

Chapter 2

Legal and policy framework

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

Commonwealth policy response

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

The Interdepartmental Committee on Human Trafficking and Slavery

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

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

The Commonwealth government's strategy

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

1. Prevention and deterrence
2. Detection and investigation

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

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

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

3. Prosecution and compliance, and

4. Victim support and protection.⁴

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Efficacy of the Commonwealth's policy response

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

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

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

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

Coordination and engagement

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Committee view

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

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

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

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

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

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

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

Recommendation 1

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

Implementation of the NAP

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

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

2.26 The Salvation Army also noted:

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

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

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

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

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

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

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

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

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

Committee view

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

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

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

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

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

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

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

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

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

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

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

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

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

Recommendation 2

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

Law enforcement and human trafficking

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

The role of federal law enforcement agencies

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

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

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

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

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

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

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

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

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

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

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

Referrals and prosecutions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.59 Since 2004, DIBP has:

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

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

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

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

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

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

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

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

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

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

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

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

Training

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

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

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

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

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

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

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

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

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

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

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

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

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

2.66 Further, it was noted that the AFP:

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

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

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

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

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

The role of state and territory law enforcement agencies

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

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

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

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

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

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

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

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

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

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

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

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

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

Cooperation between the AFP and state and territory police

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

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

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

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

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

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

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

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

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

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

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

Committee view

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

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

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

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

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

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

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

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

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

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

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

Recommendation 3

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

Recommendation 4

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

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

International engagement

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Committee view

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

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

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

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

Recommendation 5

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

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

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

Further proposals for policy and law reform

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

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

Modern Slavery Act

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

Committee view

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

Support for Trafficked People Program

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

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

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

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

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

95 AGD, *Submission 17*, pp 8–9.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.111 Similarly, ASA stated:

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

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

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

Committee view

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

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

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

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

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

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

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

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

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

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

Recommendation 6

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

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

National Compensation Scheme

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

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

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

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

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

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

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

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

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

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

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

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

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

Committee view

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

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

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

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

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

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

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

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

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

Recommendation 7

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Recommendation 8

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

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

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

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

Anti-Slavery and Trafficking Commissioner

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

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

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

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

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

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

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

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

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

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

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

129 ASA, *Submission 9*, pp 6–7.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

...

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

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

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

Committee view

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

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

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

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

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

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

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

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

Recommendation 9

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

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