



Submission No 8

**Inquiry into Slavery, Slavery-like conditions and People
Trafficking**

Organisation: Attorney-General's Department



Australian Government
Attorney-General's Department
Criminal Justice Division

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Inquiry Secretary
Joint Standing Committee on Foreign Affairs, Defence and Trade
Human Rights Subcommittee
PO Box 6021
Parliament House
CANBERRA ACT 2600
jscfadt@aph.gov.au

Dear Mr Zinkel

Inquiry into slavery, slavery-like conditions and people trafficking

I am writing in relation to the Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade's inquiry into slavery, slavery-like conditions and people trafficking.

Since 2003, the Australian Government has had a comprehensive strategy in place to target people trafficking in all its forms, including for sexual and labour exploitation. For ease of reference, the use of the term 'people trafficking' in the strategy is intended to encompass slavery and slavery-like practices, as well as people trafficking. The measures under Australia's anti-people trafficking strategy address the full cycle of trafficking from recruitment to reintegration, and reflect four central pillars: prevention; detection and investigation; prosecution; and victim support and protection. For your information, the current fact sheet on the Australian Government's anti-people trafficking strategy is at **Attachment A**.

Given the challenges in this area, an effective and coordinated whole-of-government response is required in order to effectively investigate and prosecute perpetrators and protect and support victims. Australia's anti-people trafficking strategy is overseen by an Interdepartmental Committee (IDC), chaired by the Attorney-General's Department (AGD), with membership from the Australian Agency for International Development (AusAID), the Australian Crime Commission (ACC), the Australian Federal Police (AFP), the Australian Institute of Criminology (AIC), the Commonwealth Director of Public Prosecutions (CDPP), the Department of Education, Employment and Workplace Relations, the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), the Department of Foreign Affairs and Trade (DFAT), the Department of Immigration and Citizenship (DIAC), the Department of the Prime Minister and Cabinet, Fair Work Building & Construction, and the Fair Work Ombudsman. The IDC is responsible for monitoring the implementation of the strategy, reporting annually to the Commonwealth Parliament on its effectiveness, and ensuring that emerging issues are addressed on a whole-of-government basis. In addition, an Operational Working Group, comprised of the AFP,

AGD, CDPP, DIAC and FaHCSIA, has been established as a subcommittee of the IDC to resolve operational issues and refer emerging policy issues for the IDC's consideration.

This submission provides information about the Australian Government's domestic implementation of the anti-people trafficking strategy, and was prepared in consultation with IDC agencies including the AFP, CDPP, DIAC and FaHCSIA. Information in this submission is current as at 20 September 2012.

I understand that DFAT will provide a separate submission prepared in consultation with the AFP, AGD, AusAID and DIAC detailing the Australian Government's implementation of regional and international aspects of the anti-people trafficking strategy. I also understand that the AIC will also provide a submission detailing its research on trafficking and related issues.

The people trafficking context in Australia

While Australia is a destination country for trafficking victims, due to our geographical isolation and strong border controls the number of people trafficked into Australia each year remains low compared with other countries in the Asia-Pacific region. As at 20 September 2012, 199 suspected victims of trafficking have been identified and referred to the Australian Government Support for Trafficked People Program since 2004. The majority of identified victims to date have been from Asia, particularly from Thailand, the Republic of Korea, and Malaysia. Of the 199 identified victims, 160 have been women trafficked for the purposes of exploitation in the sex industry. However, cases of men and women being trafficked for labour exploitation are increasingly being identified by Australian authorities.

Legal frameworks

Australia ratified the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (the Trafficking Protocol), which supplements the *United Nations Convention against Transnational Organized Crime* (UNTOC), in 2005. The Trafficking Protocol is the first global legally binding instrument with an agreed definition on trafficking in persons and covers trafficking for sexual servitude, slavery and labour exploitation.

Australia is also a party to a number of other international instruments that form part of the legal framework on trafficking, including the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights*, the *Convention on the Elimination of All Forms of Discrimination against Women*, the *Convention on the Rights of the Child* and its *Optional Protocols on the sale of children, child prostitution and child pornography, and on involvement of children in armed conflict*, the *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*, and several International Labour Organization conventions on forced labour.

In ratifying the Trafficking Protocol, the Australian Government undertook a substantive legislative review to map Australia's obligations and to determine the extent to which new laws or offences were required. While slavery was already criminalised under Division 270 of the Commonwealth *Criminal Code*,¹ the insertion of people trafficking offences into the Criminal Code through the *Criminal Code Amendment (Trafficking in Persons Offences) Act 2005* ensured trafficking is

¹ Slavery has been a criminal offence in Australia since 1824 due to the application of the United Kingdom's *Slave Trade Act 1824*. In 1999, slavery offences were inserted into Division 270 of the Criminal Code to modernise the somewhat archaic Slave Trade Act offences.

comprehensively criminalised, fulfilling Australia's legislative obligations under the Trafficking Protocol.

As a result, Australia has strong anti-trafficking laws with severe penalties, including offences relating to slavery and trafficking persons into, from, and within Australia for the purposes of exploitation. The offences, which are set out in Divisions 270 and 271 of the Criminal Code, are framed to be broadly inclusive, including by covering conduct which:

- occurs both across borders and within Australia – subject to constitutional limitations
- is for a range of exploitative purposes
- includes men, women and children as victims, and
- takes place with or without the involvement of organised crime groups.

The maximum penalties for the Criminal Code offences range from 12 months' imprisonment for debt bondage to 25 years' imprisonment for slavery and trafficking in children.

To ensure Australia's legislative framework remains robust and responsive to emerging issues, on 30 May 2012 the Attorney-General, the Hon Nicola Roxon MP, introduced the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012 into Parliament. Prepared following extensive public consultation, the Bill proposes to amend Divisions 270 and 271 of the Criminal Code to ensure that the broadest range of exploitative behaviour is captured and criminalised, including by:

- establishing new offences of forced marriage and harbouring a victim, and standalone offences of forced labour and organ trafficking
- ensuring the existing slavery offences apply to conduct which renders a person a slave, as well as conduct involving a person who is already a slave
- extending the application of the existing offences of sexual servitude and deceptive recruiting for sexual services so they apply to non-sexual servitude and all forms of deceptive recruiting
- broadening the definition of 'exploitation' to include additional slavery-like practices
- inserting a definition of 'coercion', which includes coercion through psychological oppression, the abuse of power or taking advantage of a person's vulnerability, and
- increasing the penalties applicable to the existing debt bondage offences, to ensure they reflect the relative seriousness of the offences.

The Bill is currently before the Senate. A copy of the Bill, and the accompanying Explanatory Memorandum, is available from the Australian Parliament House website at: http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r4840.

Investigations and prosecutions

Trafficking investigations are a high priority for the AFP. In determining which matters to prioritise, the AFP uses the Case Categorisation and Prioritisation Model (CCPM). Considerations when assessing a crime under the CCPM include incident type and the impact of the matter on Australian society. Generally, people trafficking offences will be assessed as having a very high impact and are considered a high priority crime type. Since 2004, the AFP has undertaken more than 350 investigations and assessments into allegations of people trafficking and related offences.

Under Australia's anti-people trafficking strategy, the AFP has established specialised Human Trafficking Teams (HTTs), which have responsibility for investigating people trafficking and related offences. The HTT National Coordinator is based in Canberra, with dedicated HTTs in Sydney and Melbourne. AFP members who are specially trained in people trafficking matters are also located in Brisbane, Canberra, Darwin and Perth. For trafficking matters in other locations, HTTs can draw upon additional support from the AFP's broader flexible investigative pool with members located in each capital city. The HTTs investigate matters both proactively and through referrals from other Commonwealth or State and Territory Government agencies, industry and non-government organisations (NGOs).

Trafficking investigators are provided specialised training through the AFP's Human Trafficking Investigation Training Program (HTIP). The HTIP includes components on dealing with victims of trauma generally, dealing with victims of trafficking specifically, and on the operations of the Support for Trafficked People Program. In addition to the general cultural awareness training received by all AFP recruits, the HTIP also provides specific awareness training focusing on the regions from which the majority of trafficking victims identified in Australia originate (for example, Southeast Asia). Between 2004 and 20 September 2012, 192 investigators completed the HTIP, including 134 AFP investigators, 35 investigators from State and Territory police (all jurisdictions), two representatives from DIAC and 21 investigators from foreign police services.

While the Commonwealth has responsibility for criminalising people trafficking, slavery, and slavery-like offences, the exploitative conduct that constitutes these crimes may also form an offence under State and Territory legislation. For example, all jurisdictions have a range of offence provisions to cover related crimes such as assault, sexual assault, forced prostitution, kidnapping and deprivation of liberty. Accordingly, State and Territory offences may be used in conjunction with Commonwealth offences. As State and Territory police may identify matters of people trafficking before the AFP, and investigations may overlap, the AFP collaborates closely with State and Territory police.

On 4 May 2011, the Australian Policing Strategy to Combat Trafficking in Persons 2011-13 was endorsed by the AFP and all State and Territory police services. The AFP and its State and Territory policing partners have committed to ensuring that Australia's anti-trafficking strategy remains relevant and responsive to emerging trends and issues. For this reason, and in recognition of Australia's international obligations, the focus of the Australian Policing Strategy was broadened to encompass all forms of people trafficking, including labour exploitation and organ harvesting.

The Australian Policing Strategy outlines a number of obligations, primarily for the AFP, but also for State and Territory police, which are:

- promoting awareness of people trafficking as a crime
- 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 appropriate technical tools are available to police agencies
- ensuring that all suspected victims are referred to the case management service provider
- providing appropriate training and education to police personnel, and
- contributing to reviews of legislation and regulatory regimes.

As part of the implementation of the Australian Policing Strategy, the AFP conducts forums to engage stakeholders in discussions to collectively combat and reduce the impact of people

trafficking. Most recently, in conjunction with the AIC and Western Australia and Northern Territory police, forums were held in Kalgoorlie, Karratha, Perth, Darwin and Alice Springs during March 2012. These forums also focused on familiarising all stakeholders with the indicators which identify possible victims of people trafficking and the referral process to Government agencies, victim support networks or other NGO support groups.

In June 2012, the AFP, the ACC and State and Territory police services facilitated the creation of a National Human Trafficking Desk (HT Desk) within the Australian Criminal Intelligence Database and Australian Law Enforcement Intelligence Net, which are managed by the ACC. The HT Desk will function as a centralised point for the collection, collation, analysis and dissemination of information and intelligence relating to people trafficking. The HT Desk will be accessible to nominated users from all contributing agencies, including the ACC, the AFP, New South Wales Police, Victoria Police, Queensland Police, Western Australia Police, Tasmania Police and Northern Territory Police.

Due to the transnational nature of people trafficking and related offences, the AFP also liaises closely with international bodies. I understand that information about the AFP's regional and international efforts to combat people trafficking will be detailed in DFAT's submission to the inquiry.

Securing prosecutions is also a key objective of the Australian Government's anti-people trafficking strategy. Prosecutions for offences under Divisions 270 and 271 of the Criminal Code are undertaken by the CDPP. The CDPP has considerable experience in the area of people trafficking, which is a challenging one given the factual situations involved, the need for interpreters and reliance on overseas witnesses. Since the commencement of Divisions 270 and 271 of the Criminal Code, the AFP has referred briefs of evidence in relation to 47 potential defendants to the CDPP for consideration of prosecution action. Some of these matters are still before the courts, and some have been referred to the relevant State or Territory Director of Public Prosecutions. Fifteen individuals have been convicted of people trafficking-related offences. Ten of those individuals were convicted of slavery offences, three of sexual servitude offences and two of people trafficking offences. One of the people trafficking convictions was for a matter involving labour exploitation. There are currently three trafficking-related matters before the courts, including one appeal.

Victim support and protection

Australia provides a comprehensive range of support services for suspected trafficking victims through its Support for Trafficked People Program. Eligible victims of trafficking are able to access the Support Program irrespective of their visa type, gender or the purpose for which they were trafficked.

The Support Program is administered by FaHCSIA, and delivered by the Australian Red Cross. The Red Cross provides tailored case management support to clients on the Support Program, including assistance to access a range of support services to improve their mental and physical health and well-being following the trauma of their trafficking experience, and opportunities to learn new skills and develop options for life after exiting the Support Program. Depending on the needs of the individual client, these services may include suitable accommodation that meets the AFP's security requirements; income support; medical treatment (through Medicare and the Pharmaceuticals Benefits Scheme, or as approved); counselling; access to legal and migration advice; appropriate skills development training including English language and vocational guidance; and social support.

The Australian Government People Trafficking Visa Framework, administered by DIAC, enables foreign nationals who do not already hold a valid visa, and are suspected victims of trafficking, to remain lawfully in Australia. They are then, like other valid visa holders who are suspected victims of trafficking, able to access support through the Support Program. The Visa Framework comprises three visas: the Bridging F visa (BVF), the Criminal Justice Stay visa (CJSV), and the Witness Protection (Trafficking) (Permanent) visa (WPTV).

A person assessed by the police as a suspected victim of trafficking may be eligible for a BVF for up to 45 days, irrespective of his or her willingness or ability to assist in the criminal justice process. BVFs can also be granted to immediate family members in Australia. There are no work rights associated with BVFs, but holders receive intensive support through the Assessment Stream of the Support Program. On the expiry of the first BVF, in cases where a suspected victim is willing, but not able, to assist police, there is also an option to grant a second BVF for a further 45 days (taking the total to 90 days). During this time, the suspected victim would continue to receive support through the Extended Intensive Support Stream of the Support Program.

After the expiry of a BVF, a CJSV may be granted to a suspected victim of trafficking who is willing and able to assist with the criminal justice process. CJSVs enable holders to remain in Australia for as long as they are required for law enforcement purposes. CJSV holders are allowed to work, and also receive support under the Justice Support Stream of the Support Program.

A suspected victim of trafficking who has made a contribution to an investigation or prosecution of an alleged trafficking offence may be eligible for a WPTV if, as a result of that contribution, they would be in danger upon return to their home country. WPTVs allow holders to remain in Australia permanently. Immediate family members may be included in WPTV applications.

NGO engagement

People trafficking and slavery are complex crimes and government action is only part of the solution. The non-profit sector in Australia is heavily engaged in this area, and plays a vital role. The Australian Government operates in close partnership with the non-profit sector.

The National Roundtable on People Trafficking was established in June 2008 as a consultative mechanism between the Government and NGOs on trafficking issues. Since then, the ministerial level National Roundtable has been convened each year. Since 2011, the National Roundtable has been supported by an operational level Senior Officials' Meeting, which is held in May.

The United Nations (UN) Special Rapporteur on trafficking in persons, especially women and children, Dr Joy Ngozi Ezeilo OON, commended Australia's robust working relationship with NGOs in her report on her fact-finding mission to Australia in November 2011. The Special Rapporteur presented her report to the 20th session of the UN Human Rights Council in June 2012. The report further recognised Australia's role as a regional leader in combating trafficking. A copy of the Special Rapporteur's Report is available from the Office of the High Commissioner for Human Rights' webpage at: www.ohchr.org.

Since 2008, the Australian Government has provided \$2.4 million to assist four NGOs to provide vital outreach for trafficking victims and to conduct education and awareness initiatives. The NGOs funded are Anti-Slavery Australia, Australian Catholic Religious Against Trafficking in Humans, Project Respect, and Scarlet Alliance.

In addition, the Government has also allocated almost \$500,000 to two NGOs, two union bodies and an industry association to carry out similar work to combat labour exploitation in susceptible industries. The recipients of the funding are Asian Women at Work, Australian Council of Trade Unions, Australian Hotels Association, Australian Red Cross, and the Construction, Forestry, Mining and Energy Union.

In April 2011, a number of Australian NGOs and IDC agencies attended a collaborative awareness exercise hosted by the AFP. The exercise aimed to collectively identify current and future activities to disrupt criminal groups benefiting from people trafficking. A key outcome of the exercise was the creation of the Anti-Human Trafficking Community Resource, which provides a comprehensive reference guide to all key government agencies, NGOs, unions and industry groups that have a role to play in caring for victims and cooperatively obstructing and investigating people trafficking and related offences. A copy of the Community Resource is available from the AFP's website at: <http://www.afp.gov.au/policing/human-trafficking.aspx>.

In June 2012, the AFP and AIC hosted a discussion exercise focusing on the demand and supply elements of people trafficking. Over 40 participants from Government, industry, unions and NGOs attended, and a number of collective actions were proposed. These actions will be coordinated through the National Roundtable.

In addition, in consultation with stakeholders, the Government will shortly begin work on developing a revised formal national plan of action to combat trafficking. In line with the Special Rapporteur's recommendation, the plan of action will be prepared to include benchmarks and indicators to measure progress and impact.

More information on the Australian Government's initiatives to combat people trafficking, including copies of the IDC's annual reports, is available from the AGD website at: www.ag.gov.au/peopletrafficking. Should the Committee wish to discuss this submission further, the contact officer in AGD is the Acting Director of the People Trafficking Section, Danica Yanchenko

Yours sincerely

Iain Anderson
First Assistant Secretary