businesses that rely on labour hire services, some labour hire businesses themselves, and civil society organisations working in the area of human trafficking and forced labour.²⁶ It was suggested that the introduction of this system would:

- Make it harder for criminals and other unsuitable people to set up or control labour hire businesses;
- Make it easier to detect and identify unethical labour hire businesses;
- Make it easier for the users of labour hire services to know they are dealing with a reputable provider;
- Provide a level of safeguard against phoenix activity;
- Make it harder for labour hire businesses to be set up with ‘front’ people who are not the real owners or controllers of the business;
- Reduce the incidence of human trafficking and forced labour through labour hire providers;
- Reduce the likelihood of people on temporary work visas will be subjected to unlawful treatment in their wages and conditions; and
- Increase the ability of third party bodies to find people on temporary work visas in need of assistance, as a public register of labour hire businesses will make it easier to find where these businesses are operating.²⁷

3.38 The UCA therefore recommended that the government:

- Introduce a licensing scheme for labour hire businesses in selected industry sectors where there is evidence of significant levels of human trafficking, forced labour and/or egregious exploitation. Such sectors should include agriculture, horticulture, food processing, construction and hospitality.
- Require labour hire businesses in sectors where there has been significant levels of human trafficking, forced labour and/or egregious exploitation to have to introduce employees on temporary work visas to a non-government organization (including unions) that is able to assist the migrant worker understand their rights and responsibilities, as is the case in Ireland for domestic workers. This would act as a significant protective factor against human trafficking and exploitation. It should be a civil offence for the labour hire business to fail to facilitate such contact between the temporary visa holder and the non-government organisation. The Commonwealth Government should establish a public list of non-government organisations

25 UCA, *Submission 33*, p. 17.

26 UCA, *Submission 33*, p. 17.

27 UCA, *Submission 33*, p. 16.

- willing to provide such support and that it assesses are qualified to provide such support.²⁸

3.39 As discussed earlier, on 5 May 2016 the Joint Standing Committee on Migration tabled its report on the Seasonal Worker Program, *Seasonal change: Inquiry into the Seasonal Worker Programme*.²⁹ That report examined some issues that were also raised with this committee, such as the exploitation of migrant workers through the use of labour hire companies. Recommendation nine of that report provided:

The Committee recommends that the Australian Government implement Recommendation 32 of the Senate Education and Employment References Committee report on the impact of Australia's temporary work visa programs on the Australian labour market and on the temporary work visa holders.³⁰

3.40 The government's response to that recommendation noted that it would address Recommendation 32 of the Senate Education and Employment References Committee report in its response to that committee's report, *A National Disgrace: The Exploitation of Temporary Work Visa Holders*.³¹ Recommendation 32 of that report provided:

The committee recommends that a licensing regime for labour hire contractors be established with a requirement that a business can only use a licensed labour hire contractor to procure labour. There should be a public register of all labour hire contractors. Labour hire contractors must meet and be able to demonstrate compliance with all workplace, employment, tax, and superannuation laws in order to gain a license. In addition, labour hire contractors that use other labour hire contractors, including those located overseas, should be obliged to ensure that those subcontractors also hold a license.³²

3.41 The committee notes that the government's response to the Senate Education and Employment References Committee report is not yet publicly available.

Committee view

3.42 As this issue has previously been examined by the Joint Standing Committee on Migration and the Senate Education and Employment References Committee,

28 UCA, *Submission 33*, p. 1.

29 Joint Standing Committee on Migration, *Seasonal change: Inquiry into the Seasonal Worker Programme*, May 2016.

30 Joint Standing Committee on Migration, *Seasonal change: Inquiry into the Seasonal Worker Programme*, May 2016.

31 Commonwealth of Australia, *Australian Government response to the Joint Standing Committee on Migration report: Seasonal change Inquiry into the Seasonal Worker Programme*, February 2017, p. 10.

32 Senate Standing Committee on Education and Employment, *A National Disgrace: The Exploitation of Temporary Work Visa Holders*, March 2016.

which both supported the establishment of a licensing regime for labour hire companies, this committee does not consider it necessary to examine this issue further.

3.43 However, in light of the recommendations of both the Joint Standing Committee on Migration and the Senate Education and Employment References Committee, as well as the evidence presented to this committee in support of the establishment of such a scheme, this committee also recommends the establishment of a licensing regime for labour hire companies. The committee notes in particular the characteristics of the licensing scheme discussed by the Senate Education and Employment References Committee in Recommendation 32.

3.44 The committee also notes that some submitters and witnesses suggested that oversight or regulation of labour hire companies with respect to labour exploitation could be within the remit of an anti-slavery and trafficking commissioner (for a further discussion of the commissioner, see chapter 2).³³

Recommendation 12

3.45 The committee recommends that the Commonwealth government establishes a licensing regime for labour hire companies.

Supply chains

3.46 This section addresses the exploitation of workers in the supply chains of goods and services. The Australian Human Rights Commission (AHRC) identified that:

Negative human rights impacts can occur at any level of a business's supply chain – from direct suppliers (also known as Tier 1 suppliers) to several layers of subcontractors that supply products and raw materials to direct suppliers.³⁴

3.47 A number of submitters and witnesses also made recommendations to the committee with respect to supply chains.³⁵

3.48 The prevalence of forced labour in supply chains for goods sold in Australia was discussed by the International Justice Mission Australia (IJM):

In 2013, ABC reported that some of Australia's leading retailers, including Rivers, Coles, Target and Kmart were sourcing clothes from factories that threatened workers with abuse. Nevertheless, garment manufacturing for Australian companies in Bangladesh had increased 1500% in the five years since 2008.

33 Ms McLeod SC, LCA, *Committee Hansard*, 5 May 2017, p. 2.

34 AHRC, *Submission 23*, p. 11.

35 See, for example, ASA, *Submission 9*, p. 41; Slavery Links Australia Inc, *Submission 15*, pp 22–27; ACRATH, *Submission 18*, p. 8; Most Reverend Terence John Brady, Chair, Bishops Commission for Pastoral Life, Australian Catholic Bishops Conference, *Committee Hansard*, 5 May 2017, p. 40.

Although not all of the global forced labour exploitation is linked to global supply chains, and ones that reach Australia, a significant amount is...Malaysia was one of the top eight exporters of electronic goods in 2013,129 and Guatemala was the fifth largest supplier of coffee to the US in 2013.³⁶

3.49 IJM made a number of recommendations in respect of this issue, some of which relate to the issue of a modern slavery act, discussed in chapter 2. Specifically, it was recommended that the Commonwealth government:

- Work to ensure that proactive steps are being taken, modelled off successful transparency legislation overseas, to eradicate forced labour from supply chains of Australian companies.
- Implement and support measures in both intergovernmental and industry-based responses to forced labour in supply chains that prioritise investment in local law enforcement.³⁷

3.50 In its submission, the AHRC discussed a 2015 report that it produced together with the Australian Centre for Corporate Social Responsibility and the Global Compact Network Australia, *Human rights in supply chains: promoting positive practice*. The research undertaken by these organisations mapped how Australian businesses, primarily in the finance, agriculture and food supply sectors, address human rights issues in their supply chains. The AHRC stated that:

49. Many respondents to the research survey said they have a responsible sourcing policy. However, clear processes and accountabilities to integrate human rights standards into supplier practices, effectively identify potential issues and take corrective action remain largely underdeveloped. The results suggest that Australian businesses are still falling short in gaining visibility and adequately responding to potential human rights risks that may exist at different stages of the supply chain.

50. The report points to opportunities for increasing visibility and power to influence human rights outcomes through stronger relationships and partnerships. However, the results also highlight the need for further regulation measures.³⁸

3.51 The AHRC made the following recommendations in respect of supply chains:

Recommendation 7: The Australian Government look to develop transparent measures to regulate trafficking and slavery within supply chains.

Recommendation 8: The Australian Government develop a national action plan on business and human rights.³⁹

36 International Justice Mission Australia (IJM), *Submission 31*, p. 24 (citations omitted).

37 IJM, *Submission 31*, pp 2–3.

38 AHRC, *Submission 23*, p. 12.

39 AHRC, *Submission 23*, p. 5.

3.52 The issue was also discussed extensively by the UCA. Over two years, the UCA together with the Oaktree Foundation conducted a study 'examining what jurisdictions around the world were doing to address the issue of goods being imported where there was a risk slavery, forced labour and human trafficking were involved in the production of the goods'.⁴⁰

3.53 The report of this study, *Unshackling Laws Against Slavery*, was launched in late 2011.⁴¹ The UCA stated in its submission that '[t]here can be no doubt there are goods entering Australia that are produced using slavery or trafficked labour'.⁴² Further:

While the Australian Government has made it an offence for any Australian individual or company to engage in any financial transaction involving a slave, regardless of where it occurs in the world, no effort is currently made to identify Australian companies importing goods that slavery in their production. The result is that no Australian company has been prosecuted for being associated with slavery in the production of goods they have imported and sold.⁴³

3.54 The UCA noted that legislation that requires 'businesses from certain high risk industries to publicly disclose what actions they are taking to ensure the products and services they are importing or selling do not have slavery, forced labour or human trafficking involved in their production' already exists in the United States (US), through the *California Transparency in Supply Chains Act 2010* and in the United Kingdom (UK), through the *Modern Slavery Act 2015*.⁴⁴ These acts require public disclosure of all businesses above a certain level of revenue.⁴⁵

3.55 The UCA therefore advocated for the introduction of legislation requiring businesses 'from certain high risk industries' to publicly disclose actions they are taking to ensure that they are not importing or selling products and services that have slavery, forced labour or human trafficking involved in their production.⁴⁶

3.56 In France, the recently adopted *Corporate Duty of Vigilance Law 2017* goes further than the laws in the US and the UK. It:

...establishes a legally binding obligation for parent companies to identify and prevent adverse human rights and environmental impacts resulting from their own activities, from activities of companies they control, and from activities of their subcontractors and suppliers, with whom they have an established commercial relationship.

40 UCA, *Submission 33*, p. 20.

41 UCA, *Submission 33*, p. 20.

42 UCA, *Submission 33*, p. 20.

43 UCA, *Submission 33*, p. 21.

44 UCA, *Submission 33*, p. 22.

45 UCA, *Submission 33*, p. 22.

46 UCA, *Submission 33*, p. 22.

The companies covered by the law – it only applies to the largest companies established in France - will assess and address the risks of serious harms to people and the planet under annual, public vigilance plans. Liability would apply when companies default on their obligations, including the absence of a plan or faults in its implementation.⁴⁷

3.57 Although AGD did not address the issue of supply chains or the work of the Supply Chains Working Group in its submission, the AGD website provides the following information about this issue:

In 2014, the Minister for Justice, the Hon Michael Keenan MP, announced the formation of the Supply Chains Working Group to examine ways to address serious forms of labour exploitation in the supply chains of goods and services. The working group comprised experts from government, business, industry, civil society, unions and academia. The working group finalised its work programme in December 2015 and reported to the Government in early 2016. Following the working group's report, the Government announced that it would strengthen its response to human trafficking and slavery, including by:

- creating a suite of awareness-raising materials for business
- further considering the feasibility of a model for large businesses in Australia to publicly report on their actions to address supply chain exploitation
- examining options for an awards program for businesses that take action to address supply chain exploitation, and
- exploring the feasibility of a non-regulatory, voluntary code of conduct for high risk industries.⁴⁸

3.58 In its evidence to the committee, and consistent with the government's most recent IDC report, the AGD noted that the Commonwealth government is 'considering Australia's response to serious forms of labour exploitation, including in supply chains'.⁴⁹

Committee view

3.59 The committee shares the concerns raised by some submitters and witnesses that forced labour exists in the supply chains of some goods and services sold in Australia. The committee is supportive of measures that seek to address this issue; in this regard, the committee notes that the Joint Foreign Affairs, Defence and Trade Committee is examining in its inquiry into a Modern Slavery Act:

47 European Coalition for Corporate Justice, *French Corporate Duty of Vigilance Law: Frequently Asked Questions*, <http://corporatejustice.org/documents/publications/french-corporate-duty-of-vigilance-law-faq.pdf> (accessed 7 July 2017), p. 1.

48 AGD, *Australia's response to human trafficking*, <https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Pages/Australias-response-to-human-trafficking.aspx> (accessed 21 June 2017).

49 Ms Catherine Hawkins, First Assistant Secretary, Criminal Justice Policy and Programmes Division, AGD, *Committee Hansard*, 10 May 2017, p. 2.

- the prevalence of modern slavery in the domestic and global supply chains of companies, businesses and organisations operating in Australia; and
- identifying international best practice employed by governments, companies, businesses and organisations to prevent modern slavery in domestic and global supply chains, with a view to strengthening Australian legislation.

Chapter 4

Sexual servitude

4.1 This chapter considers sexual servitude and human trafficking in the context of the sex industry. It also discusses the emerging issue of cybersex trafficking, particularly of children.

Prevalence of trafficking in the sex industry

4.2 The extent to which human trafficking, slavery and slavery-like practices occur in the Australian sex industry was the subject of contested views during the course of the inquiry. Some submitters and witnesses argued that they are not a common occurrence in the industry, while others claimed that most migrant and culturally and linguistically diverse (CALD) sex workers are subjected to some form of exploitation.

4.3 As noted in chapter 2, in 2015–16 the Australian Federal Police (AFP) received 169 new referrals in respect of human trafficking, slavery and slavery-like offences, 39 of which related to sexual exploitation.¹ The Attorney-General's Department (AGD) provided information about the breakdown of referrals to the AFP for sexual exploitation and exploitation in other industries since 2004:

Between 2004 and March 2017, the [AFP] referred 341 suspected trafficked people to the Australian Government's Support for Trafficked People Program (Support Program). A total of 191 of these referrals related to alleged exploitation in the sex industry. A further 113 of these referrals related to exploitation outside the sex industry.

Historically, the majority of suspected trafficked people identified by Commonwealth authorities have been women who have experienced exploitation in the sex industry. However, in recent years Australian Government statistics show that the number of suspected trafficked people identified being exploited in other industries and in intimate relationships has been comparable to those subjected to exploitation in the sex industry.

Since 2009, 117 of the 255 suspected trafficked people referred to the Support Program have been allegedly subject to exploitation in the sex work industry. The remaining 138 suspected trafficked people were allegedly subject to exploitation in industries other than the sex work industry or through forced marriage.²

4.4 However, other submitters and witnesses rejected suggestions that human trafficking, slavery and slavery-like practices were a feature of the sex industry.

1 Commonwealth of Australia, *Trafficking in Persons: The Australian Government Response 1 July 2015–30 June 2016*, 2016, p. 20

2 Attorney-General's Department (AGD), answers to questions on notice, 10 May 2017 (received 26 June 2017), p. 12.

4.5 For example, the Scarlet Alliance, the peak national sex worker organisation in Australia, informed the committee that, '[i]t is our assertion, along with various other sources of evidence, that trafficking is not a widespread phenomenon in the Australian sex industry'.³

4.6 The Scarlet Alliance argued that biases and misperceptions about sex workers and the sex industry were the genesis of the assumption that a large proportion of sex workers were victims of human trafficking. The Scarlet Alliance outlined the results of an investigation into the sex industry by the Department of Immigration and Border Protection (DIBP) which found that:

...between 1 January 1997 and 30 December 2012, across that five-year period, 5,378 were working in the Australian sex industry, the majority of whom were working lawfully and, of those people, 21 per cent had held student visas. Student visa holders working in the sex industry represent less than one per cent of all student visa holders. It is like the massage parlour issue. Because of the assumptions that people have, they see every Asian student on a student visa as a potential sex worker, or they see every massage parlour as an illegal sex industry premises, and that is absolutely not the case.⁴

4.7 The Scarlet Alliance also discussed the practice of sex workers choosing to immigrate to Australia to perform sex work, emphasising the importance of such workers knowing their rights in order to prevent exploitation.⁵ The committee was informed that such migrants use a 'variety' of visas to enter Australia:

We did examine that in our research project [a two-year national research project of migrant sex workers in Australia, conducted in conjunction with the Australian Institute of Criminology]. We found that there was a percentage under student visas and a percentage under work visas. These are the more shorter term working visas through reciprocal arrangements that Australia has that eligible people under 30 are able to access. Spousal and partner visas are sometimes used. It was a spread across the different kinds of working visas.⁶

4.8 The Vixen Collective, a representative body for sex workers in Victoria and a member organisation of Scarlet Alliance, informed the committee that it had not seen evidence of human trafficking in Victoria.⁷

4.9 By contrast, Collective Shout stated:

...three-quarters of the Australian sex industry is located outside of the legalised regime—in Victoria and New South Wales that is. We find Asian

3 Ms Jules Kim, Chief Executive Officer, Scarlet Alliance, *Committee Hansard*, 5 May 2017, p. 32.

4 Ms Kim, Scarlet Alliance, *Committee Hansard*, 5 May 2017, p. 34.

5 Ms Kim, Scarlet Alliance, *Committee Hansard*, 5 May 2017, pp 35–36.

6 Ms Kim, Scarlet Alliance, *Committee Hansard*, 5 May 2017, p. 33.

7 Ms Jane Green, Spokesperson, Vixen Collective, *Committee Hansard*, 4 May 2017, p. 33.

women densely populated within the industry that falls outside of regulatory measures. Around 45 per cent of these women, according to empirical research, either have poor or fair English language skills, which means, effectively, that they are not communicating at any proficient standard.

...You cannot assume that these women understood what was happening and what is happening to them now by virtue of the fact that they cannot read anything that is produced by Australian regulatory bodies, so we cannot say that they understand what is going on... We do not know what is happening [outside the legal] industry.⁸

4.10 Collective Shout also informed the committee that women, mostly from China and South Korea, are provided working holiday visas or student visas by 'migration agents or local pimps'⁹ and referred to a number of studies that illustrated that Asian women were being trafficked into Australia on visas for the purpose of working in the Australian sex industry.¹⁰

4.11 Representatives of the United Nations Office on Drugs and Crime (UNODC) similarly informed the committee that there are 'significant trafficking flows from South-East Asia potentially to Australia, mainly women for sexual exploitation, but also potentially for labour exploitation'.¹¹ The UNODC continued: 'from where we sit it looks like a lot of sex exploitation cases are taking place in Australia' but generally, not many people are being forced to immigrate to Australia from South-East Asia.¹²

4.12 The Coalition Against Trafficking in Women in Australia (CATWA) discussed the ways in which exploitation is occurring in the sex industry:

Of the evidence we have available—which, like I say, is often quite limited—there is variation. There is not one single model, but, of what has been exposed, debt bondage is very common particularly in the trafficking of women from South-East Asia. It is less common that women would be, say, forced at the point of departure to come than that they are brought under deception, which of course under the Palermo protocol makes it trafficking. Any form of deception, coercion or even power imbalance does. In the cases identified, women often might know they are not coming to work in the sex industry. That is a very common one. They might be told they are waitressing. They might be working in a massage parlour. Then, in actual fact, once they are here, their passports are taken and they are told

8 Dr Caroline Norma, Consultant, Collective Shout, *Committee Hansard*, 4 May 2017, pp 2–3.

9 Dr Norma, Collective Shout, *Committee Hansard*, 4 May 2017, p. 3.

10 Collective Shout, *Submission 1*, pp 2–3.

11 Mr Jeremy Douglas, Regional Representative, Southeast Asia and the Pacific, United Nations Office on Drugs and Crime (UNODC), *Committee Hansard*, 4 May 2017, p. 45.

12 Mr Benjamin Smith, Regional Programme Coordinator, Human Trafficking/Smuggling of Migrants, UNODC, *Committee Hansard*, 4 May 2017, p. 45.

they owe tens of thousands of dollars—sometimes hundreds of thousands of dollars—and they have to work that off.¹³

4.13 Indeed, the Inner South Community Health Ltd (ISCH), which provides 'drop-in' services for sex workers in the Victorian sex industry,¹⁴ stated that although representatives from ISCH are not meeting sex workers who have been trafficked into the sex industry, such people 'are more likely to be in establishments that are going to be less encouraging to allow us in in the first place'.¹⁵

4.14 In order to address the prevalence of clandestine sex trafficking into Australia, CATWA therefore recommended:

...that demand for sexual services be recognised as fuelling sex trafficking and, as such, be discouraged in line with the [*Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime*]. Demand for sexual services must therefore be explicitly addressed in all policy attempts to combat trafficking and that state laws regarding prostitution be consistent with these attempts. The legislative approach that best fits these needs is the Nordic Model...which decriminalises all prostituted persons but discourages demand for sexual exploitation by prohibiting pimping and sex buying.¹⁶

4.15 This legislative approach, discussed further in paragraphs 4.27-4.40, was also recommended by Nordic Model Australian Coalition (NorMAC) as a way to address sex trafficking into Australia.¹⁷

Committee view

4.16 Despite the conflicting evidence about the prevalence of human trafficking, slavery and slavery-like practices in the Australian sex industry, a consistent message was that this is an issue that is, for obvious reasons, difficult to quantify. The evidence from the Scarlet Alliance and the Vixen Collective suggests that in the regulated sex industry, trafficking of sex workers may not be a regular occurrence. However, as other submitters and witnesses highlighted, unscrupulous and deceptive operators who traffic people for the purpose of sex work are more likely to operate outside the regulated industry. Similarly, migrant and CALD sex workers, on account of cultural and language differences, as well as fear about reprisal and/or their migration status, may not know where they can seek support and advice, or may be unwilling to do so.

4.17 The committee believes that the lack of comprehensive and up-to-date data on the prevalence of sex trafficking both to and within Australia is a problem. Only once

13 Dr Meagan Tyler, Member of the Executive Committee, Coalition Against Trafficking in Women in Australia (CATWA), *Committee Hansard*, 4 May 2017, p 14.

14 Inner South Community Health Service Ltd (ISCH), *Submission 12*, p. 2.

15 Mr Alan Murnane, General Manager, ISCH, *Committee Hansard*, 4 May 2017, p. 2.

16 CATWA, *Submission 3*, p. 8.

17 Nordic Model Australian Coalition, *Submission 22*, p. 3.

accurate data is available will the quantum of the problem be apparent, and consideration can be given to how it should be addressed. As such, the committee recommends that balanced and constructive research into the prevalence of sex trafficking into and within Australia is conducted, in collaboration with organisations such as Scarlet Alliance given their expertise and networks.

Recommendation 13

4.18 The committee recommends that the Commonwealth government commission balanced and constructive research into the prevalence of sex trafficking into and within Australia.

4.19 The committee is concerned by the evidence of Collective Shout and CATWA that some women are trafficked into the Australian sex industry on the promise of other types of work and/or under the guise of a student visa. The committee shares these concerns, and suggests that such exploitation can be reduced by strengthening Australia's visa systems such that there is less opportunity for third parties to abuse the visa process for the purpose of sex trafficking into Australia.

Recommendation 14

4.20 The committee recommends that the Commonwealth government strengthens visa systems to prevent involuntary human trafficking into the sex industry in Australia.

International engagement

4.21 The Scarlet Alliance described some of its work with sex workers intending to immigrate to Australia.

4.22 Ms Jules Kim, Chief Executive Officer of the Scarlet Alliance discussed the benefits of engaging with sex workers destined for Australia through the Scarlet Alliance Migration Project. The project funds the Empower Foundation, which enables the Scarlet Alliance to disseminate information to sex workers in Thailand considering travelling to Australia about their rights and responsibilities in Australia.¹⁸ Ms Kim elaborated:

That has been incredibly successful and we have been able to disseminate a lot of information to Thai sex workers. It has been borne out in the reduction in numbers of Thai sex workers who have experienced exploitation. Part of the rationale behind funding that particular partnership was, earlier in the response, Thai sex workers were overrepresented in the numbers that were coming to the attention of the AFP and to anti-trafficking efforts. We did a consultation with people that had experienced exploitation or had been involved in trafficking investigations to ask them, 'What could we have done differently, or what support could have allowed you to make different choices at that point?' Through that initial consultation, a lot of the information was, 'Well, we didn't know what our rights were.' Immigration does not exactly translate information, for the

18 Ms Kim, Scarlet Alliance, *Committee Hansard*, 5 May 2017, p. 35.

most part, either. It was like, 'If we had simple information on our rights and responsibilities in terms of migration and legal information, that would be a huge step in being able to reduce any vulnerabilities to exploitation.'¹⁹

4.23 The Scarlet Alliance considered the project to be 'a cost-effective, practical way for the government to support trafficking prevention efforts in Australia'.²⁰

Committee view

4.24 The committee acknowledges the importance of the work undertaken by the Scarlet Alliance Migration Project to combat sex trafficking and the potential exploitation of these migrant sex workers in Australia. The committee is supportive of this project and the model it demonstrates, which could also be effective if replicated in other countries, particularly those identified as source countries for victims of sex trafficking into Australia such as China and South Korea.

4.25 Consistent with its view and recommendations in relation to other types of migrant workers (see paragraphs 3.17 to 3.21), the committee believes Australian governments should support and fund initiatives to inform migrant sex workers about their legal rights and obligations both pre-departure and post-arrival in Australia.

Recommendation 15

4.26 The committee recommends that Australian governments support and fund initiatives to inform migrant sex workers about their legal rights and obligations both pre-departure and post-arrival in Australia.

Criminalisation of the sex industry

4.27 The costs and benefits of criminalising the sex industry in Australia was also a source of contention during the course of the inquiry. The committee heard conflicting evidence from submitters and witnesses supportive of criminalising the sex industry as a means by which to combat human trafficking, and on the other hand, those that supported decriminalisation.

4.28 For example, Collective Shout encouraged the committee to:

...fundamentally understand that prostitution is a business of trafficking and to tackle it accordingly by criminalising the sex industry's customers, criminalising the sex industry's business people, and joining countries like Ireland, Northern Ireland, Canada, France, Norway, Iceland, Korea and Sweden in doing so.²¹

4.29 The approach taken by the countries to which Collective Shout referred is commonly known as the 'Nordic model'. The committee received a number of

19 Ms Kim, Scarlet Alliance, *Committee Hansard*, 5 May 2017, p. 35.

20 Ms Kim, Scarlet Alliance, *Committee Hansard*, 5 May 2017, p. 34.

21 Dr Norma, Collective Shout, *Committee Hansard*, 4 May 2017, p. 2.

submissions in favour of the Nordic model.²² In its submission, CATWA described the model and outlined its benefits:

The Nordic Model constitutes asymmetric decriminalisation: it directly addresses demand for prostitution and trafficking by criminalising sex buyers and third parties who profit from prostitution, while simultaneously supporting the victims/survivors of prostitution and trafficking.

The Nordic Model...is a legislative approach which recognises that prostitution is a form of violence against women and, more broadly, undermines women's equality.

The Nordic Model functions by decriminalising prostituted persons but prohibiting pimping, brothel owning and the purchase of sex.²³

4.30 However, the Scarlet Alliance emphasised that the previous Special Rapporteur on trafficking in persons, especially women and children, stated that she found no evidence that this model reduces trafficking.²⁴ The Scarlet Alliance also stated that:

...trafficking can be prevented within the existing infrastructure in Australia. However, a prevention approach needs to continue to be invested in, and in fact a significant investment needs to occur within government for the prevention approach to trafficking. Australia predominantly has maintained a criminal justice approach to trafficking, focusing on police and surveillance, but increasing regulation, policing and surveillance are not effective approaches to combating trafficking or exploitation. We need to shift to a comprehensive, multifaceted and evidence-based prevention approach which supports culturally and linguistically appropriate sex worker peer education, in-country partnerships with sex worker organisations in countries of origin, decriminalisation of sex work and the accessibility of civil remedies for those who have experienced exploitation.

... There is no evidence that criminalisation will reduce trafficking. In fact, we believe it does the opposite by eroding the human and civil rights of sex workers, including migrant sex workers, by reducing sex worker control over our work and workplaces. Criminalisation of our work, our clients or our workplaces makes us vulnerable to exploitation.²⁵

4.31 Similar evidence was given by the Vixen Collective, which argued against the type of criminalisation established under the Nordic model, on the basis that:

...it comprehensively cuts off the ability of sex workers to access assistance from police when we are subject to violence, which is of significant concern; and it cuts off access to justice through the courts. It also cuts off access to those remedies for potential victims of human trafficking, and has

22 See, for example, The Nordic Model Australia Coalition, *Submission 22*, p. 1; Mr Peter Abetz MP, *Submission 19*, p. 10.

23 Coalition Against Trafficking in Women Australia, *Submission 3*, p. 4.

24 Ms Kim, Scarlet Alliance, *Committee Hansard*, 5 May 2017, p. 30.

25 Ms Kim, Scarlet Alliance, *Committee Hansard*, 5 May 2017, pp 30–31.

the tendency to push sex work underground and make it less visible to police when things are going wrong both for sex workers and for victims of human trafficking, which is not advantageous.²⁶

4.32 Indeed, Scarlet Alliance, Vixen Collective and a number of other organisations advocated for the full decriminalisation of the sex industry.²⁷ Vixen Collective defined decriminalisation as:

...the removal of all criminal laws relating to the sex industry, allowing sex work to be regulated like other work - this does not mean no regulation, but that sex work should be regulated like any other work.²⁸

4.33 The Vixen Collective also listed a number of benefits of decriminalisation, including:

- Decriminalisation recognises sex work as work, helping to break down stigma against sex workers and reduce discrimination.
- It has been shown that [sexually transmitted infection] rates and safe sex outcomes are maximised under decriminalisation.
- Under decriminalisation there is less waste of police resources on enforcement and sex workers are better able to access assistance when in need because of improved relations with police.
- It has been shown that sex work as regulated under decriminalisation has little to no amenity impacts.
- Access to justice is improved for sex workers under decriminalisation, including an improved ability to pursue criminal cases against those who perpetrate violent or sexual offences against sex workers, but also civil protections (such as restraining orders).
- Decriminalisation would give sex workers better access to workplace safety, including state apparatus such as WorkSafe Victoria and the Fair Work Ombudsman.
- Decriminalisation would give sex workers greater ease to access health services, without the requirement to 'out' themselves - as is required due to mandatory testing under current licensing regulations - which has been shown to lead to discriminatory treatment and exclusion from medical services.²⁹

4.34 ISCH submitted that 'Commonwealth advocacy for decriminalisation of sex work by the States would also be an effective strategy to minimise trafficking of sex workers', referring to a 2015 Amnesty International report that stated:

...there is no evidence to suggest that decriminalisation results in more trafficking. To the contrary, it finds that when sex work is decriminalised,

26 Ms Green, Vixen Collective, *Committee Hansard*, 4 May 2017, p. 32.

27 See, for example, Sex Workers Outreach Project, *Submission 2*, p. 3; Scarlet Alliance, *Submission 5*, p. 4; Vixen Collective, *Submission 20*, p. 4; ISCH, *Submission 12*, p. 4.

28 Vixen Collective, *Submission 20*, p. 7.

29 Vixen Collective, *Submission 20*, p. 8.

sex workers are better able to work together and demand rights, leading to better working conditions and standards and greater oversight of the commercial sex industry and potential trafficking within it. When they are not threatened with criminalisation, sex workers are also able to collaborate with law enforcement to identify traffickers and victims of trafficking.³⁰

4.35 By contrast, Collective Shout argued in its supplementary submission:

A 2015 study carried out in NSW surveyed 309 men as customers of the sex industry, and found these men had mostly been prostituting women even before the sex industry was decriminalised in that state: ‘the average length of time men had been procuring sexual services was 21 years’. In other words, the men, in general, had previously ignored prevailing laws in NSW. They were frequent customers of the NSW sex industry: ‘almost 59 per cent of the men who answered this question (based on n =262) stated they purchased sex weekly, fortnightly or monthly (n =154)’. Furthermore, the ‘[m]en were asked if they would stop purchasing sexual services if it was recriminalized in New South Wales. The majority of men indicated that they would not (69.3 per cent, n =180)’.³¹

4.36 Regulation of the sex industry was also raised as an important issue. The Scarlet Alliance made the following comments about regulation of the sex industry:

Regulatory tools that have been used to monitor, regulate, and license the sex industry in Victoria have disadvantaged sex workers, insufficiently protected the rights of marginalised groups and enabled the unfair treatment of sex workers by Victorian Police, Immigration, and the AFP. This has not resulted in safer or fairer workplaces; these bodies have not found evidence of human trafficking despite regular compliance checks of licensed brothels, and have managed only to deport migrant sex workers working of their own volition.³²

4.37 Indeed, the Scarlet Alliance considered that as violations of sex industry regulations are not trafficking offences, they should not be treated in this manner, as this harms sex workers ‘and is the result of police acting on perceptions rather than responding to evidence’.³³

4.38 ISCH argued against regulation specific to the sex industry, on the basis that the human trafficking offences in the *Criminal Code Act 1995* (Criminal Code) are effective to address any such offences that might arise in the sex industry:³⁴

A non-universal response directly related to trafficking for sex work would further encourage ‘the stereotype that exploitation and the sex industry are inherently linked and therefore migration for sex work equals trafficking’

30 ISCH, *Submission 12*, p. 4, citing *Policy to Protect the Human Rights of Sex Workers*, 2015.

31 Collective Shout, *Submission 24*, p. 2.

32 Scarlet Alliance, *Submission 5*, p. 9.

33 Scarlet Alliance, *Submission 5*, p. 19.

34 ISCH, *Submission 12*, p. 3.

(Kim and Jefferies, 2013), which is widespread and often recycled in the media.³⁵

Committee view

4.39 The committee has not formed a view about the appropriateness or otherwise of implementing the Nordic model in Australia. The committee acknowledges the opposing and often passionately held views of submitters and witnesses on this issue, and stresses that any consideration of criminalised or decriminalised models for regulating the sex industry as a means of addressing sex trafficking must take into account the:

- benefits and harms likely to result for sex workers; and
- extent to which any model will reduce human trafficking in the sex industry.

4.40 The committee also reiterates the need for balanced and constructive research into the prevalence of sex trafficking into and within Australia so that the quantum of the problem can be properly understood before possible solutions are proffered.

Cybersex trafficking

4.41 International Justice Mission Australia (IJM), which partners with local authorities and organisations to combat 'slavery, sex trafficking, online sexual exploitation of children, sexual violence, police abuse of power, property grabbing and citizenship rights abuse',³⁶ raised particular concerns about the increasing prevalence of cybersex trafficking.

4.42 IJM defined cybersex trafficking as 'the live streaming sexual exploitation of children viewed over the internet', noting that it was 'unimaginable before the digital age' and 'involves different criminals and different, often younger, victims' than 'traditional trafficking'.³⁷ IJM elaborated:

Before the proliferation of the internet, customers had to physically go to a bar or brothel to purchase sex from victims who were often young women or teenagers. Now paedophiles and abusers located anywhere in the world but typically from countries like our own can exploit children without ever leaving the comfort of their own home.³⁸

4.43 In its submission, IJM stated that '[n]ot enough is currently being done to address these crimes in the Australian intergovernmental response to human trafficking'.³⁹ For example, IJM considered that cybersex trafficking should be directly

35 ISCH, *Submission 12*, p. 3–4.

36 International Justice Mission Australia (IJM), *Submission 31*, p. 1.

37 Ms Kimberly Randle, Director, Corporate and Legal, IJM, *Committee Hansard*, 5 May 2017, p. 7.

38 Ms Randle, IJM, *Committee Hansard*, 5 May 2017, p. 7.

39 IJM, *Submission 31*, p. 2.

addressed by the existing strategies within the *National Action Plan to Combat Human Trafficking and Slavery 2015–19*.⁴⁰

4.44 IJM provided detail about the global growth of cybersex trafficking, including in Australia. For example, IJM noted that:

- There has been an increase in the number of convictions under ss 474.26 and 474.27 coming before courts in NSW and Victoria. Data from NSW and Victoria from 2010 to October 2016 indicates that there have been at least 279 convictions for offences under s 474.26. Data from Victoria alone indicates there were 124 convictions under s 474.27 from 2010 to 2015. By contrast from October 2008 to November 2013, there were only 150 cases involving s 474.26 or s 474.27 in NSW Higher Courts; and
- In February 2015, the AFP reported receiving 5617 referrals of online child sexual exploitation in the 12 months prior, an increase of 54% from the period before. The figure for the whole of 2015 was 11,000.⁴¹

4.45 One of the recommendations made by IJM was, therefore, that the AFP should be adequately resourced 'to improve their investigation of cybersex trafficking cases, particularly through the use of covert personas'.⁴²

4.46 The committee also heard about the existing legal framework used to prosecute these offences. IJM referred to the current provisions relating to a carriage service to procure persons under 16 years of age at sections 474.20 and 474.26 of the Criminal Code as being inadequate to address cybersex trafficking, as:

...the average sentence is significantly lower than that maximum sentence, and the maximum sentence for human trafficking offences under the Commonwealth Criminal Code is significantly higher than that 15 years.

4.47 In response, the IJM made a number of recommendations to the committee in respect of legislative reform.⁴³ For example, IJM recommended that consideration should be given 'to legal avenues by which to prosecute cybersex trafficking offences as a sexual servitude or slavery offence, or as aiding or procuring such offences'.⁴⁴

4.48 The committee also heard from representatives of the UNODC about the prevalence of cybersex trafficking. Specifically, Mr Benjamin Smith informed the committee that:

...it is our understanding that the numbers are quite high. You are particularly looking at situations where you have, say, children in the Philippines or even now in Thailand—children based here—who are being

40 IJM, *Submission 31*, p. 2.

41 IJM, *Submission 31*, p. 9 (citations omitted). Section 474.26 of the *Criminal Code Act 1995* addresses using a carriage service to procure persons under 16 years of age, and section 474.27 addresses using a carriage service to 'groom' persons under 16 years of age.

42 IJM, *Submission 31*, p. 2.

43 For those recommendations, see: IJM, *Submission 31*, p. 2.

44 IJM, *Submission 31*, p. 2.

sexually exploited on webcams. These webcams are then streaming the content live to countries all over the world, including Australia. That sort of trafficking is taking place in that way.⁴⁵

4.49 Mr Jeremy Douglas added:

We have worked with a couple of countries in the region to start to criminalise online child pornography. In late 2015, we were successful in getting Thailand to criminalise this. But there are still quite a few countries here in the region that have not criminalised this offence, so there is a very significant gap in the laws within the region. It is particularly across the Mekong. It is easy for people to set up with very little criminal implication within these countries and, as Benjamin said, to stream this all over the world. We are actually looking right now at taking the lessons that we had from the Thai experience and the law that was developed here and trying to promote that within some of the neighbouring countries.⁴⁶

Committee view

4.50 The committee shares the concerns raised by IJM and the UNODC about the growing prevalence of cybersex trafficking, particularly as babies and children are the most common victims. The committee considers that more should and must be done by the Commonwealth government to address this horrific crime where it is perpetrated by an Australian or within the Australian jurisdiction (irrespective of the location of the victim).

4.51 On the basis of the evidence presented to it, the committee recommends that the Commonwealth government investigates the adequacy of current legislative provisions and criminal offences to address cybersex trafficking and makes legislative amendments as necessary where current arrangements, including the provisions of the Criminal Code, are ineffectual.

Recommendation 16

4.52 The committee recommends that the Commonwealth government investigates the adequacy of current legislative provisions and criminal offences to address cybersex trafficking and makes legislative amendments as necessary where current arrangements, including the provisions of the *Criminal Code Act 1995*, are ineffectual.

45 Mr Smith, UNODC, *Committee Hansard*, 4 May 2017, p. 47.

46 Mr Douglas, UNODC, *Committee Hansard*, 4 May 2017, p. 47.

Chapter 5

Forced marriage

5.1 This chapter addresses a number of issues with respect to forced marriage, a slavery-like offence introduced into Commonwealth legislation in 2013. The chapter first sets out the definition of a forced marriage, as distinct from an arranged marriage. It then examines the prevalence of forced marriage in Australia, and concludes with an examination of the Commonwealth government's response to forced marriage.

What is forced marriage?

5.2 In 2013, amendments were made to the *Criminal Code Act 1995* (Criminal Code), including the insertion of the offence of 'forced marriage'.¹ The Criminal Code and the *Crimes Act 1914* were also amended in order to provide protections for vulnerable witnesses giving evidence in Commonwealth criminal proceedings, including victims of human trafficking and slavery.² Subsequently, in 2015, the definition of 'forced marriage' in the Criminal Code was expanded, and the related penalties were increased.³

5.3 Forced marriage appears at section 270.7A of the Criminal Code and is defined as follows:

- (1) A marriage is a forced marriage if one party to the marriage (the victim) entered into the marriage without freely and fully consenting:
 - (a) because of the use of coercion, threat or deception; or
 - (b) because the party was incapable of understanding the nature and effect of the marriage ceremony.
- (2) For the purposes of subsection (1), marriage includes the following:
 - (a) a registered relationship within the meaning of section 2E of the *Acts Interpretation Act 1901*;
 - (b) a marriage recognised under a law of a foreign country;
 - (c) a relationship registered (however that process is described) under a law of a foreign country, if the relationship is of the same, or a similar, type as any registered relationship within the meaning of section 2E of the *Acts Interpretation Act 1901*;

1 The offences of forced labour, organ trafficking and harbouring a victim were also introduced, and amendments were also made to the *Crimes Act 1914*, the *Migration Act 1958*, the *Proceeds of Crime Act 2002* and the *Telecommunications (Interception and Access) Act 1979*.

2 *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013* and *Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protection and Other Measures) Act 2013*.

3 Attorney-General's Department (AGD), *Human trafficking and slavery legislation*, <https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Pages/Human-trafficking-legislation.aspx> (accessed 6 April 2017).

(d) a marriage (including a relationship or marriage mentioned in paragraph (a), (b) or (c)) that is void, invalid, or not recognised by law, for any reason, including the following:

(i) a party to the marriage has not freely or fully consented to the marriage (for example, because of natural, induced or age-related incapacity);

(ii) a party to the marriage is married (within the meaning of this subsection) to more than one person.

Note: Section 2E of the *Acts Interpretation Act 1901* covers relationships registered under a law of a State or Territory that are prescribed by regulations under that Act.

(3) Paragraph (1)(a) applies whether the coercion, threat or deception is used against the victim or another person.

(4) For the purposes of proving an offence against this Division or Division 271, a person under 16 years of age is presumed, unless the contrary is proved, to be incapable of understanding the nature and effect of a marriage ceremony.

Note: A defendant bears a legal burden in relation to proving the contrary (see section 13.4).

5.4 The maximum penalty for a forced marriage offence is seven years, or nine years for an aggravated offence.⁴ Where the victim is under the age of 18 and is taken overseas for the purpose of the forced marriage, the maximum penalty increases to 25 years' imprisonment.⁵

5.5 A forced marriage is *not* the same as an arranged marriage, the distinction being the lack of consent in a forced marriage in contrast with an arranged marriage. As Anti-Slavery Australia (ASA) explained:

It is a consent issue. It is legal. There is no issue. There is no breach of Australian law through an arranged marriage, and in fact there are many successful arranged marriages in Australia.

A forced marriage is different technically. It is a marriage where there has been conduct—effected through coercion, for example—that has had the effect of taking away a person's ability to fully and freely consent to the marriage. It is really a forced marriage. It is where there is no full and free consent to that marriage, and there have been many examples of forced marriages in the Australian context—for example, 'Unless you marry this man, I will harm another person,' or, 'Unless you marry this person, your sister will not be able to finish her schooling.' There is coercion and threat that can take away a person's ability to fully and freely consent. In the case law, they use the expression 'having the will being overborne'. There is no ability to consent. So it is an issue about coercion and is different from arranged marriage.

4 *Criminal Code Act 1995*, s. 270.7B.

5 *Criminal Code Act 1995*, s. 271.4.

Sometimes, though, some of the cases use the expression 'the point at which consent vanishes'. So there is a grey line somewhere, sometimes, between an arranged marriage and a forced marriage. But many of the cases that we have seen have been quite clearly on the forced marriage side of the spectrum.⁶

Forced child marriage

5.6 Forced child marriage occurs when the person that is the victim of a forced marriage is less than 18 years of age. Such an offence is defined as an aggravated offence, carrying a maximum of nine years' imprisonment.⁷

5.7 In its supplementary submission, The Salvation Army—Freedom Partnership to End Modern Slavery (The Salvation Army) discussed the findings on forced child marriage in Australia from a study undertaken by the National Children's Youth and Law Centre:

...between 2011-2013, 250 cases were identified by research respondents. From 2014-2015, 28% of total matters investigated by the Australian Federal Police [(AFP)] were related to early and forced marriage. Between 8 March 2013-31 July 2015, 49 referrals of forced marriage were received, of which 41 were accepted for further investigation; 32 of these matters related to persons under the age of 18.⁸

5.8 On the issue of forced child marriage in the Asia-Pacific region, the United Nations Office on Drugs and Crime (UNODC) stated:

As a phenomenon, the idea of forced marriage is particularly prevalent in the Mekong region—examples of Vietnamese women being forced to marry Chinese nationals, for example. That is the classic example. As to the extent to which these women are children, I am not so sure; although I know there are some cases where they have been teenage brides, for example. We do not work specifically on this issue, but we do handle this issue insofar as we work with law enforcement in these regions and help them to combat trafficking writ large. We have not had any specific initiatives that look on the issue of forced marriage.⁹

Prevalence of forced marriage in Australia

5.9 Data for the 2015–16 financial year indicates that the number of referrals to the AFP and investigations by the AFP relating to forced marriage have increased

6 Professor Jennifer Burn, Director, Anti-Slavery Australia (ASA), University of Technology Sydney, *Committee Hansard*, 5 May 2017, p. 19.

7 Pursuant to the definition of 'aggravated offences' at s. 270.8 of the *Criminal Code Act 1995*.

8 The Salvation Army—Freedom Partnership to End Modern Slavery (The Salvation Army), *Supplementary submission 25.1*, p. 3 (citations omitted).

9 Mr Benjamin Smith, Regional Programme Coordinator, Human Trafficking/Smuggling of Migrants, United Nations Office on Drugs and Crime (UNODC), *Committee Hansard*, 4 May 2017, p. 46.

each year since March 2013, when the new offences were first introduced into the Criminal Code.¹⁰

5.10 In 2015–16, the AFP received 69 referrals for forced marriage offences.¹¹ The AFP's practice in respect of responding to referrals is set out in the government's *Trafficking in Persons* report:

Where there was sufficient evidence, these matters were referred to the CDPP. Australia also sought mutual legal assistance to support ongoing human trafficking and slavery-related investigations during the reporting period, where evidence was available offshore.¹²

5.11 Further information about prosecutions was provided by the Attorney-General's Department (AGD):

...referrals have been received involving victims of alleged forced marriages that have occurred, or were planned to occur, both domestically and internationally.

There has only been one forced marriage matter established at law. In this case the marriage occurred in Australia. The victim in this matter was an Iranian national, however was not brought to Australia solely for the purpose of a forced marriage.¹³

5.12 The Salvation Army noted that the AFP has reported that forced marriage offences account for almost 50 per cent of the AFP's investigations¹⁴ into human trafficking, slavery and slavery-like offences,¹⁵ commenting that '[u]nfortunately, the current design of the framework has not delivered prosecutions; has prevented many victims from receiving ongoing support; and has not reduced the prevalence of the practice'.¹⁶

5.13 The Commonwealth government has acknowledged that a different investigative approach is required for forced marriage, compared to other human trafficking and slavery matters.¹⁷ It was noted in the most recent *Trafficking in Persons* report that:

10 Commonwealth of Australia, *Trafficking in Persons: The Australian Government Response 1 July 2015–30 June 2016*, 2016, p. 20.

11 Commonwealth of Australia, *Trafficking in Persons: The Australian Government Response 1 July 2015–30 June 2016*, 2016, p. 20.

12 Commonwealth of Australia, *Trafficking in Persons: The Australian Government Response 1 July 2015–30 June 2016*, 2016, p. 20.

13 AGD, answers to questions on notice, 10 May 2017 (received 26 June 2017), p. 2.

14 The Salvation Army, *Submission 14*, p. 3.

15 Commonwealth of Australia, *Trafficking in Persons: The Australian Government Response 1 July 2015–30 June 2016*, 2016, p. 20.

16 The Salvation Army, *Submission 14*, p. 3.

17 Commonwealth of Australia, *Trafficking in Persons: The Australian Government Response 1 July 2015–30 June 2016*, 2016, p. 22.

Cases of young women and girls in, or at risk of, forced marriage or serious exploitation within intimate relationships continue to be identified, with some of these cases involving young women and girls from Australia being taken overseas to be married. Since the introduction of forced marriage legislation in March 2013, this crime type has risen to represent 41 per cent of all AFP human trafficking referrals in 2015–16. While there is currently insufficient information available to determine whether human trafficking for this purpose has increased in prevalence, or whether a greater awareness has led to increased reporting, it is anticipated that matters relating to forced marriage will continue to increase in the medium term given the legislative changes and greater community engagement.¹⁸

Government response to forced marriage

5.14 Forced marriage has been identified as one of the seven key areas of focus of the *National Action Plan to Combat Human Trafficking and Slavery 2015–19* (NAP).¹⁹ The NAP provides that:

...forced marriage has been criminalised in Australia since the entry into force of specific offences in the Criminal Code on 8 March 2013. Over the life of the National Action Plan, a key area of focus will be to refine the Australian Government response to this issue including the provision of support and appropriate referral pathways for people in, or at risk of forced marriage. Work will also continue to finalise the development and dissemination of a Forced Marriage Community Pack for frontline officers and service providers, vulnerable groups, and the general public including: information and FAQ sheets on forced marriage; a small fold-away booklet for people in, or at risk of forced marriage; a how to guide (including a template) on preparing a forced marriage safety plan; a media fact sheet; a forced marriage information booklet for agencies, community organisations and service providers; and, a website to assist people in, or at risk of forced marriage with information, links to services and free online individualised advice.²⁰

5.15 The following sections consider the Commonwealth government's response to forced marriage by examining the effectiveness of existing legislative provisions; funding for NGO programs intended to reduce the prevalence of forced marriage; community education; and interagency and interstate cooperation.

18 Commonwealth of Australia, *Trafficking in Persons: The Australian Government Response 1 July 2015–30 June 2016*, 2016, p. 23.

19 Commonwealth of Australia, *National Action Plan to Combat Human Trafficking and Slavery 2015–19*, 2014, pp 19–20. The other key areas of focus are: monitoring of the 2013 legislative reforms; awareness-raising and education; exploitation in supply chains; operational protocol for minors; strengthening connectedness with States and Territories; and international and regional leadership.

20 Commonwealth of Australia, *National Action Plan to Combat Human Trafficking and Slavery 2015–19*, 2014, p. 19.

Effectiveness of existing legislative provisions

5.16 While submitters welcomed the criminalisation of forced marriage, a number of recommendations were made to the committee in respect of legislative and regulatory reform that could increase the effectiveness of the existing provisions.

5.17 For example, Australian Catholic Religious Against Trafficking in Humans (ACRATH), an organisation educating young people on the topic of human trafficking since 2005, advocated for the inclusion of forced marriage in the definition of family violence in Australia, on the basis that the family violence sector has 'vast experience in victim/survivor care, community education and development of resources'.²¹

5.18 Further, ASA considered that the following changes could be made to the Migration Regulations 1994:

- ...repeal the “would be in danger” clause currently contained within Migration Regulation 2.07AK.
- Provide for temporary family reunification for victims of human trafficking who have assisted police for 6 to 12 months or more while holding the Bridging F Visa.
- Amend the family violence provisions in the *Migration Regulations 1994* (Cth) to include circumstances where a marriage was forced such that there is no ‘genuine relationship’.²²

Protection orders

5.19 A number of organisations specifically raised concerns about the existing protection order regime. For example, ASA identified that, through its experience with this offence—discussed further below—there are 'significant gaps in the legal framework', particularly in respect to the existing family law protective jurisdiction.²³ The ASA therefore advocated for:

...the introduction of a complementary civil framework through the *Family Law Act 1975* (Cth) to address gaps in victim support and protection where any person, regardless of age, is at risk of or in a forced marriage.²⁴

5.20 In its submission, the Australian Human Rights Commission (AHRC) also identified legislative gaps and recommended that '[t]he Australian Government allow for general protective and preventative orders be issued for people over the age of 18 years in relation to forced marriage'.²⁵ This recommendation was made on the basis of the following explanation:²⁶

21 Australian Catholic Religious Against Trafficking in Humans (ACRATH), *Submission 18*, p. 8.

22 ASA, *Submission 27*, p. 15.

23 ASA, *Submission 9*, p. 29.

24 ASA, *Submission 9*, p. 29.

25 Australian Human Rights Commission (AHRC), *Submission 23*, p. 10.

26 AHRC, *Submission 23*, p. 10.

The Family Court of Australia and the Federal Circuit Court of Australia can issue protective and preventative orders for children at risk of forced marriage. However, there is currently no civil protection order available for young women aged over 18 years who are at risk of forced marriage. Such a protection order has been introduced in other jurisdictions for example, the United Kingdom Forced marriage protection order which allows those at risk or their advocates to apply for a protective order, regardless of the age of the person at risk.²⁷

5.21 The inadequacy of protective orders was also acknowledged by The Salvation Army as providing an example of where 'challenges exist' in the implementation of the forced marriage provisions.²⁸ It was noted that, pursuant to the *Family Law Act 1975* (Family Law Act), protections no longer apply when an individual reaches the age of 18.²⁹ As a result, 'any orders in place whilst the individual was under 18, such as an Airport Watch List Order, are lifted and can no longer protect the individual at risk once they turn 18'.³⁰

5.22 The Salvation Army therefore recommended that the government '[i]ntroduce Forced Marriage Protection Orders, similar to the U.K. model, which include airport watch list orders and court ordered intervention for those over the age of 18'.³¹ It was also recommended that the government:

- Integrate federal and state responses to forced marriage which include a mandatory role for state child protection agencies.
- Remove the requirement to cooperate with law enforcement for victims of trafficking. As a minimum, remove the requirement for victims of child and forced marriage and for all children.³²

5.23 In response to questions on notice, the AGD informed the committee that the ability to create border alerts specific to forced marriage has existed since October 2016, and is divided into two alert types: 'Forced Marriage – Investigations' and 'Forced Marriage – Court Order'.³³ To date, there have been 75 'Forced Marriage – Investigations' alerts, with 56 still in effect. The committee was also informed that of these 75 alerts, 33 related to people under 18 years of age, and 42 to people over 18

27 AHRC, *Submission 23*, p. 10.

28 The Salvation Army, *Supplementary submission 25.1*, p. 6.

29 The Salvation Army, *Supplementary submission 25.1*, p. 6.

30 The Salvation Army, *Supplementary submission 25.1*, p. 6.

31 The Salvation Army, *Submission 25*, p. 7. This was also discussed by ASA in its submission, made prior to the implementation of the existing watch lists in October 2016: ASA, *Submission 9*, p. 30.

32 The Salvation Army, *Submission 25*, p. 7.

33 AGD, answers to questions on notice, 10 May 2017 (received 26 June 2017), p. 8.

years of age.³⁴ The committee notes that there have been no 'Forced Marriage – Court Order' alerts.³⁵

Committee view

5.24 The committee acknowledges the various recommendations made to it to amend existing provisions of the Migration Regulations 1994 and the Family Law Act, which may serve to strengthen protections for potential victims of forced marriage. However, the committee considers the existing legislative provisions are sufficient to address this practice, and that protections for these potential victims could be strengthened by other means.

5.25 The committee welcomes the AGD's advice that border alerts relating to forced marriage have been available to Australian authorities since October 2016. However, the committee is concerned about the apparently limited protections available to people over the age of 18, and therefore considers there may be merit in extending protection orders, including court ordered alerts, to these individuals.

Recommendation 17

5.26 The committee recommends that the Commonwealth government considers extending the application of protection orders relating to forced marriage to people over 18 years of age.

Funding for non-government organisation programs

5.27 Following the introduction of the offence of forced marriage in the Criminal Code, the AGD provided specific one-off funding to three organisations:

In 2014, the Australian Government awarded a total of \$485,925 in further funding to three specialist [non-government organisations] over three years to progress outreach, education and awareness-raising activities on forced marriage issues. [ASA] received \$355,393 to develop and administer a dedicated website to provide people in, or at risk of, forced marriage with information, advice and links to support services. The website, *My Blue Sky*, was launched on 25 November 2015 and also includes a helpline and a free legal advice service primarily delivered by text message and email. ACRATH received \$61,000 to develop a unit of work and resource kit for teachers, school support staff and students in pilot schools across Australia. The Australian Muslim Women's Centre for Human Rights (AMWCHR) received \$69,532 to develop a pilot education and training program aimed at increasing the capacity of frontline organisations in vulnerable communities. The ACRATH and AMWCHR projects were pilots and were completed in December 2015.³⁶

5.28 In its submission, ASA provided an overview of the My Blue Sky website:

34 AGD, answers to written questions on notice, 12 May 2017 (received 26 June 2017), p. 25.

35 AGD, answers to questions on notice, 10 May 2017 (received 26 June 2017), p. 8.

36 AGD, *Submission 17*, p. 13.

My Blue Sky includes dedicated pages for young children and teenagers; educators and medical practitioners; as well as a page for those who are worried about a friend who may be forced to marry. Parts of the website are available in six languages with links to the [AGD] Forced Marriage Community Pack.³⁷

5.29 ASA also provided details of the website's usage in 2016, which 'highlight[s] the need for coordinated, accessible education targeted towards at-risk communities'.³⁸

My Blue Sky has received over 20 requests and referrals for assistance and legal advice concerning Australians who feared, or were subject to forced marriage during 2016. Additionally My Blue Sky has received referrals from temporary partner visa holders who have reported that they have experienced violence, preceded by a forced marriage.³⁹

5.30 Speaking on behalf of ASA, Professor Jennifer Burn informed the committee that this form of engagement with vulnerable people allows a relationship of trust to be built:

...vulnerable people can contact us confidentially and securely. They often begin the communication with a tentative question, and then we will respond. Then there will be another question or a comment. In some of our cases we have had over 40 communications with a young person fearing forced marriage before there is an instruction to take some steps and protective steps on their behalf. It is interesting to see that. That is one of the benefits of an online scheme that we had not anticipated.⁴⁰

5.31 The committee also received evidence from ACRATH, another organisation that had received government funding to respond to the practice of forced marriage. ACRATH noted that through its role educating secondary and tertiary students about human trafficking, it has identified that there is:

...a great deal of ignorance about the issues of forced marriage, about the difference between forced and arranged marriages, about the human rights of all people with regard to marriage, and about supports that are available to people, mostly girls and young women, who are facing forced marriage.⁴¹

5.32 Indeed, ACRATH suggested to the committee that it is necessary for schools and the community sector to educate parents about the law with respect to forced marriage, but also the social detriments of this practice.⁴²

37 ASA, *Submission 9*, p. 28.

38 ASA, *Submission 27*, p. 15.

39 ASA, *Submission 27*, p. 15.

40 Professor Burn, ASA, *Committee Hansard*, 5 May 2017, p. 18.

41 ACRATH, *Submission 18*, p. 6.

42 Ms Christine Carolan, Executive Officer, ACRATH, *Committee Hansard*, 4 May 2017, p. 22.

5.33 ACRATH also discussed the lack of government funding for the programs it is undertaking in schools, and suggested that forced marriage training could be included in the curriculum for all schools.⁴³ In its supplementary submission, ACRATH noted that it had:

...asked [AGD] to continue funding to raise awareness of forced marriage for at least another two years in order to meet this need [for awareness raising]. One experienced ACRATH ex-principal likened the introduction into schools of forced marriage units of study to the introduction in the 1970s of sex education; she commented that it took a number of years for school communities to accept the sex education material and to be able to face the challenges of teaching the material and offering support to students who need it. ACRATH believes the same challenges are being faced now that units of study on forced marriage are being introduced.⁴⁴

5.34 ACRATH advocated for a number of other policy changes with respect to forced marriage, including the establishment of a Pilot Project for flexible entry to the Support for Trafficked People Program.⁴⁵

5.35 ACRATH and a number of other submitters and witnesses advocated for early engagement with potential victims of forced marriage, and providing these people with adequate and appropriate support.⁴⁶ For example, The Salvation Army stated:

The inherent challenge is that people who need help are not getting it. Outside of the Federal Government's Support Program there are no funded services for comprehensive, face-to-face support for individuals facing early and forced marriage.

...

In our experience, the majority of individuals seeking support do so before the marriage takes place. This illustrates the need to ensure that an effective early intervention response is in place. Our clients have told us that if they want to avoid being married they are not able to remain living at home. All have reported physical and/or verbal abuse once their families found out they were resistant, did not want to marry or, had told somebody about their situation.⁴⁷

Committee view

5.36 The committee believes that community engagement and education are the most appropriate ways in which forced marriage in Australia can be addressed; the committee is therefore supportive of the programs conducted by organisations such as

43 Ms Carolan, ACRATH, *Committee Hansard*, 4 May 2017, pp 22–24.

44 ACRATH, *Submission 26*, p. 4.

45 ACRATH, *Submission 18*, p. 8.

46 See, for example, ACRATH, *Submission 26*, pp 2–4; Ms Laura Vidal, National Projects Coordinator, The Salvation Army, *Committee Hansard*, 5 May 2017, p. 28.

47 The Salvation Army, *Supplementary submission 25.1*, p. 5.

ACRATH, ASA and the AMWCHR and urges the government to ensure that these programs continue into the future.

5.37 The committee is concerned that government funding for these organisations is not ongoing. In order for these organisations to continue their important work, the committee considers it imperative that the Commonwealth government continues to fund them—and other suitable organisations and programs—for outreach, education and awareness-raising activities on forced marriage issues.

Recommendation 18

5.38 The committee recommends that the Commonwealth government continues to fund organisations and programs that engage in outreach, education and awareness-raising activities on forced marriage issues.

5.39 The committee also notes the evidence about the role of educating school-aged children and their parents about forced marriage as one way in which governments can work to combat forced marriage. The committee agrees that consideration should be given by Australian governments to including education on forced marriage in school curricula.

Recommendation 19

5.40 The committee recommends that Australian governments consider the inclusion of education on forced marriage in school curricula.

Community engagement and education

5.41 As mentioned above, community engagement and education play a vital role in addressing forced marriage in the Australian context. The AGD told the committee about the Commonwealth government's role in community engagement, with the help of civil society organisations:

...we developed and launched a very comprehensive forced marriage community pack in December 2014. It includes practical things like a template safety plan, question-and-answer information sheets, small booklets and guides for service providers. We developed that in conjunction with Civil Society. There was a working group under the national round table that has Civil Society on it. In 2015, we translated a range of that information into a number of priority committee languages—Arabic, Dari, Farsi, Somali, Tamil, Urdu. So we are doing quite a bit to address exactly the issue that you are raising. The pack was updated this year, and we are going to redistribute the forced marriage community pack in the middle of this year.⁴⁸

5.42 ASA noted that 'collaborative forced marriage networks have been established in New South Wales and Victoria', distinct from government, 'with plans to establish networks in other states and territories in the future'.⁴⁹ Further detail was provided

48 Ms Catherine Hawkins, First Assistant Secretary, Criminal Justice Policy and Programmes Division, AGD, *Committee Hansard*, 10 May 2017, p. 6.

49 ASA, *Submission 9*, p. 29.

about the NSW Forced Marriage Network, which ASA co-convenes with the Australian Red Cross. The Network:

...brings together over 130 members from 60 government and community organisations. Membership includes representation from the Cultural and Linguistically Diverse (CALD) communities, migrant resource centres, government agencies at the local, state and federal level as well as from community organisations and individual advocates. The purpose of the Network is to engage the community to raise awareness about and prevent forced marriage as well as to provide coordinated support and assistance to people who may be in, or at risk of, forced marriage. Three working groups have also been established in the areas of prevention, education and training and direct service provision. There is clearly a need for greater education and awareness-raising about forced marriage in all communities. Currently the Networks are run on a pro-bono basis by members, and this limits the capacity to provide education and outreach. There is a real need for government funding for these Networks.⁵⁰

5.43 The Salvation Army outlined the benefits likely to arise from restructuring the current framework for addressing forced marriage, in order to 'take advantage of well-developed networks at the community level':⁵¹

The advantages of doing so would include better resource sharing between Commonwealth and state-based agencies; tapping into the expertise of victim-response networks, including local refuges, family violence services, and cultural community based organisations, all of which could provide support for victims unable to go onto and remain on the Support Program; and finally, leveraging this cooperation to progress community engagement, which is quite limited in the current framework, to decrease the practice of forced marriage.⁵²

5.44 Indeed, Ms Laura Vidal, National Projects Coordinator at The Salvation Army did not consider that strengthening criminal offences with a view to increased deterrence was the 'most effective way of moving forward' with respect to this issue:⁵³

What we need to do is ensure that appropriate support is available to people so that they can prevent a marriage from occurring, and then deliver grassroots community education with a whole diverse split of communities. We need to be really careful that we are not segmenting out particular groups where we have an assumption that this practice is more common than others. We have received referrals from a wide range of religious and cultural backgrounds, so we would definitely advocate for this as a human rights issue. Education needs to be built in using a human rights framework,

50 ASA, *Submission 9*, p. 29.

51 The Salvation Army, *Submission 25*, p. 14.

52 The Salvation Army, *Submission 25*, p. 14.

53 Ms Vidal, The Salvation Army, *Committee Hansard*, 5 May 2017, p. 28.

and the rights of women and girls and men and boys are part of that piece of mainstream human rights education.⁵⁴

New migrants

5.45 The Department of Social Services (DSS) described the information on forced marriage that is provided to visa applicants:

The family safety pack sits on the DSS website, but the link to it is in visa grant letters. When people apply for, initially, a spouse visa, they get a range of information attached to that letter that says: 'The Australian government has important information to provide about Australian law. See the attached link.' So, in many cases, they would access it via the internet, but in Immigration posts where the internet is not easily available—it is easily printed out and provided with the visa letter. It is provided before arrival and, principally, for spouse visa holders. Last year, after a range of consultations with CALD and migrant communities, there was a suggestion that it be progressively expanded to other visa classes, because there are people in similar situations—say the spouse is an international student or a 457 holder; there are various sorts of dependent visas. To my knowledge, it has been expanded out to 457 visa holders, international students, New Zealand category visa holders, and it is our understanding that it will be progressively continued.⁵⁵

5.46 It was further clarified, in response to questions on notice, that a link to the Family Safety Pack, which 'includes four factsheets on domestic and family violence, sexual assault, forced and early marriage, and family violence and partner visas' is provided to visa applicants across the partner, child, orphan relative, skilled and student visa streams.⁵⁶ The pack has been translated into 46 languages.⁵⁷

5.47 The committee was also informed that newly arrived migrants, humanitarian entrants, and their sponsors and service providers receive a Beginning Life in Australia booklet, which 'includes links to national and state-based organisations people can contact if they require support or information about forced marriage'.⁵⁸

5.48 Offshore humanitarian entrants also participate in the Australian Cultural Orientation program, where participants are provided with a booklet that includes information about Australia's laws on forced marriage.⁵⁹ This information is provided again through the Humanitarian Settlement Services program, once these visa holders have arrived in Australia.⁶⁰

54 Ms Vidal, The Salvation Army, *Committee Hansard*, 5 May 2017, p. 28.

55 Dr Margot Clifford, Director of CALD and Indigenous Women's Safety, Family Safety Taskforce, Department of Social Services (DSS), *Committee Hansard*, 10 May 2017, p. 8.

56 AGD, answers to questions on notice, 10 May 2017 (received 26 June 2017), p. 3–4.

57 AGD, answers to questions on notice, 10 May 2017 (received 26 June 2017), p. 4.

58 AGD, answers to questions on notice, 10 May 2017 (received 26 June 2017), p. 4.

59 AGD, answers to questions on notice, 10 May 2017 (received 26 June 2017), p. 5.

60 AGD, answers to questions on notice, 10 May 2017 (received 26 June 2017), p. 5.

5.49 However, ACRATH suggested that the government is not doing enough to inform people migrating to Australia that forced marriage is unlawful.⁶¹ ACRATH identified that this issue requires 'a multifaceted approach', including that people have the opportunity to access information about Australia's response to forced marriage through English language classes migrants participate in on their arrival in Australia.⁶²

Committee view

5.50 As outlined at paragraph 5.36, the committee is of the opinion that community engagement and education are the most appropriate means of addressing forced marriage in Australia.

5.51 Consistent with this view, and the committee's earlier recommendations relating to briefings and information for migrant workers pre-departure and post-arrival in Australia, the committee recommends that information about forced marriage (amongst other things) is consistently and routinely provided to newly arrived migrants in Australia, not only through their engagement with government officials at their point of arrival and when accessing government services, but also through appropriate community groups and programs.

Recommendation 20

5.52 The committee recommends that information on forced marriage is consistently and routinely provided to newly arrived migrants in Australia through their engagement with government officials and agencies, as well as appropriate community groups and programs.

Interagency and interstate cooperation

5.53 In chapter 2, the committee discussed the need to strengthen the Interdepartmental Committee on Human Trafficking and Slavery, agency engagement and engagement between the Commonwealth and state and territory governments. Some submitters to the inquiry also raised the lack of coordination across governments and frontline services with regard to forced marriage in particular.

5.54 For example, The Salvation Army stated that '[a] more streamlined and accessible response protocol that involves both state and federal government agencies and civil society is required' noting that '[t]he current approach places excess burden on the individual at risk to initiate these processes'.⁶³ The Salvation Army provided the following example:

One young woman in a pair of sisters, accommodated by a partner youth service, disclosed the confidential address of her sibling to the family who was actively looking for her following her disclosure of forced marriage. When reporting this to New South Wales police they did not have any specific criminal legislation that could apply to this unique situation. It was decided that should the family make an attempt to access the property and

61 Ms Carolan, ACRATH, *Committee Hansard*, 4 May 2017, p. 18.

62 Ms Carolan, ACRATH, *Committee Hansard*, 4 May 2017, p. 18.

63 The Salvation Army, *Supplementary submission 25.1*, pp 6–7.

the individual at risk, New South Wales police would utilise a ‘trespassing offence’. A more appropriate response would be for responding officers to assist the victim to obtain a protection order.⁶⁴

5.55 The Salvation Army recommended that the NAP should be revised, in cooperation with states and territories, in order to 'include specific, measurable and funded steps to facilitate a more coordinated response to early and forced marriage'.⁶⁵

a. As part of this process, the federal government should work with states to update relevant legislation ensure it is effectively synchronised with federal legislation.

b. The federal government should then work with states to develop clear response protocols between key stakeholders and provide supplemental funding to build states’ capacity to efficiently identify and appropriately respond to disclosures of early and forced marriage⁶⁶

5.56 Ms Vidal elaborated on this at a public hearing, noting that 'we are experiencing a great deal of difficulty with state agencies recognising the existence of the federal framework or that the federal offences exist'.⁶⁷

5.57 The need for better coordination with states and territories was also highlighted by ASA:

Since the practice of forced marriage was criminalised in 2013, the [AFP] have reported that a significant number of children are facing forced marriage. As child protection is a state issue, this highlights the need for clear coordination between federal and state agencies for the purpose of establishing effective referral and support services.⁶⁸

Committee view

5.58 Given the committee's first recommendation, it is unnecessary for the committee to make a further recommendation in relation to inter-agency coordination and communication specifically on forced marriage. However, the committee encourages the Commonwealth government to consider improvements to inter-agency coordination and communication on forced marriage issues in the context of recommendation 1.

Mr Craig Kelly MP Chair

64 The Salvation Army, *Supplementary submission 25.1*, p. 7.

65 The Salvation Army, *Supplementary submission 25.1*, p. 8.

66 The Salvation Army, *Supplementary submission 25.1*, p. 8.

67 Ms Vidal, The Salvation Army, *Committee Hansard*, 5 May 2017, p. 25.

68 ASA, *Submission 9*, p. 30.

Additional comments from the Nick Xenophon Team

1.1 The Nick Xenophon Team (NXT) is highly concerned about the relatively new and rapidly growing form of human trafficking, cybersex trafficking.

1.2 NXT acknowledges the committees comments in relation to this issue, however we believe the committee could have gone further in its recommendations.

1.3 NXT agree with the International Justice Mission (IJM), which stated in its submission that ‘not enough is currently being done to address these crimes in the Australian intergovernmental response to human trafficking’.¹

1.4 During committee hearings Senator Skye Kakoschke-Moore put questions to representatives from the United Nations Office on Drugs and Crime (UNODC) regarding their concerns about cybersex trafficking.² Mr Benjamin Smith of UNODC stated that their understanding is that the incidents of cybersex trafficking are quite high.³ In their submission to this inquiry IJM also noted that both the Australian Federal Police (AFP) and the Commonwealth Director of Public Prosecutions (CDPP) have reported increases in cybersex trafficking cases over the past three years.⁴

Adequate Resourcing

1.5 NXT agree with the committee’s recommendations regarding the adequate funding of: Commonwealth government programs, Australian Federal Police staffing and training, and of the *National Action Plan to Combat Human Trafficking and Slavery 2015-19*. NXT agrees that adequate funding be provided to Australian law enforcement agencies to ensure that they are able to effectively combat and investigate human trafficking offences.

1.6 In their submission IJM call for the Australian Government to provide adequate resources to improve their investigation of cybersex trafficking cases.⁵ IJM state that ‘the successful identification and arrest of cybersex traffickers requires further enhancement of state and federal capabilities with respect to covert investigation techniques’.⁶ As noted in the committee report a number of witnesses and submissions recommended that adequate funding be provided to further the aims of the *National Action Plan to Combat Human Trafficking and Slavery 2015-19*.

1.7 During Committee hearings Senator Kakoschke-Moore asked UNODC whether they believed Australian law enforcement agencies are sufficiently resourced to sufficiently manage matters of cybersex crime.

1 International Justice Mission, *Submission 31*, p. 2.

2 *Committee Hansard*, 4 May 2017, p. 47.

3 Mr Benjamin Smith, Regional Programme Coordinator, Human Trafficking/Smuggling of Migrants, United Nations Office on Drugs and Crime, *Committee Hansard*, 4 May 2017, p. 47.

4 International Justice Mission Australia, *Submission 31*, p. 8.

5 International Justice Mission Australia, *Submission 31*, p. 13.

6 International Justice Mission Australia, *Submission 31*, p. 12.

Senator KAKOSCHKE-MOORE: I was just asking whether, in your view, Australian law enforcement officers operating overseas have sufficient resources to do their job in respect to human trafficking?

Mr Douglas: I must say we have a very good working relationship with Australian law enforcement overseas, both with the Australian Federal Police and with the Australian Border Force where we see them located. We do see this as a transnational crime from our perspective in the way we are looking at it and discussing it to today. The resource needs to address transnational crime are growing.

...What I am getting at is the capacity of the public security systems to keep up with that movement is not necessarily there, and Australia is heavily networked to this region so probably you will see increasing connection of people coming through this region towards Australia for different types of opportunities so potentially there would be need for more resources to be able to handle the operational needs here in the region. You could probably say that is in relation to the number of crimes but this is definitely one area where, while there is some capacity, in some places there is probably more capacity needed.

1.8 NXT are concerned that Australian law enforcement bodies are not adequately resourced to manage the recent increase in cybersex crime due to the unfortunate rapid expansion of criminal activity in this area.

Recommendation 1

1.9 NXT recommend that further funding be provided to Australian law enforcement agencies to adequately combat cybersex trafficking.

Legislative Reform

1.10 NXT agrees with the committee's recommendation that the Commonwealth government investigate the adequacy of current legislative provisions and criminal offences.

Recommendation 2

1.11 NXT recommends that the federal government amend offences under the Commonwealth legislative provisions to ensure that the conduct of offenders engaging in cybersex trafficking falls within the relevant criminal provisions and can be effectively prosecuted by Australian law enforcement bodies.

1.12 NXT also believe that the efforts of law enforcement agencies must not be hampered by internet service providers being unwilling to cooperate with Australian agencies undertaking investigative work into cybersex trafficking.

1.13 As raised by Ms Kimberly Randle during committee hearings, IJM recommends that:

[R]eporting requirements on internet service providers—legislation in the Commonwealth Criminal Code relating to internet service providers and their duty to report—be amended. In terms of an internet service provider's responsibility to report this abhorrent crime on their own network, Australia's legislation, I would submit, is not as tight as it could be. There is

international legislation that could be used as a guide to amend those provisions in the Commonwealth code so that internet service providers have a greater responsibility to report information when this occurs on their networks.⁷

1.14 As reported by Alex McDonald on the *7.30 Report*, ABC, in almost a fifth of cybersex trafficking cases police are not getting the vital information they need from internet service providers (ISPs). McDonald reports that cooperation from ISPs is not always forthcoming, and that it is often difficult to obtain the crucial evidence from ISPs such as subscriber records, IP addresses and mobile data.⁸

Recommendation 3

1.15 NXT recommends that amendments be made to strengthen the Criminal Code by clarifying what information must be provided by internet service providers and internet content hosts where the information requested is in the possession or control of the internet service provider/content host. The type of information NXT believe must be handed over includes names, email addresses, billing addresses, geographic location and user names.

1.16 IJM also raised concerns within their submission about the appropriateness of the current provisions within the Criminal Code (Cth), as they relate to cybersex offences. IJM recommends that ‘the Australian government should give consideration to legal avenues by which to prosecute cybersex trafficking offences as a sexual servitude or slavery offence, or as aiding or procuring such offences’.⁹ IJM put to the committee that there are ten provisions within the Criminal Code (Cth) through which a cybersex crime may be prosecuted, but claim that further clarity and consideration of the current laws be undertaken.¹⁰

1.17 NXT are concerned about the lack of aggravated offences within the relevant aspects of the Criminal Code. NXT believe that such horrific offences should include aggravation provisions.

1.18 IJM note in their submission that the updating of offences relating to cybersex trafficking should include provisions relating to aggravated offences. IJM laments the lack of aggravated offences in the current Criminal Code and compares it to similar aspects of the NSW Crimes Act:

For example, under the *Crimes Act 1900* (NSW) s 66C(5), the presence of another person is a circumstance of aggravation that effectively increases the sentences for the offences of sexual intercourse with persons between 10 and 14 and between 14 and 16. The explanation of this circumstance of

7 Ms Kimberly Randle, Director, Corporate and Legal, International Justice Mission Australia, *Committee Hansard*, 5 May 2017, p. 11.

8 Mr Alex McDonald, ‘*Are telcos doing enough to help combat child sexual abuse overseas?*’, Australian Broadcasting Corporation, broadcast 26 June 2017, <http://www.abc.net.au/7.30/content/2017/s4692124.htm> (accessed 17 July 2017).

9 International Justice Mission Australia, *Submission 31*, p. 14.

10 International Justice Mission Australia, *Submission 31*, p. 15.

aggravation is that it can work to ‘embolden or reassure the offender in committing the crime’. The Commonwealth offences involving sexual activity with or procurement of a child via the internet and the State offences concerning child abuse material do not have similar aggravating circumstances, despite the fact that third parties are often present and produce the same effect.¹¹

Recommendation 4

1.19 NXT recommends amendments be made to the Criminal Code to include the following situations:

- **Where the child is, or reasonably appears to be, under 10 years of age.**
This is designed to capture offences committed against very young children. NXT recognises that it may be difficult for law enforcement agencies to obtain birth certificates to confirm the exact age of the victim.
- **Where an act of torture, cruelty or degrading treatment is done to the child while the underlying offence is being committed.**
For example babies having hot wax dripped on them.
- **Where a person pays a fee or reward for the abuse to be perpetrated against a child.**
NXT understand that not all abuse against a child is paid for. This amendment recognises that where a fee or reward is paid, profit is essentially being derived as a result of a child being abused.

1.20 NXT is highly concerned about the increase in cybersex trafficking, and in particular cyber trafficking and exploitation of children. NXT wish for Australia to take a strong stance against cybersex trafficking and for it to be a world leader in the prevention and eradication of cybersex trafficking.

Senator Skye Kakoschke-Moore
Senator for South Australia

11 International Justice Mission Australia, *Submission 31*, p. 17.

Appendix 1

Public submissions

Submissions received 44th Parliament

- 1 Collective Shout
- 2 Sex Workers Outreach Project (SWOP)
- 3 Coalition Against Trafficking in Women Australia (CATWA)
- 4 Confidential
- 5 Scarlet Alliance
- 6 Miss Amber Russell
- 7 Confidential
- 8 Civil Liberties Australia
- 9 Anti-Slavery Australia
- 10 not allocated
- 11 Australian Catholic Bishops Conference
- 12 Inner South Community Health
- 13 Unions WA
- 14 Salvation Army
- 15 Slavery Links Australia Inc
- 16 Federation of Ethnic Communities' Council of Australia
- 17 Australian Government
- 18 Australian Catholic Religious Against Trafficking in Humans
- 19 Peter Abetz MP
- 20 Vixen Collective
- 21 Law Council of Australia
- 22 NorMAC
- 23 Australian Human Right Commission

Submissions received 45th Parliament

- 24 Collective Shout
- 25 The Salvation Army
- 26 Australian Catholic Religious Against Trafficking in Humans

27 Anti-Slavery Australia

28 The Echo Project

29 Walk Free Foundation

30 Sex Workers Outreach Project

31 International Justice Mission Australia

32 Law Council of Australia

33 Synod of Victoria and Tasmania, Uniting Church in Australia

Appendix 2

Public hearings and witnesses

Thursday, 4 May 2017—Melbourne

BURTON, Dr Mark, Board Member, Slavery Links Australia Inc

CAROLAN, Ms Christine, Executive Officer, Australian Catholic Religious Against Trafficking in Humans

DOUGLAS, Mr Jeremy, Regional Representative, Southeast Asia and the Pacific, United Nations Office on Drugs and Crime

EVANS, Mr Robert Charles, Former Chair, Slavery Links Australia Inc

GREEN, Ms Jane, Spokesperson, Vixen Collective

HOWELL, Mr (Stephen) Roscoe, Board Member, Secretary, Slavery Links Australia Inc

MURNANE, Mr Alan, General Manager, Inner South Community Health Service Ltd

NORMA, Dr Caroline, Consultant, Collective Shout

SMITH, Mr Benjamin, Regional Programme Coordinator, Human Trafficking/Smuggling of Migrants, United Nations Office on Drugs and Crime

TYLER, Dr Meagan, Member of the Executive Committee, Coalition Against Trafficking in Women Australia

ZIRNSAK, Dr Mark, Director, Social Justice, Uniting Church in Australia, Synod of Victoria and Tasmania

Friday, 5 May 2017—Sydney

BRADY, Most Reverend Terence John, Chair, Bishops Commission for Pastoral Life, Australian Catholic Bishops Conference

BURN, Professor, Director, Anti-Slavery Australia, University of Technology Sydney

CHANDRASENA, Ms Udesha, Policy Officer, Scarlet Alliance

COX, Mr Cameron, Chief Executive Officer, Sex Workers Outreach Project

FAJARDO, Mr Josiah, Research Associate, International Justice Mission Australia

KIM, Ms Jules, Chief Executive Officer, Scarlet Alliance

McLEOD, Ms Fiona, SC, President, Law Council of Australia

MOLT, Dr Natasha, Senior Legal Adviser, Law Council of Australia

MOORE, Ms Heather, National Policy and Advocacy Coordinator, The Salvation Army's Freedom Partnership

PHO, Mr Samuel, National Secretary, The Salvation Army

RANDLE, Ms Kimberly, Director, Corporate and Legal, International Justice Mission Australia

STANGER, Ms Jenny, National Manager, The Salvation Army's Freedom Partnership

VIDAL, Ms Laura, National Projects Coordinator, The Salvation Army's Freedom Partnership

Wednesday, 10 May 2017—Canberra

BREEN, Mr Adrian, Assistant Secretary, Transnational Crime Branch, Attorney-General's Department

CARAPPELLUCCI, Ms Flora, Principal Adviser, Families Group, Department of Social Services

CLIFFORD, Dr Margot, Director of CALD and Indigenous Women's Safety, Family Safety Taskforce, Department of Social Services

DIPLOCK, Superintendent Brian, National Coordinator, Commonwealth Crimes Against the Person, Australian Federal Police

GALE, Commander Lesa, Manager, Victim Based Crime, Australian Federal Police

HANSFORD, Mr Hamish, Assistant Secretary, Department of Immigration and Border Protection

HAWKINS, Ms Catherine, First Assistant Secretary, Criminal Justice Policy and Programmes Division, Attorney-General's Department

PERRY, Mr Ryan, Director, People Smuggling and Trafficking Section, Attorney-General's Department

RICHARDS, Mr Peter, Acting First Assistant Secretary, Department of Immigration and Border Protection

WOODFORD-SMITH, Mr Kingsley, Assistant Commissioner, Detention, Compliance and Removals Division, Department of Immigration and Border Protection

Appendix 3

Tabled documents, answers to questions on notice and additional information

Answers to questions on notice

- 1 Answers to Questions taken on notice at hearing, Wednesday 10 May 2017, provided by the Attorney General's Department. Received Friday 23 June 2017.

Additional Information;

- 1 Additional information from the Attorney-General's Department (received 21 December 2016)
- 2 Additional information from Inner South Community Health (received 4 May 2017)

