



Submission No 39

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

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Submission to the Inquiry into Slavery, Slavery-like Conditions and People Trafficking
Joint Standing Committee on Foreign Affairs, Defence and Trade
Human Rights Sub-Committee
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SUMMARY OF MAIN POINTS

1. Australia's Efforts To Address People Trafficking, Including Through Prosecuting Offenders and Protecting And Supporting Victims

The present submission notes that Australia has made significant progress since 2003 to address trafficking in persons in relation to both criminal justice and victim support measures. Recent efforts to refine the legal framework and deliver additional support to victims are important and welcomed. As these achievements have been extensively examined elsewhere, this part of the submission limits itself to highlighting several outstanding matters that have not been given sufficient attention.

Commit to a rationalisation of the legal framework: the proposed amendments fill some important gaps but do not reduce the unnecessary and burdensome complexity of the legal framework. The Bills Digest proposal for a review of the framework five years after enactment of the revisions is fully endorsed by this submission.

Strengthen the criminal justice response: the rate of investigations, prosecutions and convictions in Australia remained stubbornly and unacceptably low relative to the presumed size of the problem. Greater attention should be paid to isolating and analysing the obstacles to an effective criminal justice response and to developing institutions and practices that draw on emerging international good practice.

Recognise the right of victims to remedies including effective reintegration: Australian recognition of the right of trafficked persons to a remedy for unpaid wages and the harms committed against them is inadequate and incomplete. The present system should be rationalized, (including through the establishment of a statutory federal compensation facility), and the practical aspects of ensuring access to remedies addressed. Reintegration support is too important to be the subject of ad-hoc programs but must become part of the package of measures routinely made available to victims.

Strengthen public awareness in meaningful, practical ways: Awareness-raising must be extended to explicitly include those who may be expected to come into contact with trafficked persons or to be confronted with indications of trafficking. Clients of sex workers comprise an important and accessible target group that has not received sufficient attention.

Consider accountability of end users of the services of trafficked persons: It is essential to commence a serious discussion on accountability of those who knowingly or recklessly use the services of a victim of trafficking or slavery and who, in most cases, currently enjoy complete impunity from prosecution or even censure.

2. Ways To Encourage Effective International Action To Address All Forms Of Slavery

Strengthen global leadership: International law, policy and practice around trafficking in persons is currently being shaped without the level of input from Australia that its capacity, profile and interests demand. Australia should capitalize on its achievements and reputation by expanding its authority and influence on trafficking in innovative ways and beyond the immediate region. The appointment of a qualified **Ambassador on Trafficking** is part of the ALP Platform and is key to asserting and maintaining Australia's leadership role and its international credibility.

Recognise the important role of the Australian Aid Program: AusAID has generated significant international attention – as well as political goodwill throughout South East Asia - on the issue of trafficking in persons. It is essential that the acknowledged success drivers of AusAID's work be explicitly recognized and built into future initiatives. AusAID should consider replicating ARTIP's criminal justice model in other regions; identify new challenges such as the foreign labour recruitment system and exploitation in the supply chains of Australian companies; and examine ways of integrating anti-trafficking more broadly into its thematic areas of work.

Separate TIP from migrant smuggling: A blurring of these two issues is contrary to Australia's political and strategic interests; confusing to its interlocutors; and could be harmful to the very positive profile it enjoys on trafficking. Australia should take immediate steps to affirm this important distinction by: (i) acknowledging that the political impetus and focus of the Bali Process is, appropriately, on the smuggling of migrants; (ii) accepting the impossibility and inappropriateness of the Ambassador for People Smuggling Issues having even nominal carriage of trafficking in persons issues; (iii) ensuring the distinction is maintained in its provision of technical assistance to other countries.

Actively discourage vigilante action by Australians abroad: The Australian Government, including the Australian Federal Police, should publicly distance itself from organisations involved in vigilante activity aimed at the 'rescue' of women and girls from Asian brothels. Such actions are ethically and legally questionable. They also lack transparency and accountability and compromise the work of that is being done by professionals to increase local law enforcement engagement and capacity.

3. International Best Practices To Address All Forms Of Slavery, Slavery-Like Conditions And People Trafficking

Acknowledge Australia's unique position and the paucity of good practice: two caveats should be noted in relation to international best practice. First: what works elsewhere will not necessarily work here because Australia's experience of trafficking is significantly different to that of other countries. Second: there is a lack of genuine "best practice" as national responses to trafficking are new and untested. Much research around these issues is agenda-driven and of poor quality. While the situation is changing, caution and scepticism are essential when considering what works and what doesn't.

Establish a blueprint for the future: International experience is demonstrating the value of a strong National Plan of Action on trafficking and related exploitation. To be effective, these instruments must be ambitious but realistic; they must have clear and measurable performance indicators; they must include strong monitoring and review mechanisms that are independent and not dominated by one agency or department.

Pay attention to trafficking in supply chains: There is growing evidence that some goods imported into Australia have been produced by forced or coerced labour and that the supply chains of Australian companies may otherwise be tainted by slavery and trafficking. Australia can learn from other countries that have taken steps to improve supply chain transparency and disrupt the economic advantage that such exploitation delivers.

Develop genuine specialisation in the criminal justice response: international practice is confirming the value of specialisation of the law enforcement and prosecutorial response to trafficking-related crimes. Australia can draw on emerging good practices to refine its approach to specialisation and thereby improve the effectiveness of investigations and prosecutions.

Prioritise victim identification: International practice has confirmed the importance promoting quick and accurate victim identification. Without such identification, efforts to protect victims and punish perpetrators will be a waste. Experience shows the importance of training front line officials to

recognise indicators of trafficking and provide an adequate first response. This must be backed up by operating procedures and protocols that ensure coordination between involved agencies, including those charged with provision of victim support.

Exercise caution in linking trafficking and prostitution: In some countries and internationally, the issue of trafficking has been co-opted to advance narrow political agendas on prostitution. The consequences have generally been extremely negative. While debates around prostitution are legitimate and important, there is presently no conclusive evidence that a particular approach to prostitution – for example, criminalisation or legalisation - significantly affects levels of trafficking related exploitation one way or another. It will be important to ensure that the generally respectful and constructive environment that has been established around these issues in Australia is nurtured.

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GENERAL OBSERVATIONS ON TERMINOLOGY

1. While it has a specific meaning in international and national laws, trafficking in persons [only Australia uses the term “people trafficking”] is today accepted as an umbrella concept for a wide range of exploitative practices, often but not always motivated by private profit.
2. It was previously assumed that ‘movement’ was an essential aspect of the definition of trafficking in persons – that trafficking was essentially the *process* by which individuals were moved into situations of exploitation. However, international law and the overwhelming majority of national laws support a broader understanding of the term whereby any ‘*action*’ (including receiving and harbouring a person) for ‘*purposes*’ of exploitation, made possible through the use of ‘*means*’ such as coercion and deception, constitutes trafficking. It is accepted that the ‘*means*’ element does not need to be established in the case of child trafficking: that this offence is established through employment of any ‘*action*’ with the intention of exploiting a child.
3. International law prohibits a range of practices that overlap with or even duplicate trafficking, including slavery, forced labour, child labour and forced marriage. While some of these practices will typically fall within the definition of trafficking set out above, that is not always the case. For example, it is generally accepted that, as a legal matter, the terms slavery and trafficking are *not* interchangeable. At least at the international level, the prohibition on slavery would be applicable only to a narrow range of trafficking situations involving clear evidence of the exercise of the powers of ownership. Australian courts have adopted a relatively liberal interpretation of the Criminal Code prohibition on slavery which extends that concept to include practices that, at the international level and in many other countries would be characterised as “trafficking” and not as “slavery”.
4. The current submission generally uses the term “trafficking in persons”. The term ‘slavery’ is used when practices under discussion could fall within the parameters of the international legal definition and / or the understanding established by Australian courts.

A. AUSTRALIA’S EFFORTS TO ADDRESS PEOPLE TRAFFICKING, INCLUDING THROUGH PROSECUTING OFFENDERS AND PROTECTING AND SUPPORTING VICTIMS

5. Australia has made significant progress since 2003 to address trafficking in relation to both criminal justice and victim support measures. Particularly over the past several years, Government agencies have demonstrated an openness and flexibility that has permitted Australia to shape its response to trafficking in light of growing understanding of the phenomenon and appreciation of how it is being dealt with elsewhere. Recent efforts to clarify that framework and to bring it in greater alignment with international legal standards are welcomed. As these achievements have been well documented elsewhere, this part of the present submission limits itself to highlighting several outstanding issues that require attention.
6. **Australia’s legislative framework** around trafficking is incomplete, confusing and overly complicated. While the amendments currently before Parliament will fill some important gaps, they will not do much to rationalise the framework or reduce its complexity. This submission

fully endorses the proposal, made in the Bills Digest prepared for the *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012* that: “[t]he Government may wish to consider a formal review five years after enactment of the revised Divisions 270 and 271 of the Criminal Code, to assess the efficiencies and effectiveness of the specific new offences. Consideration could be given at that point to whether a simpler, more streamlined set of offences, as exist in some other jurisdictions, would be more appropriate.”¹

7. While much has been done, **the criminal justice response must be considerably strengthened**. The number of investigations of trafficking-related offences (325 to March 2012); prosecutions (34 defendants to March 2012); and convictions (14 individuals to March 2012) relative to the presumed size of the problem in Australia remains stubbornly and unacceptably low. While some of the obstacles confronting the Australian criminal justice system are universal (for example, high reliance on victim testimony, difficulty in securing necessary victim cooperation), this does not completely explain the unsatisfactory success rate. The kind of detailed and considered analysis that would provide genuine insight into obstacles to a more effective criminal justice response remains to be done. Factors that are likely to be revealed by such an analysis include inadequate victim identification; the highly complex legislative framework; inadequate investigatory and prosecutorial expertise particularly in relation to trafficking, most particularly outside the sex industry; and inadequate specialisation of the criminal justice response. Paragraphs 27 to 30 below highlight emerging good practices that may support Australian efforts to strengthen the key components of the criminal justice response: specialist investigators, prosecutors and front line officials.
8. Australia must take steps to **recognise the right of victims to remedies including effective reintegration**. As victims of crime and human rights violations, trafficked persons have an internationally recognised legal right to a remedy for damages including unpaid wages and the harms committed against them. International studies have confirmed the core elements that must be in place for this right to be effectively realised.² While Australian labour and victim of crime laws provide piecemeal protection, and while legislative amendments currently before Parliament will expand the group of persons potentially able to secure reparations, coverage remains inadequate and incomplete. A rigorous assessment of current arrangements should be made with a view to establishing whether and to what extent victims of trafficking are able to: (i) take action against their exploiters for civil damages including both unpaid wages and non-economic loss; and (ii) secure awards or orders from criminal courts for compensation and / or restitution from persons convicted of trafficking-related offences.
9. Consideration should also be given to the establishment of a statutory **federal compensation fund** accessible to all persons who have been identified as victims of trafficking related crimes. In accordance with international good practice, efforts should be made to ensure that the assets and proceeds of such crimes are identified, confiscated and made available as a contribution to such a fund.³
10. The **practical aspects of ensuring effective access to remedies** must also be addressed. For example, access to remedies should not depend on the immigration status of the victim; victims and presumed victims of trafficking-related exploitation should be fully informed of their legal rights, including their rights to access remedies through judicial and administrative proceedings, promptly and in a language and form they understand; those who wish to pursue civil or criminal claims against their exploiters should be provided necessary assistance as well

¹ Department of Parliamentary Services (Cth), *Bills Digest*, No 14 of 2012–13, 24 August 2012, p. 29.

² See A Gallagher, *The Right to an Effective Remedy for Victims of Trafficking in Persons: A Survey of International Law and Policy*, background paper for the Expert Meeting on prosecution of trafficking cases convened by the UN Special Rapporteur on trafficking in persons, especially women and children, Ms Joy Ngozi Ezeilo, Bratislava, Slovakia, November 2010, available from: http://www2.ohchr.org/english/issues/trafficking/docs/Bratislava_Background_paper1.pdf.

³ Ibid. See also United Nations Office of the High Commissioner for Human Rights, *Commentary on the United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 2010, p. 222.

as a right to stay for the duration of any such proceedings. Effective measures should be in place for the enforcement of reparation judgments including foreign judgments.

11. The right to a remedy includes support for **effective return and reintegration**. It should not be presumed that all trafficked persons wish to stay in Australia. Many may want to return home but fear retaliation or stigmatization or re-trafficking. Australia has an obligation to ensure that persons who have been subject to criminal conduct in our country and who do return home are, in collaboration with the country of origin, given the help they need to recover and reintegrate. Thus far, the provision of reintegration support has been ad-hoc and there is no available evidence of sustainable results. There does not appear to be any formal reintegration program currently operational. Reintegration is too important to be dealt with in this way. It must be formalised and become part of the package of support routinely made available to victims.
12. Efforts should be made to **strengthen public awareness in meaningful, practical ways**. Current initiatives aimed at improving community awareness about trafficking are important and should be continued. However, there must be a clear focus on targeting those who may be expected to come into contact with trafficked persons or be confronted with indications of trafficking and who should be informed of their responsibilities in that regard. For example, clients of sex workers are an important target group as well as being relatively accessible given that trafficking for sexual exploitation requires at least minimal exposure of both victims and perpetrators to the wider community. In this regard the attention of the Committee is drawn to a very specific recommendation of the Victorian Parliament aimed at raising awareness amongst “prospective customers of sexual services”.⁴ It is very unfortunate that an AFP initiative to that end, which received international attention and recognition as an innovative good practice, has been inexplicably terminated.⁵
13. Australia must openly confront the issue of **accountability of users of the services of trafficked persons**. Those who benefit indirectly from the exploitation of victims or from the market distortions made possible by trafficking, (for example, through access to cheap and sometimes scarce or illegal goods and services), will generally not fall within trafficking related offences as these are defined in Australia law and internationally. In most cases this is appropriate. A consumer of food produced by a trafficked restaurant worker, for example, can be assumed to have no knowledge of the exploitation involved in providing that food. In other cases however, clear indications of trafficking may be present to end-users such as clients of trafficked sex workers; owners of premises used for trafficking; recipients of organs acquired through trafficking; or users of the services of sexual surrogates who have been trafficked or otherwise exploited. Establishing criminal responsibility in such situations is difficult and may not always be realistic or even productive.⁶ However, the possibility has been raised at the international level⁷, as well as in Australia (in the specific context of trafficking into the sex

⁴ Recommendation 14: “The Committee recommends that the Sex Industry Regulation, Policy and Coordination Unit place advertisements warning prospective customers of sexual services as to the existence of the crime of sex trafficking. Such notices should be placed prominently in the Personal or Adult Services sections of state, territory and local newspapers and any websites advertising sexual service providers, as appropriate”. Parliament of Victoria Drugs and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work: Final Report*, June 2010, p. 186.

⁵ This initiative involved the placing of notices in the ‘personals’ sections of newspapers drawing attention to the fact that some persons working in the sex industry have been coerced and providing details of how information on such cases can be transmitted to the police. The cost was borne by the newspapers.

⁶ Note however, the observation in a number of international texts that knowledge, intent or purpose of such an offence could be inferred from objective factual circumstances. See for example the Explanatory Report to the European Trafficking Convention, paragraph 235, citing Article 6(2)(f) of the United Nations Convention against Transnational Organized Crime. Council of Europe, *Explanatory Report on the Convention on Action against Trafficking in Human Beings*, CETS 197, 16.V.2005 (2005).

⁷ Council of Europe Convention on Action against Trafficking in Human Beings, May 16, 2005, CETS No. 197, entered into force Feb. 1, 2008, Article 19. See also Council of Europe, *Explanatory Report on the Convention on Action against Trafficking in Human Beings*, above n 8, paras. 230–233; the United Nations Office on Drugs and Crime (UNODC), *Model Law against Trafficking in Persons* (United Nations, 2009), p. 35; and the UNODC, *Legislative Guides for the Implementation of*

industry)⁸. Certainly it is essential to commence a serious discussion on accountability of persons who knowingly or recklessly use the services of a victim of trafficking or slavery and who, in most cases, enjoy complete impunity from prosecution or even censure.

B. WAYS TO ENCOURAGE EFFECTIVE INTERNATIONAL ACTION TO ADDRESS ALL FORMS OF SLAVERY

14. There is a pressing need to **strengthen Australia's global leadership** on the issue of trafficking. Trafficking is a relatively new issue for the international community and laws, policies and practices currently being developed will determine the direction of our future response. That process is already well underway and is continuing without the level of input from Australia that its capacity, profile and interests would appear to dictate.
15. Australia should capitalise on its considerable international achievements and reputation (see below) by expanding its authority and influence on trafficking in persons in innovative ways and beyond our immediate region. For example, it is widely acknowledged that Australian support has been instrumental in the development of an internationally lauded model of criminal justice responses to trafficking that is now accepted and under implementation throughout South East Asia.⁹ Efforts should be made to use international forums, such as the Conference of Parties to the United Nations Convention against Transnational Organized Crime and the Protocols Thereto to promote the universalization of this highly successful and well-accepted model. The United Nations Office on Drugs and Crime, as the focal UN agency for the issue of trafficking in persons is also a logical partner in seeking to internationalize and disseminate the world-class training programs and other resources that have already been produced through the Association of South East Asian Nations (ASEAN) with Australian funding.¹⁰
16. The appointment of a qualified **Ambassador on Trafficking** is part of the Australian Labor Party Platform.¹¹ It has also been the subject of a recommendation by the United States Department of State¹² and the United Nations Special Rapporteur on Trafficking¹³ and is key to asserting and maintaining Australia's leadership role and its international credibility. As noted

the United Nations Convention against Transnational Organized Crime and the Protocols thereto (United Nations, 2004), Part 2, p. 297.

⁸ See Parliament of Victoria Drugs and Crime Prevention Committee, above n 6, p. 166, Recommendation 6: "The Committee recommends that intentionally, knowingly or recklessly obtaining sexual services from trafficked women is criminalised in Victoria". The author rejects the Victorian Government's response that such conduct would be covered under existing offences such as rape or indecent assault. See also Joy Ngozi Ezeilo, Special Rapporteur, *Report of the Special Rapporteur on trafficking in persons, especially women and children, Mission to Australia*. 20th sess, UN Doc. A/HRC/20/18/Add.1 (18 May 2012), Recommendation 85(b): "Continue and expand initiatives aimed at alerting potential clients of sex workers to the existence of trafficking and exploitation, including their responsibilities in this regard to ensure that authorities are made aware of suspected cases of trafficking".

⁹ This model was developed through a series of projects initiated and funded by AusAID during the period 2003-2011. The core features of the model are set out in A Gallagher and P Holmes, 'Developing an Effective Criminal Justice Response to Human Trafficking: Lessons from the Front Line' *International Criminal Justice Review* (2008), 318, available from:

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1292563

¹⁰ These resources include a full suite of training materials for front line law enforcement, specialist investigators, specialist anti-trafficking unit commanders, prosecutors and judges as well as the first-ever handbook on international legal cooperation in trafficking in persons cases. A full list is available in the Annex to the Association of Southeast Asian Nations (ASEAN), *Progress Report on Criminal Justice Responses to Trafficking in Persons in the ASEAN Region* (ASEAN, 2011), available from: <http://lastradainternational.org/?main=documentation&document=2829>

¹¹ The Australian Labor Party Platform agreed at the 46th National Conference: "Labor will appoint a Global Ambassador for People Trafficking Issues to give greater coordination and focus to Australia's efforts to take action against people trafficking". Australian Labor 46th National Conference, *National Platform*, p. 203, available from:

<http://www.alp.org.au/getattachment/fdffe386-48e4-4ead-be88-d099e884bc54/our-platform/>

¹² "[Australia should] consider appointing an Ambassador dedicated to addressing human trafficking issues worldwide". United States of America Department of State, *Trafficking in Persons Report*, June 2011, p.75.

¹³ "The Special Rapporteur recommends that the State ... Consider appointing an ambassador for human trafficking to further strengthen the country's already high and positive international profile on this issue and to complement the work of the Ambassador for People Smuggling Issues within the Pacific region, South-East Asia and globally." Joy Ngozi Ezeilo, Special Rapporteur, above n 8, 2012, Recommendation 86(e).

below, the functions of such a post cannot and *should not* be assumed by Australia's Ambassador for People Smuggling Issues. It is also submitted that the assignment of 'trafficking' functions to the recently appointed Global Ambassador for Women and Girls, who is concurrently the Executive Director of the Australian Passport Office, is very much out of step with the practice of other countries and an inadequate and incomplete response to our need for high-level international representation on this issue. Highly qualified and respected Trafficking in Persons Ambassadors from countries such as the United States and Sweden have become powerful international players in current efforts to shape global law, policy and practice on this issue. That Australia is unable to join this group in a situation of equality is truly a missed opportunity.

17. In considering how to contribute to effective international action to address trafficking and related exploitation, it is essential to **recognise the important role of Australia's aid program**. AusAID has generated significant international attention – as well as political goodwill throughout South East Asia - on the issue of trafficking in persons. This has been the direct result of a series of innovative projects that have focused on strengthening criminal justice responses to trafficking in persons.¹⁴ AusAID has indicated its intention to continue this successful and widely appreciated work. Cementing Australia's reputation and profile in this area requires that the key success drivers of the previous initiatives be explicitly recognised and built into future work. These include a strong emphasis on bringing in the best available technical expertise from wherever it can be sourced; the space to develop relationships of trust with governments that may otherwise be highly sensitive to Australian intervention; and a capacity to operate at the highest political levels within regional institutions.
18. Consideration should be given to replicating the AusAID successes detailed above in other regions, most particularly the Pacific where trafficking and related exploitation is being increasingly recognised as a serious and growing problem that has not yet received the attention it deserves. Australia should also make an effort to consolidate its reputation for innovation by identifying and addressing newly emerging challenges such as the foreign labour recruitment system that so effectively feeds victims of trafficking from developing countries into plantations, private households, construction sites, fishing boats and military bases throughout the world. The issue of exploitation in the supply chains of Australian companies is another area where AusAID could play an important leadership role, in close cooperation with industry partners. Finally, AusAID could usefully consider how to integrate anti-trafficking more broadly into its thematic areas of work; for example by linking initiatives aimed at increasing access to education with efforts to remove children from exploitative work.
19. Australia must take firm and unequivocal steps to **separate trafficking from migrant smuggling**. The link is a relic from earlier times when distinctions were not clarified in law or policy and interchangeable use of the two terms was much more common. It is now widely accepted that effective international action to address trafficking and related exploitation requires explicit acknowledgement of the legal, policy and practical distinctions between trafficking in persons and smuggling of migrants. While there is overlap between trafficking and migrant smuggling in many parts of the world, that is generally not the situation in this country where persons identified as trafficked have invariably arrived in the country on a valid visa.¹⁵ A blurring of the two issues is contrary to Australia's broader political and strategic interests, confusing to its interlocutors, and indeed could be harmful to its very positive profile it enjoys on the issue of trafficking.

¹⁴ The Independent Completion Report for the second phase of this series of projects, which ran from 2006-2011, is available from: <http://www.ausaid.gov.au/Publications/Documents/artip-icr-final-report.pdf>

¹⁵ A possible exception relates to the question of whether crew-members of some migrant smuggling vessels have been trafficked (recruited through deception for purposes of exploitation). See Joy Ngozi Ezeilo, Special Rapporteur, above n 8, para. 18.

20. To this end Australia should take immediate and decisive steps to affirm the important distinction between smuggling and trafficking by: (i) acknowledging that the political impetus and focus of the Bali Process is, appropriately, on the smuggling of migrants and by moving Australia's anti-trafficking efforts to other, more suitable forums; ;¹⁶ (ii) accepting the impossibility and inappropriateness of the Ambassador for People Smuggling Issues having in-principle carriage of trafficking in persons issues; and (iii) avoiding the provision of technical assistance to other countries that may result in an unhelpful blurring of the distinction between these two crime types.
21. A number of Australian organisations, most prominently the “Grey Man”, have sought to directly secure the ‘rescue’ of women and girls they believe to be trapped in the sex industry in countries of South East Asia. Typically, undercover operatives pose as paedophiles seeking to engage the sexual services of children. Despite receiving public support from prominent Australians and a sometimes worryingly uncritical media,¹⁷ the Grey Man has been reliably accused of unethical and unprofessional conduct aimed at boosting donations including faking rescues.¹⁸ Even leaving aside these allegations, serious questions must be asked about collaboration of such organisations with police agencies that do not always operate to required standards of legality and professionalism and that may, at some level, be complicit in trafficking-related crimes. The absolute lack of transparency and accountability inherent in these sensitive and hazardous operations are another cause for grave concern. The Australian Government should be doing everything within its power to support reform of police forces to ensure that legitimate and professional interventions can and do occur. However, the Government must also **actively discourage vigilante action by Australians abroad**. Relevant agencies, most importantly the Australian Federal Police, should publicly distance themselves from such organisations and remind Australian citizens of the attendant risks and dangers – including to the rights and wellbeing of individuals caught up in ethically and legally questionable rescue operations abroad.¹⁹

C. INTERNATIONAL BEST PRACTICES TO ADDRESS ALL FORMS OF SLAVERY, SLAVERY-LIKE CONDITIONS AND PEOPLE TRAFFICKING

22. Two caveats should be noted in relation to international best practice. The first is the need to **acknowledge Australia's unique position**: what works elsewhere will not necessarily work here because Australia's experience of trafficking is significantly different to that of other countries. For example, our geographical isolation and consequent capacity to control borders means that Australia's population of irregular migrants (a group that is generally considered particularly vulnerable to trafficking-related exploitation) is small and homogenous relative to

¹⁶ Note, it has elsewhere been suggested that the Bali Process be reformed to ensure greater focus on the issue of trafficking in persons. The present submission argues that the political impetus behind the Bali Process was and continues to be the issue of migrant smuggling. As evidenced by the 2011 Regional Cooperation Framework which deals entirely with issues related to migrant smuggling, (see summary provided by the 2012 Expert Panel on Asylum seekers, pp. 110–111, available from: http://expertpanelon asylumseekers.dpmc.gov.au/sites/default/files/report/attachment_6_australia_international_regional_engagement.pdf), this is unlikely to change except in a cosmetic and low-impact way. Even in the unlikely event that serious attention and resources were to be devoted to trafficking through the Bali Process, it could be convincingly argued that a dilution of Bali Process focus and direction by such a shift would do a serious disservice to both issues.

¹⁷ See, for example, ABC Television, ‘Shades of Grey’, *Australian Story*, 16 June 2009, available from: <http://www.abc.net.au/austory/specials/shadesofgrey/default.htm> and ABC News, ‘The Grey Man’, 7.30 *Queensland*, 11 July 2011, available from: <http://www.abc.net.au/news/2011-07-08/the-grey-man/2787710>

¹⁸ See Lindsay Murdoch, ‘Rescue boss out over claims of fake ‘victims’, *The Sydney Morning Herald*, 26 March 2012, available from: <http://www.smh.com.au/national/rescue-boss-out-over-claims-of-fake-victims-20120325-1vsox.html>; Andrew Drummond and Sean Parnell, ‘Doubt cast over charity group The Grey Man's sex trafficking rescue claims’, *The Australian*, 7 January 2012, available from: <http://www.theaustralian.com.au/news/nation/doubt-cast-over-charity-groups-sex-trafficking-rescue-claims/story-e6fgr6nf-1226238636704>; and Andrew Drummond, ‘Australian Charity Accused of Faking Hill Tribe Children Rescue From Sex Slavery’ on *Andrew Drummond*, 6 January 2012, available from: <http://andrew-drummond.com/2012/01/06/australian-charity-accused-of-faking-hill-tribe-children-rescue-from-sex-slavery/>

¹⁹ For a comprehensive survey of different views on the ‘raid and rescue’ industry around trafficking, see the “Editorial” and “Debate” sections of Issue 1 (June 2012) of the *Anti-Trafficking Review*: (2012) 1 *Anti-Trafficking Review* 2, 122–165, available from: <http://www.antitraffickingreview.org/component/content/article/2-uncategorised/9.html>

comparative countries. The second caveat relates to the **lack of genuine “best practice”**. National responses to trafficking and related exploitation are relatively new and untested. Policies and laws have generally been developed on the run, often under external political pressure and principally through trial and error. Much research around these issues (including research promoting certain approaches as “best practice”) is agenda-driven and of relatively poor quality. While the situation is changing, caution and scepticism are essential when considering what works and what doesn't.

23. With these caveats in mind it is nevertheless possible to identify several areas where experience outside Australia appears to hold lessons (of both good and bad practice) of significance for this country. These include: (i) development of a national plan of action to address trafficking and slavery; (ii) the challenge of addressing trafficking and slavery in the supply chains of good and services; (iii) effective specialisation of the criminal justice response; (iv) the importance of improving identification rates - and how this can be done; and (v) the need to exercise caution in linking trafficking with prostitution.
24. The need for a comprehensive approach to trafficking – involving a range of governmental and non-governmental stakeholders is now widely recognised. One common response to the challenges inherent in such an approach has been to develop a comprehensive **National Plan of Action on Trafficking**.²⁰ Of course, National Plans of Action are only as useful as the political commitment behind them. The ineffective examples are often little more than a public relations tool - deliberately formulated in vague or aspirational terms and lacking concrete performance indicators and oversight mechanisms. Strong National Plans, on the other hand, provide a genuine opportunity for stakeholders to agree on and articulate their goals. Strong National Plans are ambitious but realistic. They clearly assign responsibilities and set measurable performance indicators that are publicly reported against. They include a strong and transparent oversight and coordination mechanism – optimally a National Rapporteur or similar national-level coordination position that is not directly tied to one particular government agency and therefore able to act independently. Australia's response to trafficking could only be enhanced by the development of such a National Plan and the establishment of robust, independent mechanisms that are capable of ensuring its effective implementation.
25. There is some evidence that that goods imported into Australia – from seafood to clothing to consumer electronics to sporting goods – have been produced through the use of forced or otherwise highly exploitative labour.²¹ While the difficulties of dealing with trafficking and slavery in supply chains are considerable and should not be underestimated, it is essential for the Australian Government to **acknowledge and pay attention to trafficking in supply chains**. The critical issue in this regard is improving supply chain transparency – from product assembly right down to the sourcing of raw materials - thereby disrupting the economic advantage that such exploitation provides. Consumer action through investigation, boycotts and petitions is important and should be encouraged. However, it is foolish and dangerous to

²⁰ Note that Australian Government documents refer to a 2003 *National Action Plan to Eradicate Trafficking in Persons*, which, by 2009, appears to have morphed into a “strategy”. The “Strategy” is little more than an information note or press release and thereby very different to the National Plans that are canvassed in this paragraph. See Australian Government, *Australian Government Anti-People Trafficking Strategy* (2009), available from: <http://www.ag.gov.au/Documents/TRAFFICKING%20-%20ENHANCED%20STRATEGY%20-%20FACT%20SHEET%20-%20English.pdf>

²¹ For example, on seafood produced through forced and exploitative labour on fishing boats operating in New Zealand waters see Benjamin Skinner, ‘The Fishing Industry's Cruellest Catch’, *Bloomberg Businessweek Global Economics*, 23 February 2012, available from: <http://www.businessweek.com/articles/2012-02-23/the-fishing-industrys-cruellest-catch> and various governmental and non-governmental reports available from: <http://slavefreeseas.org>. The cotton industries of India and Uzbekistan, which supply to many clothing retailers operating in Australia, have been accused of using child labour. See, for example, Environmental Justice Foundation reports, *Slave Nation: State Sponsored Forced Child Labour in Uzbekistan's Cotton Fields* (2010) and update, *White Gold: Uzbekistan, A Slave Nation for Our Cotton?* (undated) both available from: <http://www.ejfoundation.org/page93.html>. For a recent expose of the use of exploitative child labour in the production of sporting goods imported into Australia see: Ben Doherty, *Stitching up Child Workers*, Sydney Morning Herald, 22 September 2012, available from: <http://www.smh.com.au/national/stitching-up-child-workers-20120921-26c86.html>.

imagine they are any substitute for explicit, demonstrable commitment on the part of both government and corporations to exploitation-free supply chains.

26. An example of innovative and potentially far-reaching reform is provided by California's 2010 *Transparency in Supply Chains Act*,²² which requires corporations with annual revenues exceeding \$USD100 million to issue an annual public statement detailing what has been done to detect and eliminate slavery-like practices in their supply chains. The Act does not require action on the part of corporations falling within its provisions, simply disclosure. However, there are indications that it is forcing greater attention from both government and the corporate sector to issues that were previously ignored. Information made available under the Act is also helping to identify good practices as well as those companies that may require assistance and support. On 25 September 2012 US President Obama went considerably further, announcing a new Federal procurement policy aimed at eliminating trafficking related exploitation in goods and services provided to the United States Government: the largest single purchaser in the world.²³ The *Executive Order: Strengthening Protections against Trafficking in Persons in Federal Contracts* prohibits contractors, sub-contractors and their employees from engaging in a range of trafficking-related conduct; requires the maintenance of tailored compliance plans for all work exceeding \$500,000 performed outside the US; applies special measures to industries and sectors with a history of involvement in trafficking-related exploitation; and mandates training and support to the private sector to strengthen monitoring and compliance of their supply chains. Australia is well placed to learn from these recent innovations and thereby to place itself front and centre of this new phase of global action against exploitation.
27. The past decade has confirmed that **specialisation of the criminal justice response** is a critical element of an effective criminal justice response to trafficking in persons. Indeed, through AusAID, Australia has been instrumental in both refining and promoting this criminal justice model throughout South East Asia. Specialisation addresses the complexity of the crime of trafficking and of the investigatory and prosecutorial processes. It can support a strong front line response that is critical in the quick and accurate identification of victims. It can also promote international cooperation through the establishment of a knowledgeable and accessible focal point for the exchange of information and experiences.
28. In Australia, **specialization of the law enforcement response** has progressed, especially within the Australian Federal Police, which has established and maintains teams of trained investigators operating principally in Sydney, Canberra, Melbourne and Brisbane. Overall however, the situation is not optimal. The Australian Federal Police specialist teams are very small and do not appear to be functioning outside the East Coast capitals. Critically, there is not yet any significant specialisation within state and territory police. This limitation on specialist capacity is of particular concern as credible reports emerge of trafficking and exploitative labour in other states and in rural areas. The *quality* of the specialist response is also highly relevant. Excellent resources have been developed in other countries around the training of specialist investigators. Australian training efforts should be reviewed and evaluated against emerging international good practice to ensure they are delivering to the necessary level of relevance and effectiveness. This will require, for example, attention to issues such as asset / proceeds tracing and confiscation, as well as to all forms of trafficking including for forced marriage, organ removal, and forced and exploitative labour. The scope of training should also be reviewed with a view to ascertaining its impact and effectiveness: to date, only about 200 investigators have received specialist training since the program commenced in

²² For a detailed discussion of the Act from a corporate perspective see Susanne Gebauer, 'Complying with The California Transparency in Supply Chains Act 2010', *Compliance and Ethics Professional*, August 2011, available from: <http://www.strquality.com/en-us/aboutus/resources/Brochures/California-Transparency-Compliance.pdf>

²³ Executive Order Strengthening Protections against Trafficking in Persons in Federal Contracts, 25 September, 2012, available at: <http://www.whitehouse.gov/the-press-office/2012/09/25/executive-order-strengthening-protections-against-trafficking-persons-fe>

2004. That is clearly insufficient. Australian law enforcement must also work to strengthen its capacity to cooperate with counterpart agencies in other countries in the exchange of information and intelligence. The nature of trafficking into this country means that many offences have a transnational element. International experience is demonstrating very clearly the impossibility of full and effective prosecution of all persons involved without high levels of operational cooperation.

29. The need for **specialisation of the prosecutorial function** is being increasingly recognised at the international level and, once again, Australia has been instrumental in promoting such an approach in other countries. While current caseloads may not require a specialist unit within the Commonwealth Director of Public Prosecutions (CDPP), several factors point toward the usefulness of this model. These include the very low numbers of successful prosecutions secured to date; the apparently low rate of case-based cooperation with prosecutorial agencies in other countries; the acknowledged complexity of the prosecutorial process; and the need for law enforcement to receive clear guidance in order to ensure they are supporting effective prosecutions. Initial steps in this direction could include the establishment of a focal point within CDPP (if this has not already happened) and the development and implementation of a training program for prosecutors who are or may be working on such cases. The **judiciary** should not be forgotten: international experience confirms that a sensitive, well-informed judiciary is an essential component of an effective criminal justice response to trafficking.
30. In most countries - and internationally - it has been widely acknowledged that failure to **identify victims of trafficking** has obstructed the success of national anti-trafficking efforts. In Australia, there can be little doubt that only a small proportion of persons who would be recognised as trafficked or enslaved under our laws are ever identified. International experience is confirming the critical role of front line officials (police, immigration officials, labour inspectors) to recognise trafficking and provide an adequate first response. Development of that capacity will invariably require training on a much broader scale than is currently taking place. For example, it is clearly insufficient to focus training just on a very small group of specialist investigators: all front line officials should, at the very least, have a basic awareness of trafficking in persons and related crimes. Development of a capacity for an adequate first response will also require the establishment of operating procedures and protocols to ensure coordination between involved agencies, including those charged with providing victim support. It is important to review the practical aspects of victim identification. For example, law enforcement officials and those responsible for overseeing compliance with labour laws need to be able to access premises in which victims of trafficking may be located. With the appropriate safeguards in place, this must include licensed brothels, which, under current systems, are sometimes virtually inaccessible.
31. International experience has confirmed the need to **exercise caution in linking trafficking with prostitution**. There is absolutely no doubt that trafficking is present in the Australian sex industry and it is both naïve and unwise to ignore the fact that the buying and selling of sexual services creates and sustains acute vulnerabilities to exploitation. Accepting these realities is not incompatible with efforts to avoid harmful targeting of an already marginalised and vulnerable group and to expand the current focus to include trafficking for labour exploitation. *However*, there is, as yet, no conclusive evidence that a particular approach to prostitution – for example, criminalisation or legalisation - significantly affects levels of trafficking related exploitation one way or another. Outside Australia, this has not stopped advocacy groups and some governments from co-opting the issue of trafficking to advance narrow political agendas on prostitution. The consequences have generally been extremely negative. In the United States, for example, the trafficking-prostitution debate has obstructed important reform; encouraged a distorted allocation of criminal justice resources; cultivated a polarised anti-trafficking community; and contributed to a continuing over-focus on trafficking for sexual

exploitation at the expense of other forms of exploitation.²⁴ The generally constructive and respectful environment within which trafficking is discussed in Australia is testimony to our having largely avoided this unfortunate situation. The importance of nurturing that environment cannot be overstated.

²⁴ For a recent and insightful examination of US experience see: http://www.nytimes.com/2012/09/23/opinion/sunday/ending-demand-wont-stop-prostitution.html?_r=0