



## Submission to the Joint Committee on Law Enforcement

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### Inquiry into Human Trafficking

January 2017

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# The Freedom Partnership

## End Modern Slavery



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## Introduction

The Salvation Army welcomes the opportunity to provide a submission to the Parliamentary Joint Committee on Law Enforcement's Inquiry into Human Trafficking. Our submission will address all of the Inquiry's terms of reference.

An effective review of Australia's anti-trafficking framework requires a thorough examination of not just the framework itself, but of influencing policy areas, including migration and workplace relations. The Salvation Army and many of our partners have been advocating rigorously over the last year that current border control policies are inconsistent with and are undermining the National Action Plan to Combat Human Trafficking and Slavery (National Action Plan).

Within the framework, there is reluctance to assess whether the assumptions that underpin the framework are correct, including whether requiring victims to cooperate with authorities yields prosecutions and effectively balances victims' rights with the public interest. Forced marriage provides a useful example here, where prosecution is not always in the best interest of the person affected or the community.

In The Salvation Army's experience, the majority of affected people, mostly girls, do not wish to provide evidence that may lead to the incarceration and prosecution of their parents. In addition to facing permanent banishment from their family and community, they cannot access the Government's own support program, beyond the initial assessment phase, if they are unwilling to cooperate. In the majority of instances reported to the AFP, the marriage has not yet taken place; therefore, whilst authorities could still prosecute, prevention may be a more appropriate goal.

The great irony of the cooperation requirement is that it is inherently another form of coercion<sup>1</sup> that has not generated the prosecutions its supporters anticipated. To its credit, the Government's focus on forced marriage has arguably resulted in a dramatic increase in referrals to the AFP, which reports the crime type accounts for nearly 50% of their investigations now. Unfortunately, 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.

While this Inquiry's terms of reference focus on the Commonwealth law enforcement response, it is important to recognise that human trafficking is a victim-based crime that occurs in community. As such, it cannot be adequately addressed through Commonwealth authorities alone. Low awareness amongst locally-based first responders and the concentration of anti-trafficking resources at the federal level contribute to the low rate of victim identification and consequently, prosecution. The National Action Plan recognises the importance of the states and territories, but does not provide a framework for accountability or action at the state level. As a result, state participation is voluntary and inconsistent.

This submission offers many recommendations to improve Australia's anti-trafficking framework, however, The Salvation Army would like to emphasise two overarching changes we see as absolutely critical: **proper resourcing** and **independent oversight**. In the absence of additional funds, the

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<sup>1</sup> Song, C. and Lee, S. *Between a sharp rock and a very hard place: The Trafficking Victims Protection Act and the unintended consequences of the law enforcement cooperation requirement*. 1 INTERCULTURAL HUM. RTS. L. REV. 157 (2006).

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Committee should consider carefully how to rechannel limited resources into more strategic and effective ways to increase the identification of victims and improve the rate at which victims cooperate with authorities. Further to this point, the committee should examine prosecutorial challenges and assess whether there are sufficient resources in place to support maintaining prosecution as a primary goal of the framework.

While an important milestone, the five-year National Action Plan to Combat Human Trafficking and Slavery is unfunded and it is unclear how it is independently evaluated for success. It was written by the Attorney General's Department (AGD) Crimes against the Person Section, which is largely responsible for implementing and evaluating the Plan. Interdepartmental Committee (IDC) members<sup>2</sup> 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. That said, in the absence of an independent overseer with expertise in this area, there is no one to provide an informed analysis of whether the framework is appropriately structured and if the objectives and activities delineated in the National Action Plan will actually fulfil the vision of ending modern slavery in Australia.

To solve this, the Australia Government should:

1. Establish an Independent Commissioner on Slavery and Trafficking, similar to that of the United Kingdom.<sup>3</sup> The first task for the Commissioner should be to conduct an independent review of the anti-trafficking/slavery framework against international best practice and measurability; and
2. Appropriate full funding for the implementation and, where necessary, further elaboration, of the National Action Plan, with an emphasis on building local capacity across the country to identify and respond to victims and to effectively prosecute offenders.

Finally, The Salvation Army wishes to endorse the submission made by the Law Council of Australia, particularly recommendations under Term of Reference #6, Effectiveness of Commonwealth Legislation and Policies, regarding a national compensation scheme for victims of trafficking, visa cancellation, and ratification of international treaties.

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<sup>2</sup> <https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Pages/Australias-response-to-human-trafficking.aspx>

<sup>3</sup> The UK Anti-Slavery Commissioner is established in the *Modern Slavery Act 2015* (UK) and must encourage good practice in the prevention, detection, investigation and prosecution of slavery and human trafficking offences; and the identification of victims of those offences (*Modern Slavery Act 2015* (UK) s 41(1).) Public authorities, such as law enforcement and border security, must co-operate with the Commissioner to enable the Commissioner to perform his or her statutory function, which may include making recommendations to public authorities about the exercise of their functions.

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### Recommendations

1. Establish an Independent Commissioner on Slavery and Trafficking, similar to that of the United Kingdom. The first task for the Commissioner should be to conduct an independent review of the anti-trafficking/slavery framework against international best practice and measurability.
2. Appropriate the full funding for the implementation and, where necessary, further elaboration, of the National Action Plan, with an emphasis on building local capacity across the country to identify and respond to victims and to effectively prosecute offenders.
3. Improve awareness of indicators and referral pathways for first responders in government staff, service providers, and law enforcement officials at the state and local level.
4. Review mandatory law enforcement protocols for screening and managing potential victims of trafficking and slavery, particularly in immigration compliance operations. Ensure law enforcement protocols for screening and managing potential victims of trafficking and slavery, particularly in immigration compliance operations, are consistent with international standards.
5. Appropriate resources for a full and robust monitoring program and provide clearer, more consistent, disaggregated data in the annual Interdepartmental Committee report.
6. Appropriate more funds to the Australian Federal Police to:
  - 6.1. Resource specialist teams in all capital cities.
  - 6.2. Develop a strategy to incorporate training on trafficking and slavery in police cadet training and professional development courses, or at minimum,
  - 6.3. Provide the Annual Investigators Training at least twice per year and in areas outside of Canberra, particularly in regional areas to target state officials.
7. Reduce reliance on immigration compliance monitoring as the key means of identifying victims by institutionalising training and ongoing professional development for state/territory police; health and welfare workers; labour, fire and safety inspectors; and other first responders at the local level. This training should include indicators of trafficking; special considerations when responding to a victim of trafficking; referral pathways for victim assistance; and collaboration with other agencies and non-governmental organisations when dealing with trafficked people.
8. Incorporate the Australian Policing Strategy into the National Action Plan in more specific and measurable terms.
9. Embed human trafficking specialists into Taskforce Cadena and other immigration compliance activities and ensure screening protocols are consistent with international standards.
10. Establish and formalise protocols to ensure cooperation between law enforcement and non-governmental organisations in the identification and provision of assistance to victims of trafficking and slavery.

11. Establish regional anti-trafficking groups to act as the state/territory implementing bodies for the National Action Plan to Combat Human Trafficking and Slavery and potential state/territory plans. In turn, representatives from these groups should attend the National Roundtable on Trafficking and Slavery to ensure state government views are present in discussions.
12. Support the establishment of a national, independent helpline that is operated by an NGO to ensure victims are able to seek safe, confidential advice and support.
13. Create incentives and reduce barriers to cooperating with criminal justice authorities, by:
  - 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 STPP and Referred Stay visa.
  - 13.5. Providing guaranteed access to trusted, independent legal advice through resourcing legal aid programs across the country.
14. Enable workers to leave exploitative work through a guaranteed right of stay so they are able to remain lawfully in the country whilst pursuing claims and, where applicable, obtain new employment.
15. Amend the FW Act to cover all workers, regardless of their immigration status.
16. Create a national licensing scheme for labour hire businesses in sectors where there is evidence of significant levels of human trafficking, forced labour and/or egregious exploitation, including agriculture, food processing, construction, hospitality and laundries<sup>4</sup>;
17. The body receiving the services of a labour hire business should be held jointly responsible for the treatment of employees by any labour hire business contracted by the body;
18. The Australian Government should introduce newly arrived workers on temporary work visas to a non-government organization (including unions) that is able to assist the migrant worker understand their rights and responsibilities;

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<sup>4</sup> David, F. (2010) *Labour trafficking*. Australian Institute of Criminology Research and Public Policy Series No. 108. Canberra: AIC.

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19. The Government should 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.
20. Fund new research to inform a current picture of organised trafficking in persons in Australia and the region. This research should examine cases involving indicators of trafficking and related crimes, such as the Carabooda case and similar cases responded to by Taskforce Cadena and immigration compliance officers.
21. Provide information on rights and responsibilities to a broader range of visa types.
22. Fund community education initiatives (through the National Roundtable) that will build awareness of the general public.
23. Conduct and make publicly available an analysis of evaluation findings of previously-funded awareness projects<sup>5</sup> to inform future work in sectors known to be at high risk of exploitation and slavery.
24. The Committee should seek answers to the following questions: Are current victim engagement strategies undermining prosecutions? Are expert witnesses being used to assist prosecutors to address credibility issues, where appropriate? Are the CDPP appropriately resourced to manage the complexity of trafficking cases?
25. Introduce Forced Marriage Protection Orders, similar to the U.K. model<sup>6</sup>, which include airport watch list orders and court ordered intervention for those over the age of 18.
26. Integrate federal and state responses to forced marriage which include a mandatory role for state child protection agencies.
27. 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.
28. Amend the Charging for a Migration Outcome Amendment to explicitly exclude victims of trafficking and slavery; amend further to provide protections for workers who report unlawful conduct.
29. An independent commissioner on trafficking and slavery should conduct a review of the National Action Plan and recommend necessary updates to ensure it is achievable with existing resources; to assess additional necessary resources; to clarify measurable outcomes; and to ensure the Plan's actions will achieve those outcomes. The commissioner would also review recommendations from all previous Inquiries and seek to progress those recommendations at the Commonwealth and state levels.

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<sup>5</sup> See National Action Plan, p.16. Asian Women at Work; ACTU; Australian Hotels Association; Australian Red Cross; and the CFMEU all received money between 2011-13 to raise awareness in particular sectors.

<sup>6</sup> <https://www.gov.uk/apply-forced-marriage-protection-order/overview>

## **Term of Reference #1: The prevalence of human trafficking in Australia, including in culturally and linguistically diverse communities**

### **Challenges in determining prevalence**

Modern slavery is a complex and hidden crime, which makes statistics highly unreliable. The crime can impact anyone and, in the case of migrants, through visa programs not subject to close regulation or scrutiny. Fear, shame, mistrust of authorities, and ignorance of rights and available support are all reasons why victims are reluctant to come forward. Additionally, the highly federalised model of Australia's anti-trafficking response means that many individuals who are likely to encounter victims at the state and local level are unaware of the indicators and available services for victims.

According to the Global Slavery Index (GSI), there are approximately 4300 people trapped in slavery or slavery-related conditions in Australia. To date, most cases of slavery in Australia have involved migrants, though it is recognised citizens and residents also experience slavery, servitude and forced marriage as well.<sup>7</sup> Across the country, a number of cases have been identified involving partner migration, which have resulted in various forms of exploitation, from forced or servile marriage to sexual and/or domestic servitude.<sup>8</sup> There have also been anecdotal reports from NGOs and unions indicating a high risk for abuse of asylum seekers awaiting status resolution in communities across Australia, including those with and without work rights.

Sex trafficking of migrant women still accounts for the majority of prosecutions. As policy debates continue on how best to address slavery in the sex industry, heavy reliance on immigration compliance monitoring acts as a barrier to help-seeking and identification of victims.<sup>9</sup> It also narrows antislavery efforts to migrants in registered brothels, despite reports of indigenous and migrant women and girls being trafficked for sex in informal settings across regional and remote Australia.

Over time, an increasing number of cases have been reported to the AFP involving suspected victims on a range of visas, including tourist, student, and temporary work visas.<sup>10</sup> Reports of labour trafficking have risen in recent years with referrals involving foreign domestic workers and people exploited in the hospitality, agriculture, cleaning and construction industries.<sup>11</sup> This coincides with recent reports by the Fair Work Ombudsman (FWO) of significant increases in complaints from overseas workers, particularly

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7 Commonwealth of Australia. (2014) Trafficking in Persons: The Australian Government Response 2012-2013. Fifth Report of the Interdepartmental Committee on Human Trafficking and Slavery p.35. Canberra: Commonwealth of Australia; Commonwealth of Australia. (2016) Trafficking in Persons: The Australian Government Response 2015-2016. Eighth Report of the Interdepartmental Committee on Human Trafficking and Slavery pp 13 and 24. Canberra: Commonwealth of Australia.

8 Richards, K. and Lyneham, S. (2014). Help-seeking strategies of victim/survivors of human trafficking involving partner migration. Trends & issues in crime and criminal justice. Australian Institute on Criminology: Canberra.

9 U.S. Department of State (2014). Trafficking in Persons Report p.82. State Department: Washington DC.

10 Commonwealth of Australia (2015). Seventh Report of the Interdepartmental Committee on Human Trafficking and Slavery. p.26.

11 Ibid. p.33. Australian Red Cross reports that 71% of new clients in 2014-15 experienced exploitation other than in the sex industry.





working holiday and temporary work visa holders, who now account for at least one third of all complaints to the FWO.<sup>12</sup>

A 2010 study of labour trafficking discussed particular groups who are vulnerable or known to have been subjected to “unlawful conduct.”<sup>13</sup> These include workers at the lower end of the skilled occupations list for the 457 program, domestic workers, bridging visa holders, and in some cases recent permanent migrants. The report noted potential or documented risk in industrial cleaning, meat works, hospitality, construction, manufacturing, and agriculture, which supports data from both AFP and FWO reports.

While the number of *known* victims in Australia is not large in comparison with other crimes, slavery is likely to be under-reported for reasons listed above. Indeed, the UN Special Rapporteur on trafficking in persons, especially women and children (Special Rapporteur) confirmed this in her mission to Australia report, stating:

The Special Rapporteur observes that the official numbers of identified victims may not be indicative of the true extent of the problem...For a variety of valid reasons, victims...may not make their cases known to the authorities, as highlighted by the trafficked persons with whom the Special Rapporteur met.<sup>14</sup>

Anti-trafficking efforts must be structured to account for and overcome these barriers. To do so, they must include proper resourcing for meaningful engagement and education activities with the public and first responders and a diversified, collaborative approach across all levels of government.

The increase in referrals of labour trafficking cases is, arguably, the result of targeted government attention to the issue after years of focusing on exploitation in the sex industry. ***This outcome supports the idea that we will only truly comprehend the scale of slavery in Australia when we endeavour to build awareness and reach out to potential victims.*** Another example of this is forced and child marriage, where legislation, awareness raising, and dialogue with service providers across the country have resulted in increased referrals and 39 AFP investigations in 2014/15. The AFP report that forced marriage now accounts for nearly 50% of their investigations.

Additional challenges to identifying victims include inconsistent and sometimes poor screening and a focus on swift removal of unlawful workers, which contributes to a climate of fear amongst migrant populations. The Carabooda market garden case provides a useful example:

In 2014, approximately 200 foreign workers were found after a multi-agency operation after reports of drug and arms trafficking, tax fraud and worker exploitation. There were strong indicators of trafficking, however, over 100 workers who were found to be unlawful were questioned and deported within 24 hours (according to the AFP). A WA State Member of Parliament, who was briefed by WA Police on the case, told The Salvation Army that the workers were asked if they were being held against their will.

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<sup>12</sup> Thousands of workers underpaid, denied entitlements by Australian employers, figures show, *ABC News Online*, 22February 2015. <http://www.abc.net.au/news/2015-02-22/thousands-of-australians-underpaid-denied-entitlements/6189802>

<sup>13</sup> David, F. (2010). *Labour Trafficking. Research and Public Policy Series no. 108*. Canberra: Australian Institute of Criminology.

<sup>14</sup> Special Rapporteur Report p.12.

When the workers said no, that concluded the trafficking screening. The Salvation Army made inquiries to the Department of Immigration about the case and we were told that the workers said they just wanted to go home.

Given the real possibility that the workers were threatened with physical harm against themselves and possibly their families if they cooperated with authorities, this is not a sufficient time frame or process to establish conditions conducive to the workers disclosing information. According to one ABC report, workers, who were found in a walled compound, were detained and questioned at the Yongah Hill immigration detention centre.<sup>15</sup> Despite the WA Police calling this is “human tragedy” and the WA Police Minister stating that the workers had been tricked into working at low rates in conditions Australians would never tolerate, the police told the ABC that the focus on the investigation was not on the foreign nationals, but on money laundering.<sup>16</sup>

We have also received confidential information that the Support for Trafficked People Program was not offered to the Carabooda workers, which combined with the above, contradicts Action 59 in the National Action Plan to Combat Human Trafficking and Slavery, which precludes the detention and deportation of unlawful individuals who show indicators of being trafficked.

It is on this basis that we question whether there are adequate processes in place to ensure that (1) potential victims of trafficking are being effectively identified, supported to cooperate with the criminal justice system; and (2) that vulnerable visa holders who may have been coerced or deceived into unlawful arrangements, are being identified and supported to report an exploitative employer and reclaim their lost wages. ***If exploited workers do not feel safe to make themselves known to police and do not trust authorities to assist them when their rights have been violated, we will not be able to effectively identify victims of trafficking and slavery.***

## Government statistics

Government statistics do not give a clear estimate of the number of historical or current victims of slavery and trafficking in Australia. In fact, compared to other developed countries, Australia provides very little statistical information about its anti-trafficking program.<sup>17</sup> Whilst some basic statistics are maintained by core response agencies like the Australian Federal Police (AFP) and Red Cross, there is no comprehensive national monitoring program. There are statistics provided in the annual Interdepartmental Committee Report (IDC), however, they do not clearly indicate an official number of victims identified and, due to differences in agency reporting, they are difficult to utilise for conclusive analysis.

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<sup>15</sup> Carabooda raids: Numerous charges after WA operation targets organised crime, *ABC News Online*, 5 May 2014. <http://www.abc.net.au/news/2014-05-05/ten-charged-after-carabooda-raids-uncover-foreign-workers/5429852>

<sup>16</sup> Ibid.

<sup>17</sup> See U.K. National Referral Mechanism Statistics at: <http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics/676-national-referral-mechanism-statistics-end-of-year-summary-2015/file>; and U.S. Attorney General's Annual Report to Congress and Assessment of U.S. Government Activities on Trafficking in Persons Fiscal Year 2014 at: <http://www.justice.gov/ag/file/799436/download>.

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For instance, according to the 8th IDC report<sup>18</sup>, the AFP received 691 referrals relating to human trafficking and slavery-related offences since 2004; a total of 311 individuals have received assistance from the Support for Trafficked People Program, delivered by the Red Cross.

In 2015-16, the AFP received 169 referrals, all of which appear to have been accepted for further investigation as there is no other number provided as in previous annual reports. (Last year, police received 119 referrals, of which 93 were accepted for further investigation.<sup>19</sup>) The statistics do not distinguish cases from individuals. The report states that where there was sufficient evidence, referrals were made to the Commonwealth Department of Public Prosecutions (CDPP), but does not indicate how many matters were referred. The report then indicates a total of 38 new clients were referred to the Red Cross program, but does not account for the remainder of cases or individuals who were not referred to Red Cross. Curiously, whilst the number of both referrals to and investigations undertaken by the AFP has risen considerably, 119-169 referrals and 93-169 investigations, the number of individuals referred onto the STPP remained the same (38 new clients onto the STPP in 2014-15 and 2015-16.) The report provides no analysis of this trend.

While it is possible to conclude that the remainder of cases were found not to be victims, it is also possible that this group were unwilling or unable to cooperate closely with an investigation and were thus not referred onto the program. It is also possible that persons referred onto the Assessment Stream of the program (the 45 to 90-day reflection period), were later determined to not be bona fide victims. Thus, the number of clients referred onto the Red Cross program is not a reliable indicator of the total number of actual victims.

Additionally, The Salvation Army provided independent support grants in 2016 through our Freedom Fund to nine victims, none of whom were on the Support Program. Our Safe House received 32 new referrals of cases with indicators of trafficking and slavery, of which 22 engaged in ongoing case management. Of the 22, only seven went onto the Support Program. We are unable to determine if any of the remaining 10, who did not engage in ongoing services with The Salvation Army, ever entered the Support Program. Without consolidated government statistics, such as those collected by the U.S. Office for Victims of Crime, which record both victim identifications by NGOs and victim certifications, there are no reliable statistics on prevalence.

Through the Australian Institute on Criminology, the Government is undertaking a modest pilot monitoring program, which will compile data from the core response agencies in the anti-trafficking framework. Moving forward, it will be necessary for the pilot monitoring program to disaggregate the AFP statistics to identify the number of referrals, number of suspected victims, number of recognised victims willing to cooperate, and the number of victims unable or unwilling to access the program. It would be helpful to examine other reporting models to inform decisions about data collection and the development of reporting templates.

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<sup>18</sup> Commonwealth of Australia; Commonwealth of Australia. (2016) Trafficking in Persons: The Australian Government Response 2015-2016. Eighth Report of the Interdepartmental Committee on Human Trafficking and Slavery p 20. Canberra: Commonwealth of Australia.

<sup>19</sup> Commonwealth of Australia; Commonwealth of Australia. (2015) Trafficking in Persons: The Australian Government Response 2014-2015. Seventh Report of the Interdepartmental Committee on Human Trafficking and Slavery p 24. Canberra: Commonwealth of Australia.

## Recommendations

3. Improve awareness of indicators and referral pathways for first responders in government staff, service providers, and law enforcement officials at the state and local level.
4. Review mandatory law enforcement protocols for screening and managing potential victims of trafficking and slavery, particularly in immigration compliance operations. Ensure law enforcement protocols for screening and managing potential victims of trafficking and slavery, particularly in immigration compliance operations, are consistent with international standards.
5. Appropriate resources for a full and robust monitoring program and provide clearer, more consistent, disaggregated data in the annual Interdepartmental Committee report.

## Term of Reference #2: The role and effectiveness of Commonwealth law enforcement agencies in responding to human trafficking

The role and effectiveness of Commonwealth law enforcement agencies varies across agencies and functions, including identification and response. As an NGO, The Salvation Army can only comment on these points insofar as we have observed law enforcement practice in working shared cases or in publicly-reported cases. We also share observations about how Australian law enforcement practices compare with international best practice.

In her 2012 mission to Australia, the 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.<sup>20</sup>

### Resourcing and cooperation with state police

One of the Special Rapporteur's key recommendations was to *"work to bridge the capacity gap between the Australian Federal Police and state/territory police, including by establishing specialist units in all states and territories"*<sup>21</sup> Yet, to date, only two specialist AFP teams are funded, in Sydney and Melbourne, and less than 50 state/territory investigators have completed the AFP's investigators course. 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. ***Questions for the Committee to consider include whether regional authorities have sufficient expertise to independently investigate and respond to trafficking cases and whether the AFP is adequately resourced to provide technical assistance to regional authorities with limited or no training in trafficking.***

<sup>20</sup> Special Rapporteur Report.

<sup>21</sup> Ibid. Recommendation 83(b).

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According to the AFP's Corporate Plan 2015-19<sup>22</sup>, the organisation forecasts at least a 10% reduction in their budget in the next two to three years. The Salvation Army strongly recommends these cuts not include anti-trafficking activities. To the contrary, we argue that more resourcing is required for the AFP to carry out the activities necessary to increase identification of people who are being exploited in isolated working conditions and private homes.

At the state and territory level, awareness of the indicators of trafficking and slavery remains quite low, as evidenced by some of The Salvation Army's interactions with local police. This remains the case in other jurisdictions as well. A report on the U.K.'s law enforcement response states:

While not all law enforcement officers will come into contact with a trafficked person, without systematic training to mainstream and embed knowledge in all forces and across all ranks, there is a risk that an untrained officer may respond inadequately to a trafficked person and may not channel the case to the correct department. It is also vital that professionals, especially the police, who work with trafficked persons, understand the complexities of the crime and ensure that their actions are not detrimental to the individual's recovery or for the outcome of the criminal proceedings.<sup>23</sup>

One promising initiative -the Victorian Police "Look a Little Deeper" education package for state police, appears to have stalled. Reported in the 6th IDC report, the campaign was due to be rolled out nationally; however it is not mentioned in the 7th or 8<sup>th</sup> IDC reports.

Also discussed in the IDC reports, is the Australian Policing Strategy, which provides a framework for collaboration between the AFP and State and Territory police agencies, including:

- promoting awareness of human trafficking and slavery as crimes
- maintaining partnerships with government and NGOs and developing prevention programs
- contributing to assessments and intelligence products prepared by the Commonwealth, States and Territories
- ensuring that necessary technical tools are available to police agencies
- ensuring that all suspected victims are given the option of referral to the Support for Trafficked People Program
- providing training and education to police personnel, and
- contributing to reviews of legislation and regulatory regimes.

According to the 8<sup>th</sup> IDC report, this has now been replaced with the *National Policing Protocol to Combat Human Trafficking, Slavery and Slavery-like Practices* (National Policing Protocol), the purpose of which will be to "provide the national framework for Australian police agencies to combat human trafficking, slavery and slavery-like practices in the future." The AFP are now considering proposals to the Protocol. ***It would be highly beneficial to further elaborate how this strategy fits into the National Action Plan; and proper resourcing and implementation of this strategy will be absolutely crucial to an effective, more comprehensive law enforcement response to trafficking and slavery.***

Another challenge involves the high rate of turnover amongst the specialist human trafficking officers,

<sup>22</sup> <http://www.afp.gov.au/Corporate-Plan-2015-2019/assets/images/AFP-Corporate-Plan.pdf>

<sup>23</sup> Annison, R. (2013) In the dock: Examining the U.K.'s criminal justice response to trafficking. Anti-slavery International for the Anti-Trafficking Monitoring Group.

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which may reflect broader resourcing issues. It is unclear why the rate of turnover is so high, but the consequences are significant. Human trafficking is an exceptionally complex crime to investigate and prosecute. The fact that the perpetrators can retain psychological control over victims through fear and intimidation, even after escape, means that effective victim-management requires great awareness and skill. It also depends on solid relationships across the various responding agencies, including civil society. High turnover results in those relationships having to be rebuilt on a regular basis; loss of expertise; and consequently, some inconsistency in interpreting and implementing the anti-trafficking framework.

### **The role of AFP**

The AFP plays an extensive role throughout the course of a trafficking case, which, when combined with limited resources, stands to limit effectiveness. For example, that forced marriage now accounts for so much of the AFP's time is both a positive and a negative. On one hand, the fact more victims are coming forward is a positive sign that the Government's message is reaching victims. However, this is not just about the number of cases; it is also about the amount of time these cases are taking and the extent to which AFP is having to broker or directly provide crisis support rather than investigating crimes and reaching out to communities.

Officers spend copious amounts of time supporting victims through the gruelling decision-making process; and in cases where the victim is unable to engage, significant resources go into crisis intervention to prevent the person being taken overseas to marry. As stated in the Introduction, the majority of cases are reported before the marriage has taken place; so the focus should be on prevention and where possible and desired by the person at risk, family preservation. The question then becomes whether the current framework is structured to harness the strengths and resources of community-based prevention services.

The Salvation Army is concerned that the lack of these resources and the "federalisation" of the forced marriage response is compromising AFP's ability to respond equally to all forms of modern slavery and, as discussed, their ability to balance proactiveness with responsiveness. Forced marriage is rightly criminalised under the Commonwealth slavery offences; however, the Committee should consider whether the best response is situated solely at the Commonwealth, rather than local level.

Many experts argue that forced marriage is a form of family violence, with unique transnational crime elements, and as such is better managed through coordination with state or local victim response networks. This is not to say that AFP should not have a role, but rather, that the framework should be restructured to take advantage of well-developed networks at the community level. 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.

The role of law enforcement is not just to respond to suspected or confirmed cases. Indeed, community engagement is often a core part of policing strategies and literature on migration and trafficking support



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the view that positive relationships with migrant communities enhance policing outcomes.<sup>24</sup> The National Action Plan recognised this, stating in Action 24: *Strengthen relationships between frontline officers and vulnerable communities*, via the AFP Community Liaison Teams. Unfortunately, there is no information in the 8<sup>th</sup> IDC report or in the AFP's annual report on how the work of AFP's liaison teams is attributable to anti-trafficking outcomes.

Considerations should also be given to how the role of police is understood by communities and question whether the effectiveness of their involvement in early intervention and community behavioural change is meeting deterrence and disruption objectives. Implementing a multi-disciplinary model, discussed further under Term of Reference #3, may increase community engagement, build supportive relationships and reduce risk of harm.

The current expectations for the AFP to address forced marriage, especially with current resources, are highly unrealistic. It will take well-developed, resourced, community-based and community-led solutions to stop a culturally-enshrined institution that has endured for centuries.

### Immigration compliance monitoring

According to the 7<sup>th</sup> IDC report, over 50% of referrals to the AFP come from the Department of Immigration and Border Protection (DIBP). This is problematic because, as the Special Rapporteur pointed out:

While it is commendable that DIAC (now DIBP) has established a specialised anti-trafficking capacity, she remains concerned about the use of immigration raids to identify victims of trafficking. In particular, raids are carried out with the specific purpose of locating and detaining foreign nationals who have breached their visa conditions or are otherwise unlawfully in Australia...Given the understandable fear of deportation or detention, she questions whether these raids are truly effective in identifying victims of trafficking.<sup>25</sup>

In the absence of specially-designed anti-trafficking taskforces, a common model in other countries, Australia is reliant on operations like those of Taskforce Cadena, which was established in 2015 to respond to fraud and exploitation in temporary work programs. While likely to uncover potential trafficking scenarios, Cadena's activities are not necessarily conducted in a way that is conducive to identifying and effectively engaging fearful people—people who may have been coached or threatened with harm if they cooperate with authorities. To our knowledge, there are no human trafficking specialists formally appointed to Cadena operations, despite having made this recommendation to government on several occasions. While taskforce members may have completed some training in the past on human trafficking, the Special Rapporteur's point is relevant: operations focused on identifying unlawfulness are not designed to build trust with victims.

In our submission to the recent Productivity Commission review of the workplace relations framework<sup>26</sup>,

<sup>24</sup>Gallagher, Anne. (2015). "Exploitation in Migration: Unacceptable but Inevitable" *Journal of International Affairs* 68.2, pp 64-69; Community Oriented Policing Services (COPS). (2010). *Enhancing Community Policing with Immigrant Populations*, US Department of Justice; Office for Victims of Crime (OVC), US Department of Justice. (2008). *First Response to Victims of Crime: A Guidebook to Law Enforcement Officers* pp38-41, 59; United National Office on Drugs and Crime (2008) *Toolkit to combat trafficking in persons*, p.273, Vienna: United Nations.

<sup>25</sup> Special Rapporteur Report, p.12.

<sup>26</sup> Available at: <http://www.pc.gov.au/inquiries/completed/workplace-relations/submissions>

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we provided information on how fear and mistrust of police amongst migrant communities negatively impacts crime reporting rates and voluntary engagement with police. Drawing on an example from the United States, we discussed how an increased culture of compliance resulted in decreased crime reporting amongst migrant communities. Evidence indicates that where a relationship of trust breaks down, migrant communities can become socially isolated, withdrawn from police, and in fact experience higher rates of crime, where criminals know poor relationships with police result in low crime reporting.<sup>27</sup>

The Government's current approach to fraud in temporary visa programs, while well-intended, does not strike the necessary balance between prosecuting offenders and protecting workers. Cases like Carabooda, which are reported in the media<sup>28</sup>, imply that unlawful status takes precedence over any exploitation that may have occurred. Not only is 24 hours insufficient to screen for trafficking; it is also too brief to assess if workers were induced or manipulated into unlawful status. Known as collusion control<sup>29</sup>, rendering a victim unlawful is a common tactic of traffickers to maintain them in a position of exploitation. Thus, the continual and swift removal of unlawful workers is likely to undermine the effectiveness of law enforcement to identify and respond to this crime.

The current paradigm rests on many false assumptions. It is assumed that all victims are identified and thus made exempt from penalties meant for those who knowingly and deliberately break the law. It is assumed that real victims behave in certain ways, such that it will be easy to identify them. It is assumed that simply giving newly arrived migrants information on their rights will enable them to exercise those rights. It is assumed that requiring victims to cooperate in the criminal justice process will facilitate prosecutions.

It is on this basis that the current paradigm sacrifices the protection of innocent people for the penalisation of the guilty. Policy makers must consider how current border control measures and the language used to make people aware of them are contributing to a culture of fear and mistrust amongst migrant workers and how that undermines Australia's anti-slavery response.

### Civil society as partners in identifying and responding

Further articulating her concerns about reliance on compliance monitoring, the Special Rapporteur expressed "concern regarding the interviewing process: suspected victims are interviewed solely by DIAC (now DIBP) officials and no social worker or psychologist is present...Only after building relationships of trust will victims be willing to disclose their true situation."<sup>30</sup>

Recognising the fear and mistrust many victims have toward law enforcement, international best practice encourages early collaboration between law enforcement and NGOs as a means to identify victims and provide the necessary support.<sup>31</sup> For instance, according to the United States Anti-Human Trafficking

<sup>27</sup> Theodore, N. (2013). *Insecure Communities: Latino perceptions of police involvement in immigration enforcement*.

<sup>28</sup> Alleged illegal farmworkers to be deported after police raids in Shepparton, Herald Sun, 1 June 2015, <http://www.heraldsun.com.au/news/law-order/alleged-illegal-farm-workers-to-be-deported-after-police-raids-in-shepparton/news-story/eda19c42427b802ae23d3caff2e64d24>; Four to be deported after slave-raid, Sky News, 20 November 2015, <http://www.skynews.com.au/news/local/brisbane/2015/11/20/four-to-be-deported-after-slavery-raid.html>.

<sup>29</sup> United Nations Office on Drugs and Crime (UNODC) and United Nations Global Initiative to Fight Human Trafficking (UN.GIFT). (2009). *Anti-human trafficking manual for criminal justice practitioners*. Module 4.

<sup>30</sup> Special Rapporteur Report, p.12.

<sup>31</sup> International Organisation for Migration (2006). *Resource Book for Law Enforcement Officers on Good Practices in Combating Child Trafficking*; United Nations Office on Drugs and Crime (2008). *Toolkit to Combat Trafficking in Persons*.



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Taskforce e-Guide: "It can be very helpful to have trusted victim service providers conduct a parallel interview as they can assist in reducing the victim's fear of law enforcement...not gather[ing] the

The Recommended Principles and Guidelines on Human Rights and Human Trafficking include the following under Guideline 2:

States...should consider...ensuring cooperation between relevant authorities, officials and non-governmental organizations to facilitate the identification and provision of assistance to trafficked persons. The organization and implementation of such cooperation should be formalised in order to maximize its effectiveness.<sup>32</sup>

Australia's Support for Trafficked People Program (STPP) includes a 45-day assessment and reflection period. This provides time for the victim to stabilise and for the AFP to make a final assessment as to whether the person is indeed a victim. While there is strong collaboration between law enforcement and service providers at this stage, there is limited or no engagement at earlier intervention points, such as immigration compliance operations. In cases like Carabooda, workers were questioned only by law enforcement officials. No service providers, mental health professionals, employment lawyers, or child protection specialists (noting that many of the workers had children on site), were engaged to assist in the interviews. On this basis, it is very possible that the workers did not fully understand their rights or entitlements and thus, were unable to make informed decisions about their futures. As a consequence, Australia may have lost a prime opportunity to prosecute human traffickers.

### Recommendations

6. Appropriate more funds to the Australian Federal Police to:
  - 6.1. Resource specialist teams in all capital cities.
  - 6.2. Develop a strategy to incorporate training on trafficking and slavery in police cadet training and professional development courses, or at minimum,
  - 6.3. Provide the Annual Investigators Training at least twice per year and in areas outside of Canberra, particularly in regional areas, to target state officials.
7. Reduce reliance on immigration compliance monitoring as the key means of identifying victims by institutionalising training and ongoing professional development for state/territory police; health and welfare workers; labour, fire and safety inspectors; and other first responders at the local level. This training should include indicators of trafficking; special considerations when responding to a victim of trafficking; and local referral pathways for victim assistance.
8. Incorporate the Australian Policing Strategy into the National Action Plan in more specific and measurable terms.
9. Embed human trafficking specialists into Taskforce Cadena and other immigration compliance activities.
10. Establish and formalise protocols to ensure cooperation between law enforcement and non-governmental organisations in the identification and provision of assistance to victims of trafficking.

<sup>32</sup> Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, UN Doc E/2002/68/Add.1, 1 [4] and Guideline 2.3 ('OHCHR Principles and Guidelines').

## Term of Reference #3: Practical measures and policies that would address human trafficking

### Building community-based responses to trafficking

In the absence of additional funds to fortify law enforcement efforts around the country, one practical alternative is simply to restructure the response. ***Community-based anti-trafficking groups provide a forum for learning, problem-solving, and developing a response framework that leverages the strengths of a variety of groups at the local level. While additional resources would be an advantage, these groups can operate within existing budgets, helping people do what they already do, but better.***

In a submission to the 2012 Joint Standing Committee on Foreign Affairs, Defence, and Trade, Subcommittee Inquiry into Slavery, Slavery-like Conditions, and People Trafficking,<sup>33</sup> The Salvation Army recommended that state governments should be encouraged to establish working groups to guide and implement anti-trafficking efforts state-wide and to coordinate those efforts with appropriate Commonwealth agencies as well as local jurisdictions. Reflecting this view, the NSW Inquiry into the exploitation of people through trafficking in all its forms listed as its first recommendation: the establishment of “a high-level Human Trafficking Ministerial Advisory Council to coordinate a whole-of government response to human trafficking and slavery in all its forms in NSW and to liaise with the Commonwealth.”<sup>34</sup>

Research indicates that active multidisciplinary anti-trafficking working groups, or task forces are more likely to discover human trafficking and achieve successful prosecution of perpetrators.<sup>35</sup> The “task force” approach is considered best practice by the UN Office on Drugs and Crime and is exercised in the U.S. and, in various forms, across Europe and Asia. The U.S. Department of Justice has since funded 43 such task forces across the United States, which has delivered dramatic improvements across a range of anti-trafficking priorities from detection and victim support to investigation and prosecution.

Another example is the United Kingdom Forced Marriage Unit,<sup>36</sup> which features a multi-disciplinary response team that works in partnership with law enforcement. The forced marriage response team would release law enforcement from time-consuming crisis management and counselling whilst remaining connected to the case.

To ensure equal focus on both criminal and social justice, The Salvation Army recommends that such groups be co-chaired by designees of state/territory community services and justice departments or to have a rotating chair to ensure an inclusive and balanced approach.

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<sup>33</sup>[http://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=jfadt/slavery\\_people\\_trafficking/subs.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jfadt/slavery_people_trafficking/subs.htm)

<sup>34</sup>[http://www.crc.nsw.gov.au/data/assets/pdf\\_file/0015/22434/Inquiry\\_into\\_the\\_exploitation\\_of\\_people\\_through\\_trafficking\\_in\\_all\\_its\\_forms\\_in\\_NSW.pdf](http://www.crc.nsw.gov.au/data/assets/pdf_file/0015/22434/Inquiry_into_the_exploitation_of_people_through_trafficking_in_all_its_forms_in_NSW.pdf)

<sup>35</sup> Northeastern University Institute on Race and Justice and Urban Institute Justice Policy Center (2012) *Identifying Challenges to Improve the Investigation and Prosecution of State and Local Human Trafficking Cases* <http://www.urban.org/uploadedpdf/412593-state-and-local-human-trafficking-cases.pdf>

<sup>36</sup> <https://www.gov.uk/guidance/forced-marriage#forced-marriage-unit>



Ideally, the working group should include key government and non-government agencies that do or would play a central role in responding to cases of slavery and trafficking as well as at least one person who has experienced trafficking and slavery first hand. Survivors have unparalleled insight and knowledge to inform prevention, identification, and response strategies<sup>37</sup> and have not been sufficiently engaged in building or evaluating the national response.

Possible focal points for the group include:

- Consult with governmental and nongovernmental organizations and the private sector to strengthen state and local efforts to prevent trafficking/slavery, protect and assist victims, and prosecute offenders.
- Examine collaborative response models between government and nongovernmental organisations.
- Assess the need for and barriers to access for services such as housing, education, health care, etc.; identify government departments that do or could provide services to victims of trafficking/slavery and connect with community groups providing direct services.
- Develop strategies to increase awareness of trafficking/slavery-like practices including training of police and government department staff likely to interact with a victim or victim-support agency (e.g. victim support, child protection, health, education, multicultural and women's interests).
- Contribute to national data collection and evaluation projects.

### National anti-slavery/trafficking hotline

Currently, Australia's only general hotline for slavery or trafficking matters is the AFP's hotline, despite the reluctance or fear victims may to engage law enforcement. Helplines, such as 1800RESPECT are now widely advertised in forced marriage materials; however, there remains no independent helpline for victims of other forms of slavery.

Evidence from the United States, the United Kingdom and Southeast Asia, where nationwide, NGO-operated helplines are promoted, demonstrates the positive impact such helplines have on reporting of potential trafficking cases; improving understanding of trafficking; and in capturing important data about trafficking trends and outreach efforts.<sup>38</sup>

### Improve incentives and remove barriers to cooperation

#### *Family Reunification*

The very lengthy timeline in achieving a permanent outcome is commonly identified by victims as barriers to cooperating with law enforcement, which for many people, means possibly putting loved ones who remain at home and unprotected at risk. The dilemma many victims face is clearly illustrated in the words of one Salvation Army client who stated: *"I could never take any action against my employer until I know my kids are safe."* There are many cases like this, where victims would fully cooperate if their safety concerns were addressed.

<sup>37</sup> Okech, D., Morreau, W., & Benson, K. (2012). Human trafficking: Improving victim identification and service. *International Social Work*. Online at: <http://isw.sagepub.com/content/early/2011/11/30/0020872811425805>

<sup>38</sup> Information on the U.S. National Human Trafficking Resource Centre is available at: <https://polarisproject.org/resources/2015-hotline-statistics>; Information on the U.K.'s helpline is available at: <https://www.gov.uk/government/news/enhanced-helpline-to-benefit-survivors-of-modern-slavery>.

Deciding to cooperate is a significant decision for a trafficked person and once it is made, it is in their interest to quickly establish permanency and ensure their safety and that of their immediate loved ones. Where permanency cannot be established before trial, temporary reunification is an option, but does not occur as a standard practice.

*Extended periods in temporary status/Transparency in decision-making within the anti-trafficking framework*

In many instances, cooperating victim witnesses remain in temporary status for years, in almost untenable situations of prolonged dependence, uncertainty and separation from family.

Non-governmental organisations observe a lack of transparency in what processes are followed to ensure eligibility for the STPP and the permanent Referred Stay visa are assessed in a consistent, objective manner. This has been a topic of discussion at several recent Roundtable meetings. Responding authorities have a great deal of discretion when making these decisions and are not held to specified time frames for actioning the various stages of a case. Further, there is no independent review process for victims to appeal negative decisions about referring them for a permanent visa.

It is unclear why victims are not invited to apply for the permanent Referred Stay visa (formerly Witness Protection Trafficking Visa-WPTV) sooner in the process. A common concern is that the defence may claim a victim is only cooperating to get a permanent visa; a claim that is, indeed, one of many common and challenging issues that prosecutors must address in their cases. We assert this difficulty is both manageable and worthwhile to ensure a stable and competent witness and would argue this claim may be refuted if a person already has a visa and is cooperating with law enforcement and prosecutors *by choice*. ***In our experience having worked in both scenarios, defence counsel will make this claim either way, in an attempt to discredit witnesses. Thus, the priority should be to have as strong and credible witness as possible.***

*Independent migration pathways*

There is another way to address the previous issue, which involves separating the immigration process from the criminal justice process. In countries like the United States, Italy and Belgium, victims may apply, or “self-petition”, for permanency. The process retains robust standards with strict eligibility criteria to prevent fraud, including evidence of credible fear (or statement of fears) if returned home.

In a recent visit to Australia, Major Anne Read, National Coordinator for The Salvation Army Human Trafficking Response Team<sup>39</sup> in the United Kingdom shared information on their model with stakeholders in Sydney. She explained a new pilot project where trafficking victims’ visa applications are reviewed not by one agency, but rather, by a panel of experts, including representatives from government, law enforcement, and the mental health and social work professions.<sup>40</sup> According to Major Read, the pilot is expected to increase transparency and neutrality in the visa adjudication process and decrease the administrative burden on any one agency.

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<sup>39</sup> The Salvation Army is the lead agency contracted by the U.K. Government to respond to the needs of suspected and confirmed victims of trafficking. The Salvation Army sub-contracts an additional 12 agencies across the country, which contributes great resources and expertise for a comprehensive safety net nationwide.

<sup>40</sup> Personal communication, Major Anne Read, 12 February 2016.

Regardless of the model, separating the immigration process from the criminal justice process, is likely to have the benefit of alleviating a considerable pressure point for AFP officers who must provide advice in relation to threat of harm to the victim should they return home. The process of compiling this information can be extensive; in other jurisdictions, like the U.S., immigration authorities accept statutory declarations from experts in human trafficking and torture, who are qualified to assess credible fear claims.

***Creating an independent pathway that accepts other forms of evidence of fear, such as statutory declarations by mental health professionals, would free up the AFP's time to focus on investigation and victim management.***

#### *Independent legal advice*

Another practical measure that would empower victims to cooperate with the criminal justice process is entitlement and access to independent legal advice. The Trafficking Protocol provides that Australia has an obligation to make legal advice available to people trafficking victims:

Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:

(b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand.<sup>41</sup>

Legal advice may be required not just for migration matters, but for criminal and possibly civil matters as well. Providing independent advice ensures someone is acting on behalf of the victim as a potential witness or even plaintiff, with no conflict of interest.

The UNODC Toolkit to Combat Trafficking in Persons states it well:

Sometimes, in a rush to accomplish other goals, such as prosecuting the traffickers, States focus on victims for the information they can provide or their usefulness to the criminal justice system. The danger is that States might treat the victims as merely pawns in a struggle between the State and the traffickers and not as human beings in need of protection and assistance and deserving of respect.

Thus, despite the best of intentions to be responsive to victims' needs, the very nature of the system puts different pressures on law enforcement officers. Providing an additional and independent source of information and support alleviates the burden on law enforcement and, in our experience, creates stronger witnesses.

#### *Address worker exploitation*

The AIC's report on labour trafficking<sup>42</sup> concluded that "The areas of life and work where...unlawful conduct occurs are potential breeding grounds for more serious forms of exploitation. As such, a focus

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<sup>41</sup> Article 6.3(b)

on unlawful conduct against migrant workers...can be considered a legitimate response to concerns about more serious forms of exploitation, including labour trafficking.”

In evidence provided to the Senate inquiry into temporary work programs<sup>43</sup>, the Productivity Commission review of the workplace relations framework<sup>44</sup>, and other fora, The Salvation Army has repeated that basic protections should not be traded for competitiveness; otherwise, the integrity of Australia’s temporary work programs will be eroded.

To strike this balance, we have proposed recommendations specific to temporary migrant workers and their spouses, who are known to be highly vulnerable to exploitative practices. These are included in the general recommendations below.

### **Recommendations**

11. Establish regional anti-trafficking groups to act as the state/territory implementing bodies for the National Action Plan to Combat Human Trafficking and Slavery and potential state/territory plans. In turn, representatives from these groups should attend the National Roundtable on Trafficking and Slavery to ensure state government views are present in discussions.
12. Support the establishment of a national, independent helpline that is operated by an NGO to ensure victims are able to seek safe, confidential advice and support.
13. Create incentives and reduce barriers to cooperating with criminal justice authorities, by:
  - 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 STPP and Referred Stay visa.
  - 13.5. Providing guaranteed access to trusted, independent legal advice through resourcing legal aid programs across the country.
14. Enable workers to leave exploitative work through a guaranteed right of stay so they are able to remain lawfully in the country whilst pursuing claims and, where applicable, obtain new employment.
15. Amend the FW Act to cover all workers, regardless of their immigration status.

<sup>42</sup> David, F.

<sup>43</sup> [http://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=jfadt/slavery\\_people\\_trafficking/subs.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jfadt/slavery_people_trafficking/subs.htm)

<sup>44</sup> <http://www.pc.gov.au/inquiries/completed/workplace-relations/submissions>



## **Term of Reference #4: The involvement of organised crime, including transnational organised crime, in human trafficking**

In 2012, the Australian Institute on Criminology (AIC) conducted a thematic review of the existing international and Australian literature on the extent of criminal group involvement in trafficking in persons.<sup>45</sup> It concluded that:

1. The involvement of organised crime in trafficking in persons is under-researched, creating a “significant gap in the knowledge base”. The author stated: “...research on this issue has the capacity to better inform victim identification and investigation and prosecution strategies. For example, the law enforcement methodology required to effectively investigate and prosecute an enduring, structured organised criminal group is likely to be quite different to the methodology that could be applied to investigate and prosecute a relatively unsophisticated, solo offender”<sup>46</sup>;
2. There is a considerable variation in the types of groups, ranging from “solo...offenders to the involvement of far more sophisticated networks that are extremely capable. This appears to be relatively consistent with the Australian situation, where the authorities have reported a variation in offending, ranging from small-scale offenders targeting one or a small number of victims at a time to more sophisticated, resilient and enduring networks.”
3. The Australian and international literature indicate involvement of “intermediaries in the migration process (such as the provision of recruitment and migration services), and those involved in trafficking in persons. This suggests a potential overlap between at least some forms of migrant smuggling and trafficking in persons. When assessing the literature on specific geographic contexts or locations, there is an indication of overlaps between trafficking criminality and other forms of criminality, such as organised fraud and drug trafficking.” These connections have not been noted in the Australian context.

These findings resonate with The Salvation Army’s direct experience working with victims of trafficking. Through our work, we have supported victims who were trafficked by small “mom and pop” operations. In many cases, victims knew or knew of their traffickers in their home countries, many of whom are reputable members of the community.

Regarding the third finding, The Salvation Army has observed involvement of “intermediaries” in many cases, mainly in the form of labour hire brokers. We refer the Committee to the Justice and International Mission Unit, Synod of Victoria and Tasmania, Uniting Church submission to the Victorian inquiry into labour hire<sup>47</sup> which states:

The Unit is concerned at the level of undetected exploitation and human trafficking of temporary visa holders in Australia and is concerned that the relevant law enforcement agencies lack adequate resources to deal with the scale of the problem. Thus, the Unit favours further measures to deter the exploitation of temporary visa holders and disrupt the ability of abusive

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<sup>45</sup> David, F. (2012) *Organised crime and trafficking in persons*. Australian Institute of Criminology Trends and Crimes in Criminal Justice, Series No.436. Canberra: AIC.

<sup>46</sup> Ibid, p. 11.

<sup>47</sup> Available at: <http://economicdevelopment.vic.gov.au/about-us/strategies-and-initiatives/inquiry-into-the-labour-hire-industry-and-insecure-work/inquiry-into-the-labour-hire-industry-and-insecure-work-submissions>

labour hire businesses and employers to make profit from their abuses. The Uniting Church recommends creating a licensing scheme for labour hire businesses; holding the ultimate employer jointly responsible for the treatment of employees; and facilitating linkage with NGOs in the community to help workers understand and exercise their rights as a means to prevent exploitation and trafficking.

The Salvation Army has been working closely with the Uniting Church to make these recommendations to the Australian Government. While there seems to be acceptance of the role labour hire plays in exploitation and trafficking, the Government has not established a mandatory licensing scheme.

The finding of overlap between migrant smuggling and trafficking is both important and relevant to the earlier discussion of the impacts of Australia's current border protection policies on vulnerable people. The Special Rapporteur raised concerns about the ability of immigration officials to establish trust with victims in immigration detention facilities to facilitate identification.<sup>48</sup> "The obligation to identify victims of trafficking is implied in all legal instruments that provide for victim protection and support."<sup>49</sup> Sending unidentified trafficked people to offshore detention centres would be a clear breach of international obligations. Additionally, international evidence indicates that victims who are deported are much more likely to have their rights denied and to be re-trafficked.<sup>50</sup>

Finally, The Salvation Army notes that money laundering and drug and weapons trafficking were all discovered in the Carabooda case.<sup>51</sup> However, given the case outcome, it is uncertain whether it would be captured in a more recent review of Australian literature on organised trafficking in persons.

#### Recommendations

16. Create a national licensing scheme for labour hire businesses in sectors where there is evidence of significant levels of human trafficking, forced labour and/or egregious exploitation, including agriculture, food processing, construction, hospitality and laundries<sup>52</sup>;
17. The body receiving the services of a labour hire business should be held jointly responsible for the treatment of employees by any labour hire business contracted by the body;
18. The Australian Government should introduce newly arrived workers on temporary work visas to a non-government organization (including unions) that is able to assist the migrant worker understand their rights and responsibilities;
19. The Government should 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.
20. Fund new research to inform a current picture of organised trafficking in persons in Australia and the region. This research should examine cases involving indicators of trafficking and related crimes, such as the Carabooda case and similar cases responded to by Taskforce Cadena and immigration compliance officers.

<sup>48</sup> Special Rapporteur Report, p12.

<sup>49</sup> Office for High Commissioner for Human Rights, Human rights and human trafficking. Fact Sheet 36. Geneva.

<sup>50</sup> Office of the High Commissioner on Human Rights (OHCHR) Recommended principles and guidelines on human trafficking, Guideline 2; International Organisation for Migration (2010). The causes and consequences of re-trafficking: Evidence from the IOM human trafficking database. Geneva: IOM.

<sup>51</sup> <http://www.abc.net.au/news/2014-05-05/ten-charged-after-carabooda-raids-uncover-foreign-workers/5429852>

<sup>52</sup> David, F.



## **Term of Reference #5: The extent to which human trafficking is facilitated by migration visas, technology and false identities**

According to the 8th IDC report<sup>53</sup>, the majority of all suspected victims have entered Australia on a valid visa, including tourist, student and temporary work visas. An AIC report on Labour Trafficking revealed possible trafficking through misuse of trainee visas<sup>54</sup>, temporary business visas<sup>55</sup>, working holiday visas<sup>56</sup>, and the Temporary Work (International Relations) visa for domestic workers employed by diplomatic or consular staff<sup>57</sup>.

In The Salvation Army's experience, traffickers wittingly use a range of visa types, including many of the above, to facilitate legal entry into Australia. In more obscure circumstances, we assisted an individual trafficked into domestic servitude by a close relation via the Orphaned Relative visa. In another, widely reported case, four Filipino men were trafficked into domestic work via the former 421 Sport Visa.<sup>58</sup>

### **Recommendations**

21. Provide information on rights and responsibilities to a broader range of visa types.
22. Fund community education initiatives that will build awareness of the general public to improve identification of victims on visas not subject to regulation.
23. Conduct and make publicly available an analysis of evaluation findings of previously-funded awareness projects<sup>59</sup> to inform future work in sectors known to be at high risk of exploitation and slavery.

<sup>53</sup> Commonwealth of Australia (2016). 8th IDC report, p23.

<sup>54</sup> David, F. pp 41, 43.

<sup>55</sup> David, F. p 33.

<sup>56</sup> David, F. p 26.

<sup>57</sup> Ibid.

<sup>58</sup> <http://www.smh.com.au/nsw/three-charged-over-alleged-trafficking-of-filipino-boxers-20131010-2vbk7.html>

<sup>59</sup> See National Action Plan, p.16. Asian Women at Work; ACTU; Australian Hotels Association; Australian Red Cross; and the CFMEU all received money between 2011-13 to raise awareness in particular sectors.

## Term of Reference #6: The effectiveness of relevant Commonwealth legislation and policies

### Anti-slavery/trafficking legislation

Australia's anti-slavery, anti-trafficking legislation is well on par with international standards; however, to date, only 18 individuals have been prosecuted for slavery and slavery-related crimes. For a variety of reasons discussed in this submission, the legislation remains underutilised and to a large degree, untested.

For example, in evidence provided to the Joint Standing Committee (Joint Standing Committee) on Defence, Foreign Affairs and Trade inquiry into human trafficking in 2013<sup>60</sup>, the Commonwealth Department of Public Prosecutions (CDPP) stated that one of the most common barriers to prosecution was getting witnesses to return to Australia to provide testimony; a problem that could be addressed if authorities were more able to secure victims' trust and willingness to remain in Australia and cooperate.

Beyond securing witnesses, low identification rates naturally result in low prosecution rates. Historically, Government officials have used low numbers to assert Australia does not have a significant trafficking problem, as reported by the Special Rapporteur.<sup>61</sup> However, noting the shortcomings in identification methods, she concluded this was unlikely.

In cases like Carabooda, it is difficult not to conclude that authorities made a deliberate decision not to bring trafficking charges. Although there may have been evidential issues, the lack of independent scrutiny over this and similar cases make it difficult to fairly assess the actions of responding authorities; a role this inquiry could perform.

Another key challenge the CDPP described in evidence put to the Joint Standing Committee involves inconsistencies in victims' statements, leading to the questions about the victims' credibility. It would be worth knowing to what extent the CDPP engages expert witnesses who can explain inconsistencies in victims' statements, which may be due to trauma, fear, confusion, and/or the residual impacts of psychological manipulation over periods of time.

A third challenge the CDPP described to the Joint Standing Committee was evidentiary burden—a challenge not unique to Australia. Further complicating this is the move by offenders to the greyer areas of the law, such as *coercion*<sup>62</sup>, which are more difficult to prove and prosecute. Even in the last ten years, it is now less likely to find victims physically restrained and to not hold their passports, as these both provide compelling evidence to support slavery or related charges. Rather, traffickers often stay one step ahead of the law and exercise subtler means of power and control. It is unclear how authorities interpret and assess the elements of *coercion*, including psychological oppression<sup>63</sup>, *abuse of power*<sup>64</sup> and *taking advantage of a person's vulnerability*<sup>65</sup>. The Committee should examine the extent

<sup>60</sup>[http://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=jfadt/slavery\\_people\\_trafficking/subs.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jfadt/slavery_people_trafficking/subs.htm)

<sup>61</sup>Special Rapporteur Report, p12.

<sup>62</sup> Criminal Code s270.1A(a)

<sup>63</sup> Criminal Code s270.1A(d)

<sup>64</sup> Criminal Code s270.1A(e)

to which responding authorities elect to pursue charges with a lower or a more manageable burden of proof and the reasons for those decisions.

The Committee should also examine how authorities assess vulnerabilities in sponsored visa programs where threat of revoking sponsorship, which may simply be a veiled threat of deportation, is used to restrict workers' rights and conditions. The AIC's report on labour trafficking provided a foundation of knowledge about the relationship between labour exploitation and labour trafficking and confirmed the existence of both amongst employer-sponsored visa programs. More research is required to gauge prevalence and to inform strategies to address the problem.

### **Forced marriage policy**

Regarding forced marriage, there remains a significant gap in supportive mechanisms available to individuals at risk of forced marriage who are over the age of 18. Court ordered interventions and airport watch list orders are limited to applicants under the age of 18 and do not apply across the states. Those at risk over the age of 18 are relying on alternative non-specific interventions which do not always include the ability to place an airport watch list order. Whilst the threat of forced marriage is often facing those under the age of 18, often the marriage takes place on an 18<sup>th</sup> birthday or shortly after an 18<sup>th</sup> birthday, rendering protective options inaccessible. The Salvation Army have provided a supplemental submission providing more in-depth analysis of the early and forced marriage situation in Australia.

### **Cooperation requirement**

The Salvation Army and other NGOs have long advocated for the removal of the requirement for victims to cooperate with the criminal justice process in order to access the services and visa framework available for victims of trafficking. A proposal was made to Government in 2014 to pilot a new stream for victims of forced marriage. The proposal suggested a separate stream for forced marriage victims where eligibility would be assessed by a non-law enforcement "certifying body". A few options were suggested for who this certifying body could be, including Red Cross, the Department of Human Services, and other non-law enforcement bodies. This proposal was officially declined at the last Roundtable Senior Officials Meeting in November 2015; however, the Government agreed to provide an automatic assessment period of 90 days, rather than the initial 45 days.

The assumption appears to be that the requirement is necessary to secure prosecutions and that, unless required, victims would not support investigations. Neither of these is true; to date, there have only been 17 individuals prosecuted under the slavery offences and in The Salvation Army's experience, many victims want to participate to see their offenders held accountable. Indeed, it is common for victims to feel confused and frustrated when authorities are not able or willing to proceed with an investigation. ***The Salvation Army recommends the Committee should examine the proposal and the Government's decision and make an independent assessment to be included in the Committee's final report.***

The Convention on the Rights of a Child (CRC) Article 3.1 states, "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." The

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<sup>65</sup> Criminal Code s270.1A(f)

CRC requires that care for a child victim of trafficking shall not, under any circumstances, be conditional on the child's willingness to act as a witness.<sup>66</sup>

Australia also has an obligation under the CRC (Article 32) to "*Promote the physical and psychological recovery and social integration of child victims.*"<sup>67</sup> The Salvation Army argues that mandatory participation in the criminal justice process does not support the psychological recovery and social integration of child victims. Both the crime victim literature and our direct experience confirm participation in the criminal justice system increases the risk of retraumatisation.<sup>68</sup>

Children should be afforded the right to have an independent guardian to assist them in decision making about their future, where another suitable adult (such as a parent where appropriate) is not available to provide support. The UNICEF Guidelines on The Protection of Child Victims of Trafficking state that "As soon as a child victim is identified, a guardian shall be appointed by a competent authority to accompany the child throughout the entire process until a durable solution that is in his or her best interests has been identified and implemented."<sup>69</sup> The Guidelines also recommend a multidisciplinary approach to assessing needs of children where solutions are recommended with the best interests of the child at the centre.<sup>70</sup>

In cases where the CDPD determines it would be in the public interest to prosecute a case, there are mechanisms, such as those in domestic violence cases that provide for an officer to act as complainant rather than the child. The Committee should explore this and determine if there are sufficient grounds to retain the cooperation requirement for child victims of slavery, particularly forced marriage.

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.

## **Other legislation**

As discussed in Term of Reference #2, a key challenge to anti-slavery/trafficking legislation and policy is other, related policies that have not been properly considered for any negative impacts on the framework. Problems mostly dwell at the intersection of immigration and workplace, or labour policy, where temporary lawful and unlawful workers are reluctant to complain about conditions for fear of losing sponsorship, and thus, opportunity to work.

For instance, in an effort to increase penalties on employers exploiting foreign workers, the Government recently passed legislation, *Migration Amendment (Charging for a Migration Outcome) Act 2015 (Cth) (Charging for a Migration Outcome Act)*, creating new civil penalties for anyone who solicits or provides payment for a visa outcome. Though well-intended to combat visa fraud and worker exploitation, the legislation also created a new \$40K penalty for a worker found to have paid for such an outcome; despite acknowledging that foreign workers, including victims of trafficking, are more vulnerable to

<sup>66</sup> Convention on the Rights of a Child, Article 2, HCHR Guidelines c.8

<sup>67</sup> OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking, 2010, p.64

<sup>68</sup> Herman, J. (1997) [1992]. Trauma and recovery: The aftermath of violence—from domestic abuse to political terror. New York: Basic Books.

<sup>69</sup> UNICEF Guidelines on the Protection of Child Victims of Trafficking, X, p.16

<sup>70</sup> UNICEF Guidelines on the Protection of Child Victims of Trafficking, X, p.25

being lured into such an arrangement. It also provided broad visa cancellation powers to the Minister, raising concerns that an unidentified victim could be inadvertently deported.

It is worth noting that both sides of government approved the new penalty, despite the fact that there were no prosecutions under the employer sanctions provisions of the Migration Act in 2015-16.<sup>71</sup> Penalties are only as useful as they are exercised and legislation introducing new penalties should be assessed for unintended, negative outcomes on vulnerable people.

The Government categorically rejected amendments that would explicitly exclude victims of trafficking on the basis that they would be automatically immune. This logic rests on the assumption that all victims are being successfully identified and directed to support, which this submission has endeavoured to demonstrate does not happen consistently.

This is but one example of a policy that is intended to protect vulnerable people, but which is based on untested assumptions and could result in harsh impacts on victims, including fines and deportation. Additionally, outcomes are likely to include strengthening the leverage exploitative employers have over unlawful workers, thus lessening the likelihood that workers will complain to and cooperate with authorities.

#### Recommendations

24. The Committee should seek answers to the following questions:
  - Are current victim engagement strategies undermining prosecutions?
  - Are expert witnesses being used to assist prosecutors to address credibility issues, where appropriate?
  - Are the CDPP appropriately resourced to manage the complexity of trafficking cases?
25. Introduce Forced Marriage Protection Orders, similar to the U.K. model<sup>72</sup>, which include airport watch list orders and court ordered intervention for those over the age of 18.
26. Integrate federal and state responses to forced marriage which include a mandatory role for state child protection agencies.
27. 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.
28. Amend the Charging for a Migration Outcome Amendment to explicitly exclude victims of trafficking and slavery and to provide protections for workers who report unlawful conduct.

<sup>71</sup> According to the DIBP Annual Report 2015-16, the Department undertook 838 activities to educate businesses in relation to the employer sanctions legislation... As a result of these visits, the Department issued 414 Illegal Worker Warning Notices to businesses to deter future non-compliance. The DIBP Report and the 8<sup>th</sup> IDC report provide no information regarding use of employer sanctions provisions, which include up to 5 years' imprisonment for aggravated offences involving the exploitation of workers.

<sup>72</sup> <https://www.gov.uk/apply-forced-marriage-protection-order/overview>

## Term of Reference #7: Other related issues.

### Law enforcement in the National Action Plan to Combat Human Trafficking and Slavery

The launch of the National Action Plan in December 2014 was a significant achievement. The Plan has many strengths, including a balanced approach across all forms of trafficking and slavery, a commitment to human rights, and clear intention to balance efforts across prevention, protection and prosecution.

One area where the Plan could be improved is in the measurability of its actions and in the ability to attribute longer-term outcomes to those actions. The lack of this detail in the Plan, combined with limited information provided in the annual IDC reports, make it difficult to fully assess the Government's progress toward ending modern slavery in Australia.

Table 1 provides a snapshot of the accountabilities and measurements for ensuring law enforcement agencies are able to identify and investigate human trafficking cases. The Table includes the measures associated with the action as well as the second progress report, which is provided in Appendix 1 of the 8<sup>th</sup> IDC report.

**TABLE 1**

<b><i>Pillar 2: Detection and Investigation</i></b>		
<b>Goal One: Australia ensures frontline officers are trained and equipped to detect and respond to human trafficking and slavery.</b>		
<b>Action</b>	<b>Measure</b>	<b>Status Report (8<sup>th</sup> IDC Report)</b>
Item 20: Train Australian domestic frontline officers to recognise the indicators of human trafficking and slavery and to respond to slavery.	20.1 Continue to run the annual Human Trafficking Investigations Programs for Australian Federal Police investigators, State and Territory police and representatives, from the Department of Immigration and Border Protection.	During the reporting period, the Australian Government continued to run the annual Human Trafficking investigations course for AFP investigators, state and territory police and representatives from DIBP. Course content has been revised and is anticipated to be delivered next in early 2017.
	20.2 Continue to provide specialist training to Department of Immigration and Border Protection onshore compliance officers through the Compliance Training Program.	During the reporting period, the Australian Government provided specialist training to DIBP onshore compliance officers through the Compliance Training Program.
	20.3 Continue to provide specialist training to Department of Immigration and Border Protection state and territory offices to ensure frontline staff, as a first point of client contact, are able to identify indicators of human trafficking and slavery.	During the reporting period, the Australian Government provided specialist training to DIBP and ABF state and territory offices to ensure frontline staff, as a first point of client contact, are able to identify indicators of human trafficking and slavery. DIBP also developed its internal e-learning module for departmental staff in frontline roles slavery.

There are several problems with this framework:

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;
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.

The vagueness of the training action is reflected in other actions that are particularly relevant to the recommendations made in this submission, including actions on raising community awareness (Action 23) and strengthening relations between frontline officers and vulnerable groups (Action 24). The corresponding measure for Action 23 is to provide practical support for organisations to raise awareness. Yet, there is no funding for a community awareness strategy and the budget delineated in the plan targets only forced marriage. While this is a positive step, it falls short of reaching the Plan's intention to balance the response across all types of slavery and trafficking.

The corresponding measure for Action 24 is to maintain capacity of AFP Community Liaison Teams to build positive, trusting and cohesive relationships with relevant communities. The status report for both actions reads as it does for Action 20; that the Australian Government continued to provide practical support to organisations and maintained the capacity of liaison teams.

On the positive side, we are not starting from scratch and the Plan provides a strong foundation from which to work. Additionally, the Plan allows for amendments to be made over time. However, it is necessary to review the measurability of the Plan to ensure its success and such a review would be best managed by an independent commissioner (see Recommendation #1).

## **Children**

It bears noting the impacts of the lack of measurability of the National Action Plan on particularly vulnerable groups, such as child victims of trafficking and slavery.

For instance, measure 50.2 reads: "Ensure that the [Support Program] and trafficking visa framework continue to take into account the needs of minors, including through the availability of a 90-day reflection and recovery period under the Assessment and Intensive Support and Extended Intensive Support Streams."

This measure is insufficient because it only speaks to whether children are afforded more time to decide if they will cooperate with law enforcement. It does not speak to the lived experience of children who engage with the framework or whether the framework is succeeding in balancing the needs and rights of children with other interests. The status report against this measure in the 8<sup>th</sup> IDC report reads:



“During the reporting period, the Australian Government ensured that the [Support Program] and visa framework continued to take into account the needs of children, including through the availability of the 90-day reflection and recovery period...” This information does not meet an adequate standard for government reporting and accountability.

### **Previous inquiry into human trafficking and slavery**

Many of the issues discussed in this submission were raised in the most recent inquiry into human trafficking, conducted in 2012-13 by the Joint Standing Committee on Defence, Foreign Affairs and Trade, Human Rights Sub-committee. The Inquiry received over 80 submissions and despite great alignment in recommendations from key anti-slavery groups, the Committee’s final report<sup>73</sup> produced only eight recommendations:

1. The Committee recommends that the Department of Immigration and Citizenship, in conjunction with the Interdepartmental Committee on Human Trafficking and Slavery and relevant non-government organisations, develop a fact sheet to provide visa applicants information on their rights as part of the visa application process. The information should be available in the visa applicant’s language.
2. The Committee recommends that the Australian Government continue to use international mechanisms including, but not limited to, the United Nations Human Rights Council’s Universal Periodic Review to combat people trafficking.
3. The Committee recommends that the Australian Government negotiate re-funding of contracts for non-government organisations one year ahead of the current contracts’ conclusion.
4. The Committee recommends that suspected victims of trafficking be provided an initial automatic reflection period of 45 days, with relevant agencies given the capability to grant two further extensions of 45 days if required. In addition, the suspected victims of trafficking should be provided adequate support services through the Support for Trafficked People Program.
5. The Committee recommends that the Australian Government consider Recommendation 3 of the Senate Legal and Constitutional Affairs report on the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012, having regard to the need to ensure that even if assistance does not lead to a conviction, it is still substantial in terms of giving assistance to authorities.
6. The Committee recommends that the Australian Government further investigate the establishment of a federal compensation scheme for proven victims of slavery and people trafficking. The compensation fund should be funded by persons convicted of these crimes. The Committee also recommends that the Australian Government review the current rates of compensation.
7. The Committee recommends that the Australian Government, in consultation with relevant stakeholders, undertake a review to establish anti-trafficking and anti-slavery mechanisms appropriate for the Australian context. The review should be conducted with a view to: introducing legislation to improve transparency in supply chains; the development of a labelling and certification strategy for products and services that have been produced ethically; and

<sup>73</sup> Trading Lives: Modern Day Human Trafficking. file:///C:/Users/heather.moore/Downloads/http---www.aphref.aph.gov.au-house-committee-jfadt-slavery\_people\_trafficking-report-front.pdf



8. The Committee recommends that the Australian Government utilise the UK Internet Watch Foundation's URL list to block access to child abuse sites in Australia increasing the prominence of fair trade in Australia.

From these, the Government accepted only Recommendation 2 in full. Given the amount of time, energy and resources that went into the Inquiry, The Salvation Army and many partner agencies were profoundly disappointed with its results. While some very positive changes have occurred in response to NGO recommendations, those occurred outside the remit of the Joint Standing Committee.

While the terms of reference are slightly different, the current Inquiry provides a great opportunity to review the outcomes of the previous inquiry and reconsider the evidence for the need for change.

### Recommendations

29. An independent commissioner on trafficking and slavery should conduct a review of the National Action Plan and recommend necessary updates to ensure it is achievable with existing resources; to assess additional necessary resources; to clarify measurable outcomes; and to ensure the Plan's actions will achieve those outcomes. The commissioner would also review recommendations from all previous Inquiries and seek to progress those recommendations at the Commonwealth and state levels.

## Conclusion

Australia has made great efforts to establish a foundation for a domestic and regional antislavery response. However, more investment is required in outreach and identification so more victims are found and supported, and more perpetrators are held accountable. In the absence of additional resources, the anti-slavery/trafficking response requires restructure to better align with international best practice, particularly in community-based collaboration as a central means to prevent trafficking, protect victims, prosecute offenders, and partner together.

**Australia needs: information, realised commitment to human rights principles, collaboration, training, awareness, evaluation, and congruent policy. An effective national response to slavery and trafficking should be evidence-based and dynamic. It should mobilise communities through multi-sector, multi-lateral engagement between all levels of government, civil society, citizens and survivors.**

This requires the leadership of all levels of government working together to identify and address gaps. Local towns and councils also have an important role to play, particularly in raising awareness and identifying potential cases. By proactively facilitating collaborative multi-sector, multi-lateral engagement, providing opportunities for training and information sharing and developing a diverse, collaborative and strategic approach to funding support services for trafficked persons, Australia can become a world leader in anti-slavery work.

## Appendix-Background on The Salvation Army, Freedom Partnership to End Modern Slavery

The Salvation Army has an international mandate to fight modern slavery. In Australia, we have been working directly with victims since 2008, when we established the first and only safe house in the country for women who experienced trafficking and slavery.

The Safe House provides case management services to safe house clients and community-based clients, including women, men, youth and children. We have supported over 300 individuals, including migrant workers who have experienced slavery in a variety of industries, including but not limited to: construction, personal/aged care, hospitality and tourism, and domestic work.

We have also supported victims of sexual servitude, forced marriage, and slave-like marriage. Over time, we have also provided prevention services to many other people who were not subjected to slavery but experienced underpayment/non-payment of wages, verbal abuse, excessive hours, living at their place of work and being unable to demonstrate an employment relationship despite working in a business for years.

The Salvation Army also provides legal services through Salvos Legal Humanitarian and works through its international networks to assist people repatriating and whose families require assistance. It is this first-hand experience that informs our recommendations in this submission.

In July 2014, we established The Freedom Partnership to build a national movement to end slavery, trafficking and other slavery-like practices in Australia. The Freedom Partnership does this by providing services to victims and by engaging survivors, service providers, communities, corporations, and all levels of government to seek and implement solutions to end slavery.

Our core initiatives include:

- Engaging and building the capacity of responders at the state, territory and local level to prevent, identify and work collaboratively to respond to cases of modern slavery;
- Fostering opportunities for survivors to become advocates in a self-determined, supported way;
- Leading and participating in strategic partnerships with other groups, including faith- and community-based organisations, unions, and academia; and
- Advocating for rights-based legislation and policy that reflects international best practice.