

**PARLIAMENTARY JOINT COMMITTEE ON FOREIGN AFFAIRS, DEFENCE  
AND TRADE: INQUIRY INTO ESTABLISHING A MODERN SLAVERY ACT IN  
AUSTRALIA**

*Note on terminology:* for ease of reference this document uses ‘human trafficking and slavery’ as a general term that also encompasses slavery-like practices such as servitude and forced labour.

**Question No. 1**

**Mr Crewther MP (Chair) asked the following question at the hearing on  
11 August 2017:**

One of the issues surrounding a number of submissions is that the only recommendations for the 852 visas for victims of trafficking can be made by the Australian Federal Police (AFP). What level of detail is required for the AFP to support a victim's application for the 852 visa?

**The answer to the honourable Chair's question is as follows:**

The title of the subclass 852 visa is the Referred Stay (Permanent) visa (RSV). The criteria for grant of a RSV are set out in regulation 2.07AK of the *Migration Regulations 1994*. Under Regulation 2.07AK, a victim may be eligible for a RSV if they have made a contribution to, and cooperated closely with, an investigation into a human trafficking, slavery or slavery-like offence, and would be in danger if they return to their home country. This visa allows the holder to remain in Australia permanently, and immediate family members may be included in the visa application.

A prerequisite for grant of an RSV is that the Minister for Justice issue a Referred Stay Certificate (RSC) certifying that the victim contributed to and cooperated closely with the investigative process. The Minister for Justice determines whether to issue a RSC on the basis of information provided by the Australian Federal Police (AFP) through an ‘Assessment of Eligibility for Certificate for the Purpose of a Referred Stay Visa’. This assessment is initiated by the AFP and summarises the contribution the victim has made to the investigative process - regardless of whether this contribution will lead to a prosecution. The assessment also addresses any relevant character issues and outlines any perceived danger if the victim were to return to their country of origin that the AFP have become aware of in the course of the investigation. The assessment must be signed by an AFP officer of the substantive rank of Commander or above.

The Australian Government is committed to ensuring the RSV process is appropriate for the Australian context. As a result of the 2015 review of the Human Trafficking Visa Framework, the Australian Government broadened the circumstances under which an RSV can be issued to include situations where victims have assisted with a human trafficking or slavery-related investigation which has not resulted in a brief of evidence to the Commonwealth Director of Public Prosecutions. As a result of this review, the Australian Government also changed the title of the subclass 852 visa from Witness Protection (Trafficking) Permanent visa to the Referred Stay (Permanent) visa. This change addresses perceived stigma associated with the former visa title and affords greater privacy to trafficked people.

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**Question No. 2**

**Senator Gallacher asked the following question at the hearing on 11 August 2017:**

We took evidence about a prosecution (the Wei Tang prosecution) where the victim was eventually deported with the debt still ready to be actioned in another foreign jurisdiction. Is that consistent with the *Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*? Is that the piece of legislation that applies to that area?

**The answer to the honourable senator's question is as follows:**

Ms Wei Tang was convicted of 10 counts of slavery in 2006 (five counts of intentionally possessing a slave and five counts of intentionally exercising a power of ownership over slave). The conviction related to the exploitation of five Thai nationals in a Melbourne brothel. The victims in this case were initially identified in 2003. This was before the Australian Government established its response to human trafficking and slavery in 2004 and ratified the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* (Protocol) in 2005. Amongst other things, the Protocol provides that States should have *due regard* for the safety of victims being repatriated to a foreign jurisdiction. Australia's current laws and policies reflect our obligations under the Protocol. For example, a victim who has assisted with the criminal justice process and would be in danger if returned to their country of origin may be eligible for a Referred Stay (Permanent) visa (RSV) to allow them to remain permanently in Australia. Any known debt owed by a victim would be considered as part of the assessment of danger during the RSV process.

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**Question No. 3**

**Senators Gallacher and Reynolds asked the following questions at the hearing on 11 August 2017:**

Can suspected victims of domestic servitude in embassies in Canberra access the justice system? How can they access it?

**The answer to the honourable senators' questions is as follows:**

Any suspected victim of human trafficking, slavery or a slavery-like offence (including servitude) referred by the Australian Federal Police is able to access the Australian Government's Support for Trafficked People Program. This includes victims who have allegedly been subject to exploitation in diplomatic premises. However, the Australian Government is required to respect the diplomatic privileges and immunities accorded to foreign diplomatic staff and foreign missions in Australia. This can include immunity from Australia's criminal jurisdiction for acts performed in both personal and professional capacities. Foreign diplomatic missions and their documents are also inviolable. This means that where an alleged victim or offender enjoys diplomatic immunity, the Australian Government may be unable to progress a criminal investigation unless the sending State agrees to waive immunity.

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**Question No. 4**

**Senator Reynolds asked the following questions at the hearing on 11 August 2017:**

What are the details of the Australian Federal Police's (AFP) Human Trafficking Investigations course? How does the AFP define trafficking versus slavery and what are the AFP telling people to look out for?

**The answer to the honourable senator's questions is as follows:**

The Human Trafficking Investigations Course (HTIC) is an elective training program within the Australian Federal Police (AFP) Victim Based Crime investigations training continuum, suitable for sworn operational members currently working within an investigation area.

HTIC is a five day program designed for senior investigators who are/or may be involved in the investigation of human trafficking, slavery and slavery-like offences. The course is designed to highlight areas critical to the successful investigation of these crimes, including relevant legislation, investigative methodologies and victim liaison and support.

The program includes sessions from key government departments and NGOs working within the human trafficking and slavery space. A number of case studies are also presented during the course which emphasise and reinforce the learning outcomes. Understanding and appreciation of indicators of human trafficking and slavery are continuously discussed during the five day program. A number of exercises are also conducted in which participants are asked to identify the indicators and relevant offences. A copy of AFP's List of Indicators has been provided in response to Question Seven.

All Canberra based Human Trafficking Investigations Courses also include an additional two day 'Hydra' scenario with a human trafficking or slavery-related theme. Hydra is an immersive simulation system that involves participants applying problem solving and decision making to critical incidents that unfold in real time.

The AFP applies the legal definitions of trafficking and slavery set out in Divisions 270 and 271 of the Commonwealth *Criminal Code*. Additional information about the Australian Government's definition of these crimes is set out at Question Eight.

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**Question No. 5**

**Senator Reynolds asked the following question at the hearing on 11 August 2017:**

What training is available from the Australian Federal Police, Department of Social Services, Department of Employment and the Fair Work Ombudsman for officers with an interface responsibility with potential victims of human trafficking and slavery?

**The answer to the honourable senator's question is as follows:**

The Fair Work Ombudsman (FWO) and the Australian Federal Police (AFP) provide comprehensive training about human trafficking and slavery for frontline officers.

*FWO training*

The FWO has established operational processes, created educational resources and delivered training to ensure that staff identify and respond to potential instances of human trafficking and slavery. This includes:

- The National Technical Training for Fair Work Inspectors which is required to be completed upon commencement in the Inspector role. Since 2015 it has contained information and guidance on the referral of matters which are outside the FWO's jurisdiction, including suspected cases of human trafficking and slavery. The training sets out indicators of human trafficking and slavery and alerts new Inspectors to referral processes.
- The creation of a detailed Knowledge Article for all staff which sets out the AFP's indicators of human trafficking and slavery, along with processes for handling suspected instances of these crimes.

Further, recently the agency has collaborated with Anti-Slavery Australia to develop a new refresher training package for Inspectors, which contains a number of new resources to further ensure that staff identify and respond to potential instances of human trafficking and slavery. The package will be available for all operational staff to complete in the first half of the 2017-18 fiscal year.

*AFP training*

In addition to the HTIC (see Question Four), the AFP has also developed a human trafficking and slavery awareness-raising package for frontline police about human trafficking and slavery. This package is titled 'Look a Little Deeper' and was initially launched in October 2014. It was developed in conjunction with Victoria Police.

The package contains information relating to human trafficking and slavery indicators, legislation and includes interviews with individuals involved in human trafficking and slavery matters and examples of where human trafficking and slavery offences may be identified.

The AFP recently updated the package to rejuvenate the design and provide AFP specific information on materials that will be disseminated to AFP members. The materials include lanyards, prompt cards and a foldable guide designed as ready reference materials for front line officers to utilise operationally when human trafficking or slavery is suspected.

In addition, a 'Look a Little Deeper' online training course has been developed to raise awareness in relation to human trafficking and slavery offences across the AFP. Development of this online course is nearing completion with all front line AFP staff targeted to complete this training program over the next 12 months. It is envisaged the AFP will provide this package to all state and territory law enforcement agencies across Australia in the coming months.

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**Question No. 6**

**Senator Reynolds asked the following questions at the hearing on 11 August 2017:**

What are the details of the Australian Border Force (ABF) training programs? Who is trained? When ABF officers execute the operation and arrest the people believed to be the perpetrators, who then interacts directly, during that first contact, with those exploited labourers?

**The answer to the honourable senator's questions is as follows:**

*What are the details of the Australian Border Force training programs? Who is trained?*

Australian Border Force (ABF) officers receive training on human trafficking and slavery, including serious forms of labour exploitation, through the standard ABF Training College program. Specialist Compliance Field training courses are also provided which include a module on human trafficking and slavery awareness and detection strategies. The main objectives of this unit are to:

- Educate and train staff on the Department of Immigration and Border Protection's (the Department's) role under the Australian Government's *National Action Plan to Combat Human Trafficking and Slavery 2015-19*
- Educate and train staff to identify possible instances of human trafficking and slavery
- Define common indicators of human trafficking and slavery
- Describe Compliance Field Officers' role in combatting human trafficking and slavery
- Identify Human Trafficking Contact Officers with whom officers can raise suspected cases of human trafficking and slavery.

Introductory and specialised group-training sessions are run several times each year. During the 2016-17 financial year, 201 ABF officers received introductory training and a further 65 ABF officers undertook specialist Compliance Field training. The Department has also developed e-learning modules on human trafficking and slavery. The modules aim to equip staff to recognise indicators of human trafficking and slavery and will form part of the mandatory training for all frontline staff. As at 4 September 2017, 1,313 officers in the Department and ABF had completed these modules.

The Department also delivers detailed briefings on human trafficking and slavery to officers being posted overseas, particularly to areas known to be associated with these forms of human exploitation.

**Human Trafficking Contact Officer Training**

Each Australian state and territory has a representative Human Trafficking Contact Officer (HTCO). They undertake this HTCO role in conjunction with their work as ABF Compliance Field officers. Many states have more than one HTCO, and the larger states have a small

specialist team working with the HTCO. HTCOs receive training in their role in the following ways:

- On commencement, a training package which includes:
  - procedural instructions on human trafficking and slavery and the role of the HTCO
  - a copy of the *DIBP-AFP Human Trafficking Referral Protocol*
  - a copy of the relevant parts of the Commonwealth *Criminal Code* setting out Australia's human trafficking, slavery and slavery-like offences
  - instructions on the Bridging F 060 visa (BVF) for unlawful non-citizen victims
  - a copy of the Human Trafficking and Slavery Interview Questionnaire, which is designed to assist in interviewing suspected victims.
- Ongoing training is provided through the Compliance Field Training course, Departmental eLearning modules on human trafficking and slavery, and dedicated HTCO teleconferences and workshops. The most recent workshop was held on 14 September 2017.

*When ABF officers execute the operation and arrest the people believed to be the perpetrators, who then interacts directly, during that first contact, with those exploited labourers?*

The ABF works closely with law enforcement partners to combat human trafficking and slavery, including sharing of information relating to persons suspected of human trafficking and slavery for police to investigate. ABF officers do not have express powers to arrest perpetrators of human trafficking and slavery, but can and do refer relevant cases to the Australian Federal Police (AFP) for further investigation. The ABF may detain persons known or reasonably suspected to be unlawful non-citizens or non-citizens working in breach of their visa conditions under Australian migration law.

ABF officers who conduct field operations will engage persons of interest who are suspected to be unlawful non-citizens or lawful non-citizens working in breach of their visa condition. Where these persons have indicators of being a victim of human trafficking or slavery, ABF follows established procedures and the Department's human trafficking and slavery referral protocol with AFP. The Department adopts a low threshold for referral of suspected cases of human trafficking and slavery to the AFP.



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**Question No. 7**

**Senator Reynolds asked the following questions at the hearing on 11 August 2017:**

Can you provide a copy of the key indicators of human trafficking and slavery used by the Australian Federal Police and Australian Border Force?

**The answer to the honourable senator's questions is as follows:**

The most recent version of the key indicators used by the Australian Federal Police is attached. The Australian Border Force also use these indicators.

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**Question No. 8**

**Senator Reynolds asked the following questions at the hearing on 11 August 2017:**

What are the categories of human trafficking, slavery and slavery-like practices and how are these categories distinguished?

**The answer to the honourable senator's questions is as follows:**

The Australian Government has clear definitions of human trafficking, slavery and slavery-like practices which are operationalised through guidance and training across Government. These definitions are based on the criminal offences set out in the Commonwealth *Criminal Code* and are consistent with Australia's international obligations.

In general terms, the Australian Government defines human trafficking as the movement of a person into, out of, or within Australia through the use of coercion, threats or deception<sup>1</sup> for certain exploitive end purposes.<sup>2</sup> These exploitive end purposes are slavery, servitude, forced labour, forced marriage and debt bondage. These practices are all serious crimes that undermine victims' personal freedom and ability to make choices for themselves. However, they involve different types of conduct and differing degrees of seriousness. This is why the Australian Government conceptualises these practices as occurring on a continuum of seriousness. Slavery is at the most serious end of this continuum, followed by servitude, forced labour, forced marriage and debt bondage. The Australian Government's definition of each of these practices is set out below:

*Slavery:* occurs when a person exercises the rights of ownership over another person. This includes the power to make the victim an object of purchase or to use their labour or services in a substantially unrestricted manner. The concept of slavery is only used to describe the most serious exploitive conduct and has a special status at international law. As a result, the Australian Government distinguishes slavery from servitude, forced labour, forced marriage and debt bondage by conceptualising these other practices as 'slavery-like' offences that involve serious exploitation but do not meet the threshold for slavery. Slavery and slavery-like practices are also sometimes described as sub-categories of the umbrella term 'modern slavery'. Modern slavery is an advocacy term and does not have an agreed definition in international or domestic law and policy.

*Servitude:* occurs when the victim does not consider themselves free to cease providing their labour or services OR to leave their place or area of work because of the use of coercion, threats or deception. To be in a condition of servitude, the victim must also be significantly deprived of their personal freedom

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<sup>1</sup> Coercion, threats or deception are not required where the victim is a child.

<sup>2</sup> The Australian Government has also criminalised trafficking in persons for the purpose of organ removal. In certain circumstances, it is possible a victim trafficked for the purposes of organ removal may be in a condition of slavery or slavery-like practices.

*Forced labour:* occurs when the victim does not consider themselves free to cease providing their labour or services OR to leave their place or area of work because of the use of coercion, threats or deception.

*Forced marriage:* occurs when the victim gets married without freely and fully consenting because they have been coerced, threatened or deceived or because they are incapable of understanding the nature and effect of a marriage ceremony.

*Debt bondage:* occurs when the victim pledges their services or the services of a third person as security for a real or purported debt where this debt is: manifestly excessive; or the reasonable value of their services is applied to the debt; or the length and nature of their services are not limited or defined.

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**Question No. 9**

**Senator Reynolds asked the following questions at the hearing on 11 August 2017:**

How are potential victims of human trafficking and slavery identified by Fair Work officers over the phone or in the field? Provide details of the instructions that Fair Work officers on the phone or in the field get, if it's not a Fair Work issue. Specifically, what are the indicators of human trafficking, slavery or slavery-like practices and what is the process for referrals?

**The answer to the honourable senator's questions is as follows:**

The Fair Work Ombudsman has established operational processes to ensure that staff identify and respond to potential instances of human trafficking and slavery. This includes the creation of a detailed Knowledge Article for all staff which sets out the Australian Federal Police's (AFP) indicators of human trafficking and slavery, along with processes for handling suspected instances of human trafficking and slavery.

Specifically, this operational guidance:

- Provides a description of human trafficking and slavery, and provides a link to the AFP's website for indicators and further information (<https://www.afp.gov.au/what-we-do/crime-types/human-trafficking>)
- Provides a description of the roles of the AFP and Anti-Slavery Australia in relation to human trafficking and slavery.
- Asks that FWO staff who suspect a worker may be, or has been, subjected to human trafficking and slavery:
  - provide workplace relations assistance as per usual processes and procedures
  - provide the customer with contact details for Anti-Slavery Australia and the AFP, and
  - escalate the customer's details to a supervisor. Upon further assessment, a formal referral to the AFP may then be made by the FWO.

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**Question No. 10**

**Senator Singh asked the following question at the hearing on 11 August 2017:**

How many Human Trafficking Contact Officers are there in the Australian Border Force?

**The answer to the honourable senator's question is as follows:**

The Australian Border Force currently has ten Human Trafficking Contact Officers. Human Trafficking Contact Officers are located in Sydney, Melbourne (covering Victoria and Tasmania), Brisbane, Adelaide, Perth, Darwin and Canberra.

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**Question No. 11**

**Senator Singh asked the following question at the hearing on 11 August 2017:**

What is the membership of the National Roundtable on Human Trafficking and Slavery?

**The answer to the honourable senator's question is as follows:**

The National Roundtable on Human Trafficking and Slavery is a unique consultative forum that brings together government, business and civil society experts to refine Australia's response to human trafficking and slavery. Since the National Roundtable was established in 2008, non-government members have played a key role in helping to shape Australia's response to these crimes. For example, National Roundtable members contributed to: the development of the Government's *Guidelines for NGOs working with Trafficked People*; 2009 reforms to the Support for Trafficked People Program and Human Trafficking Visa Framework; significant legislative reforms in 2013; the creation of the *Forced Marriage Community Pack*; and the development of Australia's *National Action Plan to Combat Human Trafficking and Slavery 2015-19*. The National Roundtable also provides an important avenue for civil society to provide independent advice and recommendations to the Australian Government, including through working groups.

The membership of the National Roundtable on Human Trafficking and Slavery is set by the Commonwealth Minister with portfolio responsibility for human trafficking and slavery. The National Roundtable meets annually at both Ministerial level and Senior Officials' level. Membership details are set out below.

<b>Government members of the National Roundtable on Human Trafficking and Slavery</b>
Attorney-General's Department (Chair)
Australian Criminal Intelligence Commission
Australian Federal Police
Australian Human Rights Commission
Australian Institute of Criminology
Commonwealth Director of Public Prosecutions
Department of Employment
Department of Foreign Affairs and Trade
Department of Immigration and Border Protection
Department of the Prime Minister and Cabinet
Department of Social Services
Fair Work Ombudsman

**Non-Government members of the National Roundtable on Human Trafficking and Slavery**

Anti-Slavery Australia

Australian Catholic Religious Against Trafficking in Humans

Australian Chamber of Commerce and Industry

Australian Council for International Development

Australian Council of Trade Unions

Australian Muslim Women's Centre for Human Rights

Australian Red Cross

Hagar Australia

International Organization for Migration

Law Council of Australia

Project Respect

Salvation Army

Scarlet Alliance

Uniting Church in Australia

Walk Free Foundation

**Non-Government members of the National Roundtable on Human Trafficking and Slavery Senior Officials' Meeting (These organisations/individuals only attend Senior Officials' Meetings of the National Roundtable)**

Victim Support Australia

United Voice

National Union of Workers

Ms Fiona McLeod SC

Asian Women at Work

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**Question No. 12**

**Senator Singh asked the following question at the hearing on 11 August 2017:**

Is there still a domestic worker visa?

**The answer to the honourable senator's question is as follows:**

No. Australia does not have a domestic worker visa.

There are limited circumstances where foreign domestic workers are issued visas either to support foreign executives or representatives of foreign governments who are temporarily residing in Australia. The visas for this purpose are Subclass 403 – Temporary Work (International Relations) – Domestic Worker (Diplomatic or Consular) stream and Subclass 408 – Temporary Activity – Domestic worker. Domestic workers are also able to accompany their employer/family household travelling to Australia for short-term tourism or business visits where they are travelling on the same itinerary.



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**Question No. 13**

**Mr Crewther MP (Chair) asked the following questions at the hearing on 11 August 2017:**

What are the ‘tied’ visa categories i.e. where there is a sponsorship element or the employer needs to sign off or where there might be a spouse to sign off? Regarding the visas that require employer sign-off, are the visas tied to a particular employer? Is there an ability to transfer between employers?

**The answer to the honourable Chair’s questions is as follows:**

Visa subclasses where the visa holder must be sponsored by an approved sponsor include:

- Subclass 403 - (International Relations) – Seasonal worker stream
- Subclass 407 - Training visa
- Subclass 408 - Temporary Activity visa, and
- Subclass 457 - Temporary Work (Skilled).

Provisions exist for holders of these visa subclasses to change employers within a reasonable timeframe, e.g. up to 60 days for Subclass 457.

On 14 December 2015 new criminal and civil penalties and visa cancellation provisions were introduced as part of a framework that allows for sanctions to be imposed on a person who asks for, receives, offers or provides a benefit in return for a visa sponsorship.

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**Question No. 14**

**Senator Reynolds asked the following questions at the hearing on 11 August 2017:**

Has anyone been convicted of an offence of improper possession or control of another person's passport, under the *Foreign Passports (Law Enforcement and Security) Act 2005*?

**The answer to the honourable senator's questions is as follows:**

Section 21 of the *Foreign Passports (Law Enforcement and Security) Act 2005* (the Act) prohibits the improper use or possession of a foreign travel document. Since the Act entered into force there have been 63 matters involving at least one offence against section 21 of the Act where the offence was found proven and a conviction recorded.

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**Question No. 15**

**Mr Crewther MP (Chair) asked the following question at the hearing on 11 August 2017:**

Can you identify one or two areas within each state and territory where human trafficking and slavery practices are most prevalent?

**The answer to the honourable Chair's questions is as follows:**

The majority of human trafficking and slavery referrals received by the Australian Federal Police (AFP) are in the metropolitan area of each state and territory.

Intelligence suggests that some regional areas are subject to suspected human trafficking and slavery activity due to specific industries that operate in that geographical region. For example, the Mildura/Robinvale region of north/western Victoria is the main source of AFP referrals outside of metropolitan Melbourne, with a focus on the agricultural sector. In other states and territories the referrals are too sporadic to suggest the prevalence of human trafficking and slavery.

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**Question No. 16**

**Senator Gallacher asked the following questions at the hearing on 11 August 2017:**

1. What are the penalties for underpayment of wages and overcharging for accommodation under the *Fair Work Act 2009* (Cth)?
2. What are the penalties for human trafficking and slavery under the *Criminal Code* (Cth)?
3. Do any of the jurisdictions have the ability to seize assets or proceeds of crime?

**The answer to the honourable senator's questions is as follows:**

1. The maximum penalties for underpaying workers is generally 60 penalty units or \$12,600 per contravention for individuals and 300 penalty units or \$63,000 per contravention for bodies corporate. From 15 September 2017—when the amendments in the Commonwealth *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017* commenced—higher penalties (that are 10 times higher than those above) are available in relation to ‘serious contraventions’ involving the deliberate and systematic underpayment of employees.

There are no specific provisions in the Commonwealth *Fair Work Act 2009* (Fair Work Act) that deal with ‘overcharging for accommodation’. The Fair Work Act primarily regulates employment relationships. The Fair Work Act regulates deductions from wages and prohibits employers from directly or indirectly requiring employees to spend their wages (or pay an amount), if the requirement is unreasonable in the circumstances. Wage deductions are only permitted if they are authorised in writing by the affected employee and principally for their benefit, or otherwise permitted under the Act. From 15 September 2017—when the amendments in the Commonwealth *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017* commenced—statutory protections will also be extend to prospective employees who are required to spend or pay an amount in contemplation of employment.

Contractual terms which are inconsistent with these statutory rights are taken to have no effect (see s326 of the Fair Work Act). For example an employer cannot lawfully dictate to an employee where they are to stay outside of work (i.e. where they are to spend their wages). Also, a term cannot require a deduction or payment that is directly or indirectly for the benefit of the employer, or a party related to the employer, and unreasonable in the circumstances. This means an employer cannot automatically deduct an amount from an employee’s wages on account of the employee’s accommodation. Even if the employee agrees to the arrangement, it must be ‘principally for the employee’s benefit’ and reasonable in the circumstances.

More broadly, the Migrant Workers' Taskforce is currently looking into the issue of overcharging for accommodation to determine whether there is a role for the Commonwealth to address issues of exploitation associated with accommodation providers.

*Summary of increases in penalties contained in the Fair Work Amendment (Vulnerable Workers) Act 2017*

Contravention	Penalty pre the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017 (per contravention)		New penalty (per contravention)	
	Penalty units / monetary amount		Penalty units / monetary amount	
	Individuals	Bodies corporate	Individuals	Bodies corporate
<b>'Serious contraventions' involving underpayments*</b> (e.g. non-compliance with term of an Award or the NES)	60 / \$12,600	300 / \$63,000	600 / \$126,000	3,000/\$630,000
<b>Falsifying employee records / pay slips</b>	20 / \$4,200	100 / \$21,000	60 / \$12,600**	300 / \$63,000**
<b>Not keeping proper employee records</b>	30 / \$6,300	150 / \$31,500	60 / \$12,600**	300 / \$63,000**
<b>Failing to issue proper pay slips</b>	30 / \$6,300	150 / \$31,500	60 / \$12,600**	300 / \$63,000**
<b>Providing false or misleading information***</b>	20 / \$4,200	100 / \$21,000	60 / \$12,600	300 / \$63,000
<b>Obstructing or hindering an official</b>	-	-	60 / \$12,600	300 / \$63,000
<p>* Penalty remains 60/300 penalty units if contravention is <u>not</u> deliberate and systematic.</p> <p>**<u>In addition</u>: multiply by 10 for deliberate and systematic contraventions.</p> <p>*** Existing provisions apply in relation to employee records only. The new provisions apply more broadly to any material produced or given to the Fair Work Ombudsman.</p> <p><b>Note:</b> As a result of amendments made to the <i>Crimes Act 1914</i> by the Parliament in May 2017, the value of a Commonwealth penalty unit increased from \$180 to \$210 on 1 July 2017. That is why the monetary amounts previously provided to the Committee differ from those in this table.</p>				

2. The penalties for the principal human trafficking, slavery and slavery-like offences set out in the Commonwealth *Criminal Code* are outlined below:

Crime type	Maximum penalty for a base offence (in years' imprisonment)	Maximum penalty for an aggravated offence (in years' imprisonment)
Slavery	25	
Servitude	15	20
Forced labour	9	12
Forced marriage	7	9
Debt bondage	4	7
Trafficking in persons	12	20
Trafficking in children	25	
Trafficking in persons for the purposes of organ removal	12	20 (25 where the victim is a child)
Harbouring a victim of trafficking in persons, slavery or slavery-like practices	4	7
Deceptive recruiting	7	9

3. The Commonwealth *Proceeds of Crime Act 2002* (the Act) establishes a scheme to trace, restrain and confiscate the proceeds, including assets, and benefits gained from Commonwealth indictable offences, foreign indictable offences and certain offences against state and territory law. The Act would apply in relation to proceeds of crime from human trafficking, slavery and slavery-like offences criminalised under the Commonwealth *Criminal Code*. Australian states and territories also have proceeds of crime laws that apply to offences committed against the law of each jurisdiction.

**PARLIAMENTARY JOINT COMMITTEE ON FOREIGN AFFAIRS, DEFENCE  
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INQUIRY INTO ESTABLISHING A MODERN SLAVERY ACT IN AUSTRALIA**

**Question No. 17**

**Senator Reynolds asked the following questions at the hearing on 11 August 2017:**

1. How many victims of human trafficking or slavery were identified in each Taskforce Cadena operation, and during the two financial years before Taskforce Cadena came into operation? Can you provide a break down of victims by visa type and country of origin?
2. Were any victims of slavery identified in the Carabooda and Pemberton raids? How many of them had retention of their passport? What were the living conditions and the restriction conditions as a group for each of those operations?

**The answer to the honourable senator's questions is as follows:**

1. Since inception, no instances of human trafficking or slavery have been identified during Taskforce Cadena operational activity. The following suspected human trafficking and slavery referrals were made to the Australian Federal Police (AFP) during the two financial years prior to the establishment of Taskforce Cadena:

- o 2013-2014: 28
- o 2014-2015: 71

Since the establishment of Taskforce Cadena the referral numbers are as follows:

- o 2015-2016: 63
- o 2016-2017: 48

2. No indicators of human trafficking or slavery were identified by the Australian Border Force (ABF) Human Trafficking Contact Officer (HTCO) during the Carabooda and Pemberton operations. As is the case with all Taskforce Cadena operational activity, any instances of human trafficking or slavery would be immediately referred to the AFP for further investigation. The AFP were in attendance at each operation and provided members to assist with the execution of search warrants at Carabooda and Pemberton. The AFP ensured members who had completed the Human Trafficking Investigations Course and trained on human trafficking and slavery indicators were in attendance at the execution of the search warrants.

During operational activity undertaken in Pemberton, Western Australia, a total of 46 Malaysian citizens were placed in immigration detention. Of these individuals, 27 were unlawful non-citizens with no valid visa, with the remaining 19 found to be working in breach of student visa conditions (six), or working in breach of Electronic Travel Authority (ETA) conditions (13). During operational activity undertaken in Carabooda, Western Australia, a total of 84 Malaysian citizens were placed in immigration detention. These individuals were found to be unlawful non-citizens with no valid visa, working in breach of student visa conditions, or working in breach of

Electronic Travel Authority (ETA) conditions. An additional five citizens of Vietnam were also detained for working in breach of Tourism or Business class visas.’

All individuals were in possession of their passports. For both operations, the living conditions presented as over-crowded, with many of the rooms configured to accommodate bunk style bedding. While located individuals were likely to have spent a large proportion of their time engaged in unlawful work practices, they were complicit with the activities they were undertaking and there were no restrictions placed on their individual movements.



**PARLIAMENTARY JOINT COMMITTEE ON FOREIGN AFFAIRS, DEFENCE  
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**Question No. 18**

**Senator Reynolds asked the following questions at the hearing on 11 August 2017:**

1. What are the different roles of the Commonwealth agencies involved in addressing human trafficking and slavery and how do they work together?
2. Who is speaking to and representing the victims and looking after their interests?

**The answer to the honourable senator's questions is as follows:**

1. There are 11 Commonwealth Government agencies that work together to implement the Australian Government's response to human trafficking and slavery. A short description of the roles of these 11 agencies is set out below:

**Attorney-Generals' Department (AGD):** AGD has overarching responsibility for managing and coordinating Australia's response to human trafficking and slavery under the *National Action Plan to Combat Human Trafficking and Slavery 2015-19* (National Action Plan), including:

- oversight of the implementation and monitoring of the National Action Plan, including managing Australia's reporting in international fora such as the UN
- coordination and oversight of whole-of-government policy on human trafficking and slavery, including by chairing the Interdepartmental Committee on Human Trafficking and Slavery (IDC) and the IDC's Operational Working Group (OWG)
- developing and administering key legislation, including criminal offences and protections for vulnerable witnesses
- driving engagement with business and civil society on human trafficking and slavery, including by chairing the National Roundtable on Human Trafficking and Slavery and ad hoc working groups, and delivering funding for civil society organisations
- international legal capacity building, including through the *Bali Process Working Group on Trafficking in Persons*

**Australian Criminal Intelligence Commission (ACIC):** The ACIC is Australia's national criminal intelligence agency and works to develop a national understanding of serious and organised crime, including threats associated with human trafficking and slavery.

**Australian Federal Police (AFP):** The AFP is the primary investigative agency for human trafficking and slavery and is responsible for referring suspected victims to the Support for Trafficked People Program.

**Australian Institute of Criminology (AIC):** The AIC is responsible for the research component of Australia's whole-of-government response to human trafficking and slavery.

**Commonwealth Director of Public Prosecutions (CDPP):** The CDPP is responsible for prosecuting Commonwealth criminal offences, including human trafficking and slavery.

**Department of Employment:** The Department of Employment is responsible for national policies and programmes that help Australians work in safe, fair and productive workplaces.

The Department provides secretariat services for the Migrant Workers' Taskforce, which has membership from a number of key IDC agencies.

**Department of Foreign Affairs and Trade (DFAT):** DFAT is primarily responsible for regional and international engagement on human trafficking and slavery, including through Australia's Ambassador for People Smuggling and Human Trafficking.

**Department of Immigration and Border Protection (DIBP) and Australian Border Force (ABF):** DIBP administers the Human Trafficking Visa Framework and provides capacity building and technical assistance in the region. As the operational arm of DIBP, ABF is responsible for protecting Australia's border and managing the movement of people and goods across it, including leading Taskforce Cadena with the Fair Work Ombudsman. DIBP and ABF refer cases of suspected human trafficking and slavery to AFP.

**Department of the Prime Minister and Cabinet (PM&C):** PM&C provides high quality advice and support to the Prime Minister, the Cabinet, Portfolio Ministers and Assistant Ministers to achieve a coordinated and innovative approach to the development and implementation of Government policies. PM&C is a member of the IDC in this capacity.

**Department of Social Services (DSS):** The Department of Social Services administers the Support for Trafficked People Program.

**Fair Work Ombudsman (FWO):** FWO is responsible for enforcing compliance with national workplace laws. The FWO's services also involve the provision of education, assistance and advice about Australia's workplace relations system.

The Australian Government is committed to ensuring these agencies work together effectively and take a coordinated and joined up approach to combating human trafficking and slavery. One way this occurs is through direct cooperation at an agency-agency level. For example, FWO and DIBP have well established processes for the referral of information to AFP. AIC also works with key agencies to collect data and undertake research.

The second way Government agencies work together is through dedicated fora like the IDC and OWG. The IDC meets twice annually as part of the National Roundtable and also provides a framework to ensure that key issues can be addressed on a whole-of-government basis, including the development of legislation. The OWG brings together key operational agencies (AGD, AFP, CDPP, DSS, DIBP/ABF) and meets every six weeks to manage operational issues and manage current cases. The OWG ensures that information is communicated effectively between agencies and the emerging issues are identified and addressed in a coordinated way. For example, the OWG has played a key role shaping reforms to the Support for Trafficked People Program, Human Trafficking Visa Framework and Australia's criminal offences. DFAT also chairs an International Working Group under the IDC to drive the Australian Government's international engagement on human trafficking and slavery. As required, agencies also work together through ad hoc working groups, including with civil society where appropriate. For example, AGD convened a Government Working Group on Protections for Private Domestic Workers Working for Diplomats and Consular Officials with DFAT, DIBP and Employment . AGD has also convened joint government-civil society working groups on supply chain exploitation and communications and awareness-raising.

2. The Australian Government's Support for Trafficked People Program (STPP) is administered by the Department of Social Services and delivered by the Australian Red Cross. Eligibility for the STPP is determined by the Australian Federal Police (AFP) based on whether a person is, or may have been, the victim of a human trafficking or slavery-related offence.

Australian Red Cross case managers are responsible for ensuring appropriate delivery of wrap around services for suspected victims in accordance with their best interests, including individual case management, access to safe and secure accommodation, medical care, counselling, skills development training and referral to legal and migration advice.

All suspected victims referred to the STPP by the AFP automatically receive up to 45 days of intensive support. This is not dependent on assistance with an investigation or prosecution. The STPP provides access to a further 45 days (equalling 90 days) of support for suspected victims who are willing but temporarily unable to assist with the investigation or prosecution of a human trafficking or slavery-related offence. Children are automatically entitled to 90 days of support, if it is in their best interests. All exiting clients are entitled to a further 20 day transition period to assist in final preparations for life outside the STPP. This period may be extended on a case-by-case basis.

Suspected victims assisting with an investigation and/or prosecution are provided ongoing support under the STPP until the matter is finalised. This entitles them to additional benefits such as long-term accommodation, welfare benefits, access to Medicare and legal services, English-language training and assistance to obtain employment and training.

A suspected trafficking victim who is not an Australian citizen and does not hold a valid visa can also have their visa status regularised under the Australian Government's Human Trafficking Visa Framework. This includes a Bridging F Visa to allow the suspected victim to remain in Australia for the initial 45 or 90 day support under the STPP. Bridging visas can also be provided to ensure a person can remain legally in Australia during a criminal justice process. A victim who has made a contribution to an investigation or prosecution, and would be in danger if returned to their home country, is eligible to apply for a permanent visa to remain in Australia.

# HUMAN TRAFFICKING AND SLAVERY INDICATORS

FACTSHEET – OCTOBER 2017

## LOOK A LITTLE DEEPER

Human trafficking is the recruitment, transportation, transfer, harboring or receipt of persons, by the threat or use of force, coercion, deception or other means, for the purpose of exploitation.

The below indicators relate to human trafficking, slavery and slavery-like practices which are comprehensively criminalised under Divisions 270 and 271 of the Criminal Code.

This list is *not* exhaustive. The indicators listed below are *not* present in all situations involving human trafficking and/or slavery. The presence or absence of any of the indicators neither proves nor disproves that human trafficking and/or slavery is taking place, their presence should lead to investigation.

### General Indicators

- ▶ Deceived about the nature of their job, location or employer
- ▶ Believe they must work against their will
- ▶ Feel they cannot leave their work environment or accommodation
- ▶ Show signs their movements are being controlled
- ▶ Show fear, anxiety, distress or nervousness
- ▶ Be subjected to violence or threats of violence against themselves or against their family members and loved ones
- ▶ Suffer injuries that appear to be the result of an assault or application of control measures
- ▶ Be distrustful of the authorities
- ▶ Have no access or control of their earnings
- ▶ Provided limited or substandard food
- ▶ Have limited or no social interaction
- ▶ Be disciplined through punishment
- ▶ Evidence of existing but untreated physical injuries/illnesses
- ▶ Be threatened with being handed over to the authorities
- ▶ Be afraid of revealing their immigration status
- ▶ Not in possession of their passports or other travel or identity documents, as those documents are being held by someone else
- ▶ Have false identity or travel documents
- ▶ Be unfamiliar with the local language
- ▶ Not know their home or work address
- ▶ Allow others to speak for them when addressed directly
- ▶ Be forced to work under certain conditions/unable to negotiate working conditions
- ▶ Transported between accommodation and work by organisers
- ▶ Be unable to communicate freely with others
- ▶ Respond as though coached by a third party
- ▶ Be under the perception that they are bonded by debt and not free to cease work
- ▶ Be under psychological or physical control of another person
- ▶ Be in a situation of dependence
- ▶ Have had their travel costs paid for by facilitators, whom they must payback by working or providing services
- ▶ Work excessively long hours over long periods
- ▶ Not have any days off or adequate breaks
- ▶ Live in poor or substandard accommodation
- ▶ Have no access to medical care
- ▶ Have acted on the basis of false promises
- ▶ Receive little or no payment
- ▶ Have limited or no contact with their families or with people outside of their immediate environment
- ▶ Have poor social awareness

### Forced Marriage

People who are in or at risk of forced marriage may:

- ▶ Have a family history of elder siblings leaving education early and/or marrying early
- ▶ Exhibit signs of depression, self-harm, attempted suicide, social isolation or substance abuse
- ▶ Have unreasonable restrictions from the family and excessive parental restriction e.g. not being allowed out or the person always being accompanied
- ▶ Make a sudden announcement they are engaged
- ▶ Have extended absence from school, a drop in performance or low motivation
- ▶ Exhibit poor attendance in the workplace
- ▶ Have parental control of income and career choices
- ▶ Show evidence of family disputes/conflict, domestic violence/abuse, running away from home or isolation from the community
- ▶ Have a family with a lot of control over the person's life which doesn't seem normal or necessary
- ▶ Be unable to make significant decisions about their future, including without consultation or agreement from their parents
- ▶ Expressing concern regarding an upcoming family holiday
- ▶ History of female genital mutilation/circumcision

## Sexual Servitude (Commercial)

People who have been trafficked for sexual servitude may:

- ▶ Move from one brothel to the next or work in various locations
- ▶ Be escorted to and from work and other outside activities
- ▶ Be unable to refuse unprotected and/or violent sex
- ▶ Show evidence they have been bought and sold
- ▶ Sleep where they work
- ▶ Live or travel in a group, sometimes with other women who do not speak the same language
- ▶ Have very few items of clothing or do not own 'seasonal' clothing
- ▶ Have no cash of their own or control of their earnings
- ▶ Have injuries from unprotected and/or violent sex
- ▶ Be with groups of women are under the control of others
- ▶ Appear in advertisements for brothels or similar places offering the services of women from a particular ethnicity or nationality or provide services to a clientele of a particular ethnicity or nationality

## Servitude (Domestic)

People who have been trafficked for domestic servitude may:

- ▶ Live with a family
- ▶ Not eat with the rest of the family
- ▶ Have no private space
- ▶ Sleep in a shared or inappropriate space
- ▶ Be forced to take drugs or alcohol to allow for greater control
- ▶ Be reported missing by their employer even though they are still living in their employer's house
- ▶ Be subjected to insults, abuse, threats or violence
- ▶ Never or rarely leave the house for social reasons
- ▶ Never leave the house without their employer

## Children

Children who have been trafficked may:

- ▶ Have no access to their parents or guardians
- ▶ Look intimidated and behave in a way that does not correspond with behaviour typical of children their age
- ▶ Have no friends of their own age
- ▶ Have no access to education
- ▶ Have no time for playing
- ▶ Live apart from other children and in substandard accommodation
- ▶ Eat apart from other members of the "family"
- ▶ Be engaged in work that is not suitable for children
- ▶ Travel unaccompanied by adults with telephone numbers for calling taxis
- ▶ Travel in groups with persons who are not relatives who may claim to have "found" the child
- ▶ Possess child-sized clothing typically worn for doing manual or sex work
- ▶ Possess toys, beds and clothing in inappropriate places such as brothels and factories

## Labour Exploitation

People who have been trafficked for labour exploitation may:

- ▶ Work in unskilled manual labour for little or no pay
- ▶ Be forced to work
- ▶ Little to no understanding of work rights and entitlements
- ▶ Receive threats against joining a union
- ▶ Work in environment where labour laws are being breached
- ▶ Be subjected to security measures designed to keep them on the work premises
- ▶ Lack basic training and professional licences
- ▶ Notices have been posted in languages other than the local language
- ▶ The employer or manager is unable to show the documents required for employing workers from other countries
- ▶ There is evidence that workers must pay for tools, food or accommodation or that those costs are being deducted from their wages.
- ▶ Have no choice of accommodation or accommodation is poor quality, multi-occupancy accommodation
- ▶ Live in groups in the same place where they work and leave those premises infrequently, if at all
- ▶ Working in unsanitary and/or unsafe conditions
- ▶ Not dressed adequately for the work they do, for example, they may lack protective equipment or warm clothing
- ▶ Be disciplined through fines
- ▶ The employer or manager is unable to show records of wages paid to workers
- ▶ Forced to open bank accounts controlled by the employer
- ▶ Passport and other personal documents are kept by the employer and the worker is not allowed to have them when they want them
- ▶ The health and safety equipment is of poor quality, missing or modified so that it can be operated by children
- ▶ Depend on their employer for a number of services, including work, transportation and accommodation.
- ▶ There are no health and safety notices
- ▶ Have no labour contract