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## **The Vulnerability of Migrants to Human Trafficking and Slavery in Australia**

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Submission to the  
United Nations Special Rapporteur on the Human Rights of Migrants,  
François Crépeau

Country Mission 1 to 18 November 2016

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*Anti-Slavery Australia appreciates the opportunity to respond to the Special Rapporteur on the Human Rights of Migrants. Established in 2003, Anti-Slavery Australia is a leading research, policy and legal centre at the University of Technology Sydney with the mission of abolishing human trafficking, slavery and slavery-like practices in Australia. Anti-Slavery Australia provides legal advice and representation to men, women and children who have experienced human trafficking, slavery and slavery like conditions in Australia.*

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## ATTACHMENT

Anti-Slavery Australia, *Giving Voice to Asylum Seekers: An evidence-based review of community asylum experiences in NSW and the ACT*, (2016).

## EXECUTIVE SUMMARY

In response to the interviews conducted by the United Nations Special Rapporteur on the Human Rights of Migrants, during his mission in Australia in November 2016, and with regard to the specific challenges faced by our clients, Anti-Slavery Australia identifies the following key human rights issues for migrants in Australia:

- Extreme labour exploitation of migrants in Australia
- Vulnerability of women and children to being trafficked out of Australia
- Limited access to the Human Trafficking Visa Framework (**Trafficking Framework**)
- Family separation during the lengthy processing of visa applications and processing
- Access to compensation for victims of trafficking and slavery offences

The focus of this submission will be on challenges faced by victims of human trafficking, slavery, servitude, forced labour and debt bondage, referred to in this submission as ‘human trafficking and slavery’. It is important to recognise that harsh or exploitative conditions alone do not constitute slavery under Australian law, and the difference between exploitative work conditions and circumstances of human trafficking or slavery is a matter of fact and degree.<sup>1</sup>

In addressing the above concerns, Anti-Slavery Australia makes the following key recommendations:

**(1) Appoint an Anti-Slavery and Trafficking Commissioner with the capacity to:**

- a. Assist with the consistent and effective monitoring visa programs, sponsors and employers of migrants, to identify, address and prevent cases of human trafficking and slavery.**
- b. Establish effective referral pathways between key stakeholders to ensure that all victims of human trafficking and slavery have access to legal and migration advice**

**(2) Amend the Trafficking Framework to better prioritise human rights**

**(3) Implement a family reunification scheme to allow the families of migrants who are in Australia for over 12 months to temporarily reside in the country**

**(4) Establish a national victim’s compensation scheme**

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<sup>1</sup> *R v Tang* [2008] HCA 39 (Unreported, Gleeson CJ, Gummow, Kirby, Hayne, Heydon, Crennan and Kiefel JJ, 28 August 2008).

## **1. CONSISTENT AND EFFECTIVE MONITORING OF VISA SPONSORS AND EMPLOYERS OF MIGRANTS TO IDENTIFY AND ADDRESS CASES OF HUMAN TRAFFICKING AND SLAVERY**

Our law practice case work reveals that the human trafficking and enslavement of migrants in Australia occurs throughout a number of industries including the sex industry, agriculture, hospitality, construction, and in private homes. In the 2014-2015 financial year approximately 43% of our clients had experienced exploitation in the sex industry, while 50% had been victims of other forms of human trafficking and slavery.

Migrants who enter Australia may do so through a variety of visa schemes that facilitate study or work. Due to the conditions of some of these schemes, including time limits, as well as other contributing isolating factors, migrant workers in Australia remain particularly vulnerable to human trafficking and slavery conditions, often from the individuals and businesses that sponsor them.

With regard to the experiences of our clients, this submission will focus on the vulnerability of migrants under particular visa schemes, including:

- **Temporary work visas:** Temporary Work (Skilled) Visa (subclass 457), Working Holiday Visa (subclass 417), Work and Holiday Visa (subclass 462) and others
- **Student Visas:** Student Visa (subclass 500), Higher Education Visa (subclass 573)
- **Partner or Family Visas:** Partner Visa (subclass 309 and 100), Partner Visa (subclass 820 and 801), Prospective Marriage Visa (Subclass 300)
- **Asylum seeker/Illegal Maritime Arrivals:** Predominately bridging visas

This list is not exhaustive, but reflects the experience of Anti-Slavery Australia, working with survivors of human trafficking and slavery. Anti-Slavery advocates a preventative approach to combatting modern day trafficking and slavery, which may be achieved through the implementation of effective monitoring practices.

### **1.1 Identifying human trafficking and slavery**

There are a number of common elements to human trafficking, slavery, servitude and forced labour situations that act as indicators, but also create difficulty in differentiating between offences. These include:

- Condition of ownership
- Control of freedom of movement
- Withdrawal of discretion over life decisions

- Taking of/withholding identity documents and important documents
- Psychological coercion, often coupled with threatened or actual physical violence and sexual assault
- Verbal abuse, humiliation
- Deception about nature and conditions of work
- Debt-bondage
- Little or no payment for work
- Threats of deportation and threats against family members in the home country
- Physical/social /linguistic isolation
- Creation of fear of exposure, distrust of law enforcement, authority

The effective and consistent monitoring of visa programs must involve the recognition of these indicators of human trafficking and slavery, and incorporate effective referral mechanisms as outlined in [section 2](#) of this submission.

## 1.2 Temporary work visas

While global, international migration can be a valuable avenue for development,<sup>2</sup> it is clear that the “discourse of new personal freedom”, which accompanies contemporary globalisation, may “mas[k] complex forms of bondage and displacement”.<sup>3</sup> These competing outcomes of international migration are exemplified by the experience of migrant workers in Australia, with the push and pull factors that make work in Australia appealing, also contributing to the high possibility of exploitation and isolation. This has led to a “national disgrace” regarding migrant exploitation within various industries in Australia, facilitated through the temporary work visa framework.<sup>4</sup>

The temporary work visa framework is comprised of a number of schemes including:

- *Temporary Work (Skilled) Visa (subclass 457) (“457 visa”)* – Applicants satisfy the criteria for this visa if their occupation is subject to a Labour Agreement, or if they are party to a Standard Business Sponsorship. Holders of a 457 visa are able to stay and work in Australia for up to 4 years, subject to the dates specified in the

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<sup>2</sup> Piyasiri Wickramasekara, ‘Globalisation, International Labour Migration and the Rights of Migrant Workers’ (2008) 29(7) *Third World Quarterly* 1247, 1247.

<sup>3</sup> Nikos Papastergiadis, *The Turbulence of Migration: Globalization, Deterritorialization and Hybridity* (Polity Press, 2000) ch 4.

<sup>4</sup> The Senate Education and Employment References Committee, *A National Disgrace: The Exploitation of Temporary Work Visa Holders* (Commonwealth of Australia, 17 March 2016) 1.

applicable Labour Agreement.<sup>5</sup> In 2016-17, as of 30 September 2016, there were 95,758 holders of the 457 visa in Australia.<sup>6</sup> For the same time period, accommodation and food services represented the third largest sponsor industry in Australia, while cooking was the top occupation for primary visas granted.<sup>7</sup> During this time, 45.9% of primary visas granted were for applicants from India.<sup>8</sup>

- *Working Holiday Maker visa programme (subclasses 417 and 462)* – These visas operate through arrangements made between Australia and 39 partner countries. There are caps on the number of Work and Holiday (subclass 462) visas granted each year and this type of visa has additional eligibility requirements.<sup>9</sup>

### **Case Study: 457 Visa Program**

In 2006, Manjit Singh travelled from India to Sydney, Australia on a temporary 457 work visa, to work as a chef in an Indian restaurant. His application was sponsored by the restaurant he was to work at, and this application stated that he would be paid \$43,000 per year.<sup>10</sup> Following a period working at the restaurant, Mr Singh died in hospital, due to complications of reactivated tuberculosis and the subsequent surgery to remove his diseased right lung.

Following his death, there was never a legal finding of trafficking. Rather, his circumstances were revealed through his statements to the Australian Federal Police, and the subsequent Coronial Inquest into his death. This inquest highlighted some indicators of the exploitative conditions reported by Mr Singh over a two year period of employment.

Mr Singh's evidence to the AFP indicated that he was;<sup>11</sup>

- Required to work from 8AM to midnight, seven days a week;
- Required to sleep overnight in the storeroom of a locked restaurant;
- Had limited food to eat and limited breaks throughout the day;
- Was forced to bathe using a jug and tap in a public restroom; and
- Had no mobile phone, computer or email access.

Mr Singh did not have any family or friends in Australia, and had limited English language

<sup>5</sup> See the criteria to be satisfied at the time of decision to grant a 457 visa: *Migration Regulations 1994* (Cth) sch 2 s 457.22.

<sup>6</sup> Department of Immigration and Border Protection, Australian Government, *Subclass 457 Quarterly Report: quarter ending 30 September 2016*, (2016) 1.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid* 2.

<sup>9</sup> Eligibility criteria can be found in the relevant sections of the *Migration Regulations 1994* (Cth). They are also summarised in the Department of Immigration and Border Protection, Australian Government, *Working Holiday Maker visa programme report: 30 June 2016*, (2016) 3.

<sup>10</sup> *Inquest into the death of Manjit Singh* (17 August 2015) Coroner's Court NSW2027/11 per Deputy State Coroner HCB Dillon at [20].

<sup>11</sup> *Ibid* at [44].

skills.

The Coroner noted (emphasis added):

*“First, Manjit was sponsored to come to Australia on certain conditions but those conditions appear not to have been met by the sponsor... **Certain, unscrupulous employers of 457 visa holders are in a position of dominance in relation to their employees.** Employees like Manjit are extremely **vulnerable to exploitation and intimidation.***

*“Second, unless there is scrutiny by [Department of Immigration and Border Protection] DIBP of the bona fides of employers making 457 visa applications by, for example, **auditing them after the arrival of 457 workers,** it appears likely that the cases like Manjit’s are and will remain the tip of the iceberg.<sup>12</sup>*

*“I hope, however, that the DIBP is not so complacent that it thinks that Manjit Singh’s case is unimportant for what it reveals about the potential threats to the welfare of 457 visa holders, and for public health to be jeopardised if they become seriously ill but are **diverted from the health system by direct intimidation or by more amorphous anxieties about their immigration status.**”<sup>13</sup>*

The recommendations emerging from the Coronial Inquest into the death of Manjit Singh identify some of the key factors contributing to his exploitation as a migrant worker in Australia, and demonstrate the barriers to assistance faced by workers in these circumstances. Our case work confirms that these factors are common amongst victims of trafficking and slavery, outlined in the case study below.

#### **Case Study: Working holiday visa (subclass 417)**

Two men, from a European country, were lured into Australia, through an online work hire company. The men conducted interviews for the company by Skype. They were told that once they arrived in Australia they would be provided assistance in obtaining a 457 visa.

The men had bank account set up for them, into which their wages were to be paid. These accounts were under the complete control of their employers, who paid the men a small percentage of their wages. After a few days the men fled.

Following their escape, demands were made by the employers for money allegedly owed by the trafficked men. Over the course of two or three months, the men were repeatedly threatened by email and over the phone, and at one stage were forced to sign ‘contracts’ stating that they owed the employer AUD\$25,000 each. An example of this contract can be found in [Appendix 1](#) of this submission.

The matter only came to the attention of law enforcement a few months after the men had escaped, when one man sought the assistance of local police on the threats that he

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<sup>12</sup> *Ibid* at [143] to [144].

<sup>13</sup> *Ibid* at [150].



had received.

Detective Sergeant Ken Foster said of the matter:

*“They [the victims] come from different parts of the world, their views of policing are somewhat different to what we understand here, they're frightened of that type of thing, they are also a long way from home, and threats were made against them, not only them but their families...”<sup>14</sup>*

Ultimately, there were no convictions for trafficking or debt bondage offences in this matter.

Evident from the above case study, employers may take advantage of workers' limited knowledge of work rights and laws in Australia, resulting in more than one instance where migrants have been coerced into signing quasi-legal agreements as a means to consolidate the trafficker's power and control. Examples of these 'contracts', reproduced with the permission of two Anti-Slavery Australia clients, can be found in Appendix 1 of this submission. The social and linguistic isolation of these workers, coupled with their fear of local law enforcement, is indicative of the common and significant barriers faced by migrants seeking assistance.

### 1.3 Student Visas

The Australian Student Visa programme incorporates seven types of visas, issued for the entire period that the applicant is enrolled in full-time study within Australia. There are a variety of requirements attached to these visas, including:<sup>15</sup>

- Financial;
- Health insurance;
- English language proficiency; and
- Health and character requirements.

Student visa holders are allowed to work for 40 hours a fortnight during course session times, while secondary holders, for example immediately family, are restricted to work 40 hours per fortnight at any time. These requirements mean that Student visa holders are often vulnerable to exploitation, particularly where unofficial agreements have been made between employers and employees. Visa holders may fear deportation due to a

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<sup>14</sup> Aleisha Orr, 'Perth people trafficking ring busted', *WA Today* (online), 21 March 2013 <<http://www.watoday.com.au/wa-news/perth-people-trafficking-ring-busted-20130321-2gh3g.html>>.

<sup>15</sup> Department of Immigration and Border Protection, Australian Government, *Student visa and Temporary Graduate visa programme six monthly report: six monthly report ending at 40 June 2016*, (2016) 3.

breach of working conditions and threats made by employers. In the six month period ending 30 June 2016, a total of 166,671 student visas were granted.<sup>16</sup>

***Case Study: Higher Education visa (subclass 573)***

Avi arrived in Australia on a student visa. During his stay in Australia, he returned to his home country, where he was married. Upon re-entry into Australia, and discovering that his parents could no longer afford to look after him, Avi searched for employment. Through a mutual friend, Avi found work in a rural Australian town. He informed his new employer that he could only work 20 hours a week. He moved into accommodation on the premises with his wife, who was residing in Australia on a Tourist visa.

During his time living and working on the premises, Avi and his wife reported that they were kept in conditions of forced labour. They said that the employer made many threats against the couple, including threats to kill them should they notify the authorities. When Avi fell ill, he was forced to continue working until he collapsed. He was allowed to visit a doctor at this time, although his wife was required to stay on the business premises. Avi's said that his employer held the couple's passports, only releasing them when Avi promised to fabricate DIBP documents to suggest that he was able to work full time in Australia.

Avi and his wife escaped soon afterward and notified the Australian Federal Police. However, the AFP were unable to continue an investigation into the matter due to a lack of corroborating evidence. Avi and his wife have now applied for a Protection visa and are awaiting the outcome of this application.

#### **1.4 Partner and Family Visas**

It is our experience that migrants, who are sponsored into Australia through one of the various spouse/partner visa schemes, are left vulnerable to exploitation, often at the hands of their sponsor. Anti-Slavery Australia has published [a research note](#), that outlines the risks and indicators of human trafficking and slavery, which affect women within the home.<sup>17</sup>

Through our case work, we also note a worrying trend of husbands sponsoring their wives and children to enter Australia, only to deceive them into returning to their country of origin, often abandoning them overseas without funds or travel documents to facilitate their return to Australia. This form of trafficking has severe consequences for the women and children involved, as they are often left impoverished in their country of origin with minimal family support. Partners also have the power to withdraw Partner

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<sup>16</sup> Ibid. 7.

<sup>17</sup> Anti-Slavery Australia, *Hidden from view: Slavery in the home*, (2016) Research Note, available online at <<http://www.antislavery.org.au/images/pdf/Publications/2016%20-%20Hidden%20from%20View%20Slavery%20in%20the%20home.pdf>>.

visa sponsorship, creating a fear of deportation that can be used to facilitate the trafficking or enslavement of sponsored parties. While family violence provisions exist to assist sponsored partners in this situation, the criteria required to satisfy these provisions may be too narrow to provide practical assistance to many migrants who are subsequently forced to return to their country of origin.

***Case Study: Partner visa***

Marina married an Australian Citizen. She was brought to Australia on a Partner Provisional visa (subclass 309). This visa allowed her to stay with her husband and his family in Australia for two years before an application for a permanent partner visa could be assessed. Marina had one Australian citizen child with her husband while she was with him in Australia, born with a serious medical condition requiring frequent medical attention.

During her time in Australia, Marina was beaten by her husband's family, and forced to remain inside the family home. After two years in these conditions, Marina was asked to accompany her mother-in-law on a trip to her husband's homeland. Marina was initially reluctant to go, as she did not have any family in that country. She was eventually convinced to go on a short trip with her mother-in-law, taking her young child with them. After five days, Marina's mother-in-law abandoned Marina and her daughter, taking both their passports with her. Marina was forced to sell her jewellery to pay for a place to stay. She was found by police crying in a park, holding her daughter. She felt great shame, and initially was unable to explain how she had ended up in this situation.

While she was away, Marina's husband had withdrawn his sponsorship for her application for a permanent visa. Marina was unaware that this had happened, as her husband was registered with the Department to receive correspondence on her behalf. She was also illiterate. Her application for a permanent visa was therefore refused.

Through the help of a local NGO, Marina was able to prove her child's Australian citizenship to local authorities, by obtaining a copy of her birth certificate from an Australian hospital. She and her daughter returned to Australia, accompanied by Department of Foreign Affairs and Trade (DFAT) staff. Due to DIBP error regarding the refusal of her visa and with assistance from DFAT and various NGOs, Marina was able to have her application reviewed by the DIBP, and she was eventually granted a permanent partner visa.

***1.4.1 Key issues regarding sponsored partners and forced marriage matters***

In the case study above, Marina was able to have her visa status reassessed after refusal of her visa. However, not all women who have suffered through the experience of trafficking or slavery have this option available to them. Key issues facing women in these circumstances include:

- English language barriers that create reliance on sponsoring spouses
- Family violence or threats of violence from spouses or in-laws
- Isolation from the wider Australian community
- Linguistic or social isolation within home country, or country in which they have been abandoned, exacerbated by cultural isolation, a lack of funds or financial support

Compounding these factors are DIBP procedures and practices where DIBP communications, such as notices of refusal of visas and invitations to comment, are sent to sponsoring parties. The reason for this practice may be that the sponsoring party's details are provided to the DIBP on behalf of the sponsored applicant and can include the nominated postal address, email address and telephone number for the purpose of DIBP correspondence. It is the experience of Anti-Slavery Australia that the DIBP deems communications through these contact points to be valid, although the sponsored applicant may never see the documents themselves. While this situation could be remedied if the sponsored party informs DIBP about more appropriate contact information, it is our experience that vulnerable women do not get the legal and migration support they need to assist them through this process.

Further, Marina's case is indicative of another emerging trend where Australian citizens or residents are taken overseas and abandoned, or forced into a marriage. Due to the clandestine nature of forced marriage, it is difficult to identify its scope and practice in Australia. However, there have been a number of critical developments since 2013, when Commonwealth law was amended to incorporate forced marriage as a specific criminal offence. My Blue Sky, created and operated by Anti-Slavery Australia and funded by the Australian Government, is a national online portal providing secure access to any Australian facing forced marriage. In 2016, My Blue Sky received over 20 requests and referrals for assistance and legal advice regarding Australians who feared that they would be or had been forced into a marriage. Through My Blue Sky, Anti-Slavery Australia has encountered several cases involving Australian citizens or visa holders who have been deceived into travelling overseas for the purpose of forced marriage. While the process to return these individuals home necessarily involves the assistance of DFAT and the AFP, it is our experience that in some cases, these government agencies are unable to fund the return of endangered individuals, requiring the charity of private, third parties to fund plane tickets back to Australia.

### **1.4.2 Family violence provisions**

The spouse/partner visa programme incorporates family violence provisions that aim to protect partners who suffer from forms of domestic violence. While the family violence provisions in the *Migration Regulations 1994*<sup>18</sup> allow the grant of a permanent visa to a person who has experienced family violence within a marriage, there is a requirement to prove the genuineness of the relationship before the family violence provisions can be invoked. The intrinsic nature of a forced marriage would indicate that there cannot be a 'genuine relationship' as the victim did not consent to the marriage.

Anti-Slavery Australia therefore recommends that the family violence provisions in the *Migration Regulations 1994* (Cth) should be expanded to include circumstances where the marriage was forced such that there was no 'genuine relationship'.

### **1.5 Asylum Seekers/Illegal Maritime Arrival bridging visas**

In 2015, Anti-Slavery Australia released a research report funded by Uniting Care NSW.ACT entitled "Giving Voice to Asylum Seekers", which is attached to this submission. The report examines the lived experience of asylum seekers in the Australian labour market and the vulnerability of asylum seekers to exploitation in NSW and the ACT.<sup>19</sup> The report makes findings based on asylum seeker responses to questions about their economic, social and emotional well-being, interviews conducted with service providers and academic research.

"Giving Voice to Asylum Seekers" outlines key concerns regarding the labour exploitation of asylum seekers in Australia, noting that while it is possible for asylum seekers to be granted bridging visas that do not restrict work rights, the process takes time. Further, the report notes that even with permission to work, past research suggests that only 15% of asylum seekers will find employment.<sup>20</sup>

The report highlights the experiences of asylum seekers who have faced labour exploitation, poor pay, excessive work hours and injury at work;<sup>21</sup>

*"Most of the women want to work, most took out loans, they have family back home to support, what they get here is basic. (With house cleaning)... what happened at the beginning was they were exploited; they were paid \$5 an hour. Usually it is \$15."*

And

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<sup>18</sup> *Migration Regulations 1994* (Cth) pt 1 div 1.5.

<sup>19</sup> Anti-Slavery Australia, *Giving Voice to Asylum Seekers: An evidence-based review of community asylum experiences in NSW and the ACT*, (2016).

<sup>20</sup> *Ibid* 61.

<sup>21</sup> *Ibid* 62-62.

*“We had a young man who worked with heavy machinery and he had an accident, he was told to get out, to go to hospital, to say something else, not to come back or we will close down your friends.”*

Based on the findings and observations of this report, Anti-Slavery Australia made a number of recommendations, focussing on a preventative approach in addressing the factors and issues that contribute to conditions of exploitation experienced by asylum seekers, including human trafficking and slavery. In particular, recommendations were made on;

- The funding and development of training programs and a mobile app that focuses on pay, work conditions and workplace health and safety, as well as accessible advice and assistance for asylum seekers in Australia; and
- The funding of an Employment Relations consultant who works with employers and prepares asylum seekers for work, also providing a service that links asylum seekers to job placements.

Outlined in the following section, the appointment of an Anti-Slavery and Trafficking Commissioner would assist in the spearheading of such preventative programs, and facilitate the streamlining of assistance available to asylum seekers who have faced conditions of trafficking or slavery.

## **1.6 The case for an Anti-Slavery and Trafficking Commissioner**

In February 2016, Anti-Slavery Australia released [a policy paper](#) outlining the benefits and role of an independent Anti-Slavery and Trafficking Commissioner in Australia. Key roles of the Commissioner would be to monitor the implementation of the *National Action Plan to Combat Human Trafficking and Slavery 2015-2019*, to consult and engage with government agencies and civil society on the prevention and identification of trafficking and slavery cases in Australia, to identify patterns of slavery and human trafficking, and ensure that legal and administrative responses are consistent with human rights standards.<sup>22</sup>

Anti-Slavery Australia proposes that the role of this Commissioner could include consultation and engagement with the DIBP on the efficacy of its policies and procedures in terms of the identification and prevention of the trafficking and enslavement of migrants facilitated through Australian visa schemes.

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<sup>22</sup> Anti-Slavery Australia, *The case for an Anti-Slavery and Trafficking Commissioner* (2016) Policy Position Paper No. 1, available online at <[http://www.antislavery.org.au/images/policy%20position%20paper\\_the%20case%20for%20a%20anti-slavery%20and%20trafficking%20commissioner\\_final2.pdf](http://www.antislavery.org.au/images/policy%20position%20paper_the%20case%20for%20a%20anti-slavery%20and%20trafficking%20commissioner_final2.pdf)> 2.

**Recommendations:**

- Develop proven and effective monitoring procedures by the DIBP to facilitate the identification and prevention of trafficking and enslavement of migrants through Australian visa schemes.
- Appoint an Anti-Slavery and Trafficking Commissioner to consult and engage with the Department of Immigration and Border Protection, as well as other agencies and NGOs, to develop programs and procedures which are effective at protecting the human rights of migrants and asylum seekers in Australia.

## **2. ESTABLISHING AND MONITORING OF EFFECTIVE REFERRAL PATHWAYS BETWEEN KEY STAKEHOLDERS, ENSURING THAT ALL VICTIMS OF HUMAN TRAFFICKING AND SLAVERY HAVE ACCESS TO LEGAL/MIGRATION ADVICE**

Anti-Slavery Australia observed that a number of NGOs raised concerns in the Special Rapporteur's Sydney interviews regarding the existing referral pathways between government agencies and service providers in Australia. These concerns centred upon the possibility that victims of exploitation may face deportation should they seek assistance from organisations such as the Fair Work Ombudsman or law enforcement, and in fact may be deported before any criminal or civil liability may be assessed.

Anti-Slavery Australia notes that the Red Cross Support for Trafficked People Program (**Support Program**) provides assistance to individuals who have been referred by the AFP as suspected victims of forced marriage, human trafficking and slavery. In 2016, approximately 41% of Anti-Slavery Australia's active clients were in the government-funded Support Program. A further 27% of our active clients were formerly a part of the Support Program, while approximately 19% were identified as requiring Trafficked and Short Term Support. A majority of our clients are referred through the AFP and Red Cross Support Program.

However, there are a multitude of barriers that prevent migrants who have suffered from conditions of human trafficking and slavery from seeking the assistance of law enforcement. These barriers can be seen from the case studies presented in [section 1](#) of this report. First among them is a fear of authorities that may feed into a migrant's fear of deportation. It is integral, therefore, that migrants who are unable to communicate with law enforcement are also afforded the opportunity to seek legal and migration advice, particularly if they are found in situations that may amount to human trafficking or slavery.

### **2.1 Role of the Anti-Slavery and Trafficking Commissioner**

Noted in [section 1.5](#) of this submission, Anti-Slavery Australia advocates the appointment of an Anti-Slavery and Trafficking Commissioner. The appointment of a Commissioner would streamline investigation, identification and referral processes for many of the key stakeholders in this area, including Commonwealth government agencies, state and territory government agencies, universities, NGOs, faith-based community organisations, business, industry and unions.<sup>23</sup> Central to the Commissioner's role would be to ensure the safety and protection of the human rights of migrants who are victims of trafficking and slavery offences.

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<sup>23</sup> Ibid. 1.



Central to the Commissioner's role would be to assist the operation of interagency taskforces against human trafficking and slavery, such as Taskforce Cadena,<sup>24</sup> by providing expert advice and guidance, particularly on the identification and subsequent support of victims of trafficking and slavery. This would ensure that migrants who have suffered from these forms of exploitation in Australia are provided with avenues to seek legal and migration advice regardless of whether they choose to assist law enforcement.

## **2.2 The exploitation spectrum and the role of a Director of Labour Market Enforcement**

Australian law recognises that acts of human trafficking and slavery exist within a spectrum of exploitative conditions. Chief Justice Gleeson in the 2008 Australian High Court case *R v Tang*<sup>25</sup> noted that:

*"It is important not to debase the currency of language, or to banalise crimes against humanity, by giving slavery a meaning that extends beyond the limits set by the text, context, and purpose of the 1926 Slavery Convention. In particular it is important to recognise that harsh and exploitative conditions of labour do not of themselves amount to slavery..."*<sup>26</sup>

In addressing the question of differentiating between slavery and exploitative working conditions, His Honour affirmed that slavery or exploitation must be assessed on a case by case basis:

*"The answer to that, in a given case, may be found in the nature and extent of the powers exercised over a complainant. In particular, a capacity to deal with a complainant as a commodity, an object of sale and purchase, may be a powerful indication that a case falls on one side of the line. So also may the exercise of powers of control over movement which extend well beyond powers exercised even in the most exploitative of employment circumstances, and absence or extreme inadequacy of payment for services."*<sup>27</sup>

There has been a number of recent, high profile cases in Australia reported in the media that highlight key issues surrounding the identification and assessment of severely exploited migrant workers that may fall outside the scope of human trafficking or slavery. A 2015 joint investigation by Australian news program *Four Corners* and Fairfax Media uncovered the widespread underpayment and overworking of international students employed at 7-Eleven stores throughout Australia.<sup>28</sup> In another instance, workers on a market garden compound in Carabooda, Western Australia, were deported

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<sup>24</sup> Taskforce Cadena is a joint agency team comprising the DIBP, AFP and the Fair Work Ombudsman. Taskforce Cadena was established to target criminals organising visa fraud, illegal work and the exploitation of foreign workers. Further information can be found at <<https://www.border.gov.au/australian-border-force-abf/taskforce-cadena>>.

<sup>25</sup> *R v Tang* [2008] HCA 39 (Unreported, Gleeson CJ, Gummow, Kirby, Hayne, Heydon, Crennan and Kiefel JJ, 28 August 2008).

<sup>26</sup> *Ibid.* [32].

<sup>27</sup> *Ibid.* [44].

<sup>28</sup> The Senate Education and Employment References Committee, above n 4, 8.63-8.65.

following a raid by Operation Cloudburst, a joint operation between the DIBP, Fair Work Ombudsman (FWO) and the AFP. Most of these workers were deported within 24 hours of their discovery although they were found in circumstances with “strong indicators of slavery-like conditions”.<sup>29</sup> In both the 7-Eleven case and the WA Carabooda case, there were no official findings of human trafficking or slavery, although there appear to be suggestions that in each instance, workers were subject to exploitative labour conditions. Particularly in the Western Australia matter, Anti-Slavery Australia notes that the speed with which workers were deported would have likely prevented the effective identification of working conditions that may have represented the serious human rights breaches of forced labour or human trafficking.

While an Anti-Slavery and Trafficking Commissioner would be able to assist government departments and agencies in the identification of exploitative practices such as those outlined above, Anti-Slavery Australia recommends that an appropriate additional or alternative approach would be the creation of a role akin to the United Kingdom’s Director of Labour Market Enforcement.<sup>30</sup> Similar to its UK counterpart, the Office of the Director of Labour Market Enforcement would create and implement strategies to prevent noncompliance in the labour market, administer sanctions and devise strategies to coordinate interagency cooperation and information sharing.<sup>31</sup> The creation of this type of role in Australia would ensure that there is no gap in the human rights protections afforded through the DIBP or FWO, and those provided through the Trafficking Framework and Support Program.

In order to prevent the exploitation of migrant workers it is also vital that information be made available to entrants on working visas. This information should explain their rights as workers in Australia. Education and information for migrant workers should be coordinated, targeted and accessible. Providing this information to working visa holders at points of entry to Australia could ensure that migrant workers understand that the Australian government does not tolerate exploitative labour practices. Education programs and policies can be developed through engagement with the Anti-Slavery and Trafficking Commissioner, or the Office of the Director of Labour Market Enforcement.

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<sup>29</sup> The Freedom Partnership to End Modern Slavery, The Salvation Army, *Submission 16* cited in The Senate Education and Employment References Committee, above n 4, 8.31.

<sup>30</sup> The Director of Labour Market Enforcement was created by the *Immigration Act 2016* (UK); see *Immigration Act 2016* (UK) s 1.

<sup>31</sup> See *Immigration Act 2016* (UK) ss 2, 8 and 18.

**Recommendations:**

- Appoint an Anti-Slavery and Trafficking Commissioner to establish and monitor effective referral pathways between key stakeholders, ensuring that all victims of trafficking and slavery in Australia have access to legal and immigration advice.
- Create an Office of the Director of Labour Market Enforcement, with the capacity to monitor and develop programs or procedures to protect against all circumstances of labour exploitation in Australia that occur outside the threshold of human trafficking and slavery.

### 3. AMEND AUSTRALIA'S TRAFFICKING FRAMEWORK TO BETTER REFLECT THE HUMAN RIGHTS INTENTION BEHIND ITS CREATION.

#### 3.1 Human Trafficking Visa Framework

The Trafficking Framework provides an opportunity to non-citizens without a valid visa and who are victims of human trafficking or slavery offences to remain in Australia. As a consequence of reforms introduced in July 2015, the Trafficking Framework now only incorporates two visas.

After assessment and referral by the AFP, individuals may be granted a Bridging visa F (BVF), allowing them to remain in Australia during the investigation of their matter and gain access to the Australian Red Cross Support for Trafficked People Program (**Support Program**). If the trafficked person has contributed to the investigation they may become eligible for a Referred Stay (Permanent) visa. It is our experience, however, that offers for a Referred Stay visa, are usually deferred until after the prosecution of the perpetrator. One other factor for eligibility is whether the Minister for Immigration and Border Protection is satisfied that the applicant would be in danger if he or she returned to their home country.<sup>32</sup> DIBP policy has recently been amended to suggest that the delegate decision-maker should consider various factors in assessing this danger, including whether the candidate could mitigate their exposure to danger by relocating within their country.<sup>33</sup>

In the 2014-15 financial year, 26 BVFs or CJSVs and 8 Referred Stay visas were granted to victims of trafficking and slavery and their families in Australia,<sup>34</sup> while in the 2015-16 financial year 31 BVFs and 5 Referred Stay visas were granted.<sup>35</sup> In total there were 80 clients on the Support Program, in 2015-16.<sup>36</sup>

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<sup>32</sup> *Migration Regulations 1994* (Cth) r 2.07AK(f).

<sup>33</sup> Department of Immigration and Border Protection, Australian Government, *Procedure Advice Manual (PAM) 3 – Character and Security – Human Trafficking Visa Framework* (1 July 2016).

<sup>34</sup> More than one BVF may be granted to an individual; The Interdepartmental Committee on Human Trafficking and Slavery, The Australian Government, *Trafficking in Persons: The Australian Government Response 1 July 2015 – 30 June 2016*, [2016] 41.

<sup>35</sup> *Ibid.*

<sup>36</sup> The Support for Trafficked People Program is also available to potential victims of trafficking and slavery, who have been referred by the AFP, and who already hold a valid Australian visa, or are Australian citizens. More information on this program can be found in section 3 of this submission; The Interdepartmental Committee on Human Trafficking and Slavery, above n 34, 35.

### 3.2 Evaluating the Trafficking Framework

In 2016, Anti-Slavery Australia released a policy paper recommending the amendment of Australia's Trafficking Framework to better reflect the human rights intention behind its creation.<sup>37</sup>

Taking into account the experiences of our clients who are victims of trafficking and slavery, this policy paper outlines key concerns with the current provisions including:

- narrow eligibility criteria for the grant of permanent visas to victims of human trafficking and slavery; and
- criteria that requires victims of human trafficking and slavery to assist with criminal investigations/prosecutions.

Anti-Slavery Australia has evaluated the current Trafficking Framework as problematic. We recommend that amendments to the programme are necessary to protect the human rights of migrants who have suffered from conditions of human trafficking and slavery in Australia.

#### **Recommendations:**

- Expand the current Referred Stay visa eligibility criteria for victims of trafficking, to better reflect the human rights intentions behind its creation.
- Remove from Referred Stay Visa criteria, the requirement that an applicant "would be in danger" if returned to their country of origin.
- Create provisions to facilitate the grant of permanent visas to victims of human trafficking and slavery where they are unable to contribute to criminal investigations due to compassionate and/or compelling circumstances.

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<sup>37</sup> Anti-Slavery Australia, *Visas for Trafficked People: The Australian Response*, Policy Position Paper No. 3 (2016) available online at: <<http://www.antislavery.org.au/images/pdf/Publications/2016%20-%20Visas%20for%20Trafficked%20People%20The%20Australian%20Response.pdf>>

#### **4. IMPLEMENTING A FAMILY REUNIFICATION SCHEME TO ALLOW THE FAMILIES OF MIGRANTS WHO ARE IN AUSTRALIA FOR OVER 12 MONTHS TO TEMPORARILY RESIDE IN THE COUNTRY**

One of the key human rights challenges faced by migrants seeking humanitarian protection in Australia is the lengthy delay in processing visa applications. This extended period of uncertainty places a particular burden on those who have suffered through psychologically and physically traumatic experiences of human trafficking and slavery. These individuals often find themselves awaiting an offer for a Referred Stay visa (subclass 852) or, if this fails, in the DIBP's Onshore Humanitarian Programme. For these people, prolonged delays coupled with the unique criteria attached to these visas, often result in the separation of family members for years, as applicants await an outcome. Should the applicant attempt to return to their country of origin for the purpose of seeing family members, they risk the refusal of their visa.

It is vital that the Australian Government facilitates the temporary reunification of families who are separated for extended periods of time due to delays in the processing of visa applications. In particular, dependent children of applicants should be allowed temporary entrance into Australia for the purposes of reunification with people who are awaiting immigration decisions over periods of 12 months or more. This would serve to assist all migrants, especially those who are victims of trafficking and slavery, to resettle successfully in Australia.

##### **4.1 Visa frameworks and criteria**

###### **4.1.1 *Referred Stay visa (subclass 852)***

Due to the clandestine nature of trafficking and slavery offences, criminal investigations are often prolonged over the course of years, and may not result in the conviction of alleged offenders for trafficking offences. While they await an offer for a Referred Stay visa, victims of trafficking and slavery offences on a BVF may be granted a further bridging visa by the DIBP for the purpose of travel outside of Australia in compassionate and compelling circumstances. Such an application requires the support of the AFP.

Should they receive this bridging visa, holders may travel to their home country, but it is our experience, that visa holders face potential repercussions where the DIBP later raises this travel history in refutation of claims of danger. This paradoxical approach by the DIBP has resulted in circumstances where visits to their home country, facilitated by the AFP and DIBP for compelling and compassionate purposes, have been used against clients at the point where an invitation for a Referred Stay visa is considered. In these circumstances, applicants are required to persuade immigration officials of the purpose of their visit, and outline any precautions taken to prevent detection. As far as we are aware there is no existing regulation or DIBP policy that identifies the presence of

dependent children offshore as a compelling reason in and of itself, for applicants to visit their country of origin. Therefore, there is a chance that parents applying for a Referred Stay visa will have the credibility of their claims scrutinised and their application refused. The following case study outlines some of the circumstances where a migrant, who had been trafficked into Australia, experienced extensive delays awaiting the grant of a Referred Stay visa. The names of all parties have been changed to preserve confidentiality.

***Case Study One: Referred Stay visa application***

Mary was a citizen of a South East Asian country, earning a small amount of money to support her two children who lived with her mother. She was trafficked into Australia in September 2011. She entered Australia believing that she would be working in a brothel, and earning money to provide a better life for her family.

Upon her arrival in Australia, Mary was told that she owed her employer much more than she had previously agreed to and that extra money would be taken out of her pay for food and accommodation. She remained in this situation due to threats that she would be turned in to Australian authorities and her family would be hurt in her home country if she attempted to escape. She was held in conditions of sexual servitude.

After her escape, Mary contributed to a police investigation conducted by the AFP. Ultimately, the offender was charged with Migration Act offences, unrelated to Mary, and was found not guilty of trafficking offences.

In March 2013, Mary received an offer of permanent stay in Australia, what at the time was known as a Witness Protection (Trafficking) visa (now the Referred Stay visa). Mary accepted this offer, however, in November 2015 the DIBP sent a request inviting further comment on adverse information that they received from the AFP. This information referred to three trips to her home country that Mary undertook between 2011 and 2013 in order to visit her young children. The Department also noted that “no specific threats were made” to Mary during her trips home. Submissions were made to the DIBP regarding Mary’s circumstances, and they were ultimately convinced that she satisfied the danger criteria. She was granted a Referred Stay visa in 2016.

Mary left her home country when her children were 6 years old. Unfortunately, her children, now 11 years old are reluctant to join her in Australia, as they have largely grown up without her. Mary now faces the prospect of not returning to her home country or seeing her children, until she has gained Australian citizenship.

#### **4.1.2 Protection visa (subclass 866)**

Australia's Humanitarian Programme is aimed at protecting individuals who have arrived lawfully into Australia and are found to be refugees under the provisions of the *Migration Act 1958* (Cth).<sup>38</sup> It is our experience that the factors underlying an individual's claims for humanitarian protection, contribute to the vulnerability of our clients to conditions of human trafficking and slavery.

The 2015-16 programme included 13,750 places available to a minimum of 11,000 offshore applicants with the remainder of places allocated to onshore applicants who had lawfully arrived in Australia.<sup>39</sup>

The processing times for onshore Protection visa applications vary by region and the complexity of individual applications. It is our experience that in New South Wales, initial decisions may be recorded more than a year after the application is lodged, while in Victoria, processing times can exceed two years. During this time, applicants are placed on Bridging visas with conditions that vary depending on the individual's circumstance, and may include, for example, an exclusion from working or studying in Australia.<sup>40</sup> Children and family members who are not in Australia at the time of application for an onshore Protection Visa are not included as applicants for the visa, although their names may be recorded in the visa application for future reference. These Bridging visas are usually provided to facilitate the applicants stay in Australia until a final decision on their immigration status is made. They remain in force through stages of appeal.

The criteria for eligibility of an Onshore Protection visa applicant, at the time of application, is outlined in s36 of the *Migration Act 1958* (Cth) and includes the requirement that they are either a refugee, or that there is a real risk of the applicant suffering significant harm should they be returned to their home country. Amongst other criteria, this risk must not be one that could be mitigated through relocation within the receiving country.

Applicants for onshore Protection visas are prohibited from returning to their home country, and if they do so, their application will be cancelled or refused. As far as we are aware there are no existing regulations or DIBP policies that allow Protection visa applicants to visit their country of origin for compelling or compassionate reasons. Moreover, it is our experience that the family members of onshore Protection visa applicants are refused entry to Australia while the applicant is awaiting an outcome for their application. This includes circumstances where family members attempt to apply

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<sup>38</sup> The meaning of refugee is outlined in s 5H of the *Migration Act 1958* (Cth).

<sup>39</sup> Department of Immigration and Border Protection, Australian Government, *Australia's Humanitarian Programme 2016-17 – Discussion Paper*, (2016) 3.

<sup>40</sup> Sch 8 of the *Migration Regulations 1994* (Cth) outlines the visa conditions that a visa of a particular class may be subject to. For example, 8101 prohibits a visa holder from engaging in work in Australia.



for other types of temporary visas to enter the country. Protection visas are granted with a condition that the applicant will not travel to the country from which they are seeking protection.

The following case study outlines the circumstances of one of our clients, currently awaiting an outcome for her Protection visa application. The names of the parties involved have been changed to preserve confidentiality.

#### ***Case Study: Protection visa application***

Julie resided in an Asian country with her parents and her three children. In 2014, she was married in that country to an Australian man, Robert, who later trafficked her into Australia. She entered the country under the impression that she would be in a marital relationship with him. Julie left her children her home country, hoping to establish herself in Australia first, so that she could support them later when they joined her and her new husband.

Upon her arrival in Australia, Julie was informed by Robert that she owed him a debt of \$5,000 for the facilitation of her transport and visa into Australia, as well as the cost of Robert's previous stay in her home country. She was told that she would be forced to work as a prostitute to repay this debt. Julie refused to undertake this work, and soon found herself in an abusive and controlling relationship with Robert, where he confiscated her passport and the little money that she had.

Julie made an initial application for a Protection Visa in November 2014. This application was withdrawn to facilitate the grant of a Criminal Justice Stay visa (CJSV),<sup>41</sup> as she was assisting police in their investigation of Robert. After she was taken off this visa programme, another Protection visa application was made in June 2015. The client was granted a Bridging visa in July 2015, with a no travel condition.

It was not until January of this year that Julie received a request for an interview with the Department of Immigration. She was last in her home country in August 2014. Since then, she has been unable to return home to see her children, now aged 17, 11 and 8 years old.

## **4.2 The case for reunification**

There are various international instruments, relevant to Australia that highlight the importance of the family and support the protection of family ties, particularly in the circumstances involving children and refugees.

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<sup>41</sup> Prior to amendments, the CJSV formed a part of the Trafficking Framework, as a temporary visa available to victims of trafficking and slavery offences who assist law enforcement in their investigations.

- Article 16 of the Universal Declaration of Human Rights (1948) and Article 23 of the International Covenant on Civil and Political Rights each state that “the family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”<sup>42</sup>
- Article 10 of the International Covenant on Economic, Social and Cultural Rights states that “the widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children.”<sup>43</sup>
- The Final Act and Article 12 of the Geneva Convention and Protocol Relating to the Status of Refugees, which respectively outline the principle of unity of the family<sup>44</sup> and rights attaching to marriage<sup>45</sup> with reference to refugees.
- Articles 9 and 16 of the Convention on the Elimination of All Forms of Discrimination Against Women (**CEDAW**), deal with the rights of women regarding equality, marriage and family.<sup>46</sup>
- The Convention on the Rights of the Child makes numerous references to family. Articles 9 and 10 discuss the rights of the child with regard to separation from family, Articles 20 and 21 deals with deprivation of family environment and adoption, and Article 23 discusses the rights of child refugees.<sup>47</sup>

Refugees and migrants who have suffered as victims of trafficking or other forms of exploitation often share experiences about the destruction of family units. For a variety of reasons and evidenced in the case studies above, individuals are separated from their love ones. Once they have achieved a sense of relative safety and stability, family reunion is frequently a top priority.<sup>48</sup> For example, a 2013 study revealed that for Sudanese refugees in Australia, “war and forced migration has altered the shape and structure of Sudanese families” although “group and family cohesion is considered to be

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<sup>42</sup> *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, 3<sup>rd</sup> sess, 183<sup>rd</sup> plen mtg, UN Doc A810 (10 December 1948) art 16(3); *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 23(1).

<sup>43</sup> *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 10(1).

<sup>44</sup> *Convention Relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954).

<sup>45</sup> *Ibid.* art 12(2).

<sup>46</sup> *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) arts 9 and 16.

<sup>47</sup> *Convention on the Rights of a Child*, opened for signature 20 November 1987, 1577 UNTS 3 (entered into force 2 September 1990).

<sup>48</sup> Brooke Wilmsen, ‘Family separation: The policies, procedures, and consequences for refugee background families’ [2011] 30(1) *Refugee Survey Quarterly* 44, 46.

of paramount importance.”<sup>49</sup> Meanwhile, parent migration has been shown to have significant social, psychological and emotional impacts on children who are often left behind with extended family or other carers.<sup>50</sup> As Robertson et al explain:

*“The refugee family experience of transnationalism is generated out of forced separation. It is characterised by the ongoing negotiation of precarious economic and social contexts, in combination with limited control over resettlement outcomes. This presents particular challenges for maintaining family connections.... [Yet] people do not abandon them altogether.”*<sup>51</sup>

#### **4.2.1 Mental health and migrant/refugee family separation**

For the individuals seeking humanitarian protection, and the victims of trafficking offences who face an uncertain future in Australia, family separation has a profound impact on psychological and emotional health. The extreme vulnerability of these groups is both a contributing factor to their isolation from the community, and a compelling argument for family reunification. In particular, victims of trafficking, slavery, sexual servitude, forced marriage and extreme labour exploitation are vulnerable to mental health issues such as Post Traumatic Stress Disorder (**PTSD**), anxiety, depression and suicide attempts as a consequence of extremely traumatic experiences.<sup>52</sup>

For onshore Protection Visa applicants, family configurations are often complicated, as Wilmsen notes, by a combination of “tradition and custom, but also of circumstances surrounding [their] refugee experiences.”<sup>53</sup> Refugees and other migrants who are faced with lengthy periods of uncertainty over their immigration status and a lack of family reunion or support suffer mental harm, which exacerbates existing barriers to successful resettlement, including:<sup>54</sup>

- Pre and Post-migration experiences and trauma
- A lack of social networks in the receiving country
- A lack of economic opportunities

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<sup>49</sup> Michael Savic, Anna Chur-Hansen, Mohammad Afzal Mahmood, and Vivien Moore, ‘Separation from family and its impact on the mental health of Sudanese refugees in Australia: a qualitative study’ [2013] 37(4) *Australian and New Zealand Journal of Public Health* 383, 383.

<sup>50</sup> Marta Moskal and Naomi Tyrrell, ‘Family migration, decision-making, step-migration and separation: Children’s experiences in European migrant worker families’ (2016) 14(4) *Children’s Geographies* 453, 454.

<sup>51</sup> Zoe Robertson, Raelene Wilding and Sandra Gifford, ‘Mediating the family imaginary: young people negotiating absence in transnational refugee families’ (2016) 16(2) *Global Networks* 219, 220.

<sup>52</sup> Dr Ligia Kiss, Nicola S Pocock, Varaporn Naisanguansri, Soksreymom Suos, Brett Dickson, Doan Thuy, Jobst Koehley, Kittiphan Sirisup, Nisakorn Pongrungeee, Van Anh Nguyen, Rosilyne Borland, Poonam Dhavan and Cathy Zimmerman, ‘Health of men, women and children in post-trafficking services in Cambodia, Thailand and Vietnam: an observational cross-sectional study’ (2015) 3(3) *The Lancet* 154, 154.

<sup>53</sup> Brooke Wilmsen, ‘Family separation and the impacts on refugee settlement in Australia’ (2013) 48(2) *Australian Journal of Social Issues* 241, 242.

<sup>54</sup> See Wilmsen, above n 48, 245 for an outline of the biomedical versus the social inclusion approach to refugee settlement.

- Difficulties accessing education
- Language barriers
- Experiences with xenophobia or prejudice
- A lack of permanent accommodation

The above mentioned 2013 study on Sudanese refugees, settled in Australia, also noted that worry for other family members, feelings of guilt and grief over the loss of intact families translated to a lack of social support and had a significant impact on the mental health of refugees.<sup>55</sup>

As Wilmsen notes, the Australian Government provides limited counselling resources for victims of torture and trauma, while by and large, its focus remains on the practical aspects of settlement.<sup>56</sup> Migrants also face long lasting repercussions from extended periods of separation from family members that may create barriers to reunification even once permanent visas have been obtained. Outlined in the case studies, this can include marriage or relationship breakdown and reluctant children who are unwilling to relocate to Australia. Moreover, once a migrant has obtained a permanent visa grant, applications for family reunification are often hampered by issues regarding the definition of family and required documentary evidence.<sup>57</sup> The Special Humanitarian Programme, that facilitates family reunification for onshore refugee applicants, is attached to the onshore Protection visa program, and therefore impacts the number of total positions available under the cap.<sup>58</sup>

Anti-Slavery Australia has experience, through our legal case-work and advocacy, of the trauma caused by family separation that severely impacts the emotional, psychological and social well-being of survivors of human trafficking. We recommend that provisions be created within the Trafficking Framework to facilitate the temporary reunification of families. Such provisions would also be suitable for individuals separated from their families during the lengthy application process for onshore Protection visas. Through this, the Australian Government can strengthen existing support programs available to migrants who are victims of human trafficking, slavery and slavery-like offences.

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<sup>55</sup> Savic et al, above n 36, 385.

<sup>56</sup> Wilmsen, above n 53, 245.

<sup>57</sup> Farida Fozdar and Lisa Hartley, Metropolitan Migrant Resource Centre, *Refugees in Western Australia: Settlement and Integration*, [2013] 22.

<sup>58</sup> Ibid.

**Recommendation:**

- Create provisions to facilitate the temporary reunification of separated families, particularly where there are dependent children, who are awaiting the outcome of immigration matters that have lasted 12 months or more.

## 5. ESTABLISHING A NATIONAL COMPENSATION SCHEME

In our 2016 policy position paper, "Establishment of a National Compensation Scheme"<sup>59</sup> and the "Report on Establishing a National Compensation scheme for Victims of Commonwealth Crime"<sup>60</sup> co-written with the Law Council of Australia, Anti-Slavery Australia notes Australia's obligations under various international treaties to ensure that compensation is available for victims of slavery, human trafficking or slavery-like offences. These papers echo recommendations made by the United Nations Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, in her report following her mission to Australia. In this report, the Special Rapporteur advocated the establishment of a comprehensive federal compensation scheme in light of the disparate State and Territory schemes, and to address the requirement under some schemes for harmful psychological assessments.<sup>61</sup>

Our previous evaluation of existing State and Territory compensation schemes has found these to be inadequate in providing remedies for the victims of such grave human rights violations. The inadequacy and the practical inefficacy of existing compensation schemes stems from factors including:<sup>62</sup>

- Disparity between the numerous State and Territory-based schemes on issues such as the categorisation of harm and the maximum amount of compensation available between jurisdictions,
- Requirement that victims create multiple applications for each State or Territory in which harm was suffered, and
- State and Territory schemes that are based on State and Territory criminal offences, and therefore may not be relevant for victims of the Commonwealth trafficking, slavery and slavery-like offences.

Anti-Slavery Australia recommends the establishment of a national compensation scheme to ensure that there is a consistent and effective pathway to remedies for victims of human trafficking and slavery. This national compensation scheme would correlate with Commonwealth legislation on the definitions of trafficking, slavery and slavery-like offences, and therefore include instances where harm is suffered due to forced labour, forced marriage or debt bondage.

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<sup>59</sup> Anti-Slavery Australia, *Establishment of a National Compensation Scheme* (2016) Police position paper no. 2, available online at <<http://www.antislavery.org.au/images/pdf/Publications/2016%20-%20The%20case%20for%20a%20national%20compensation%20scheme.pdf>> 3.

<sup>60</sup> Anti-Slavery Australia and the Law Council of Australia, *Establishing a National Compensation Scheme for victims of Commonwealth crime*, (2016) available online at <<http://www.antislavery.org.au/images/FINAL%20REPORT%20-%20ASA%20-%20LCA%20The%20Case%20for%20a%20National%20Compensation%20Scheme.pdf>>.

<sup>61</sup> Joy Ngozi Ezeilo, *Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, addendum: Mission to Australia*, UN Doc A/HRC/20/18/Add.1 (18 May 2012) 16 [64].

<sup>62</sup> Anti-Slavery Australia, above n 53, 3.

**Recommendation:**

- Establish a national compensation scheme for victims of Commonwealth crimes including offences related to trafficking, slavery and slavery-like conditions.

**Appendix 1 – Example ‘Contracts’ signed by severely exploited migrant workers<sup>63</sup>**

a)

**Loan Agreement**

I [REDACTED], have borrowed \$ 25,000.00 from Mr [REDACTED], for purpose of my future living expenses.

I will pay [REDACTED] the money back on weekly payment. The sum we have agreed that I will pay back is the same amount as I borrowed, which is \$25,000.00.

[REDACTED]  
[REDACTED]  
Signature [REDACTED]  
[REDACTED]

b)

**LETTER OF UNDERTAKING**

Henceforth, from this day, [REDACTED], I, [REDACTED] presently residing at the above address under the custody of [REDACTED] And [REDACTED] hereby agree to abide with the following:

1. That henceforth, I will always ask for permission before going out of the Residence at any point in time.
2. That I will be of good behaviour and do my duties obediently and well.
3. That henceforth, I will not seek any other job from outside of the Residence.
4. That if I get myself into any trouble outside of the Residence, I will be responsible for myself.
5. That as Cook in the Residence, if at anytime there is an issue of food poison or endangering life of any member or guest of the Residence, I will be held responsible and be prosecuted by the Police.
6. Failure to abide with all the above conditions will, result to my immediate sack from the Residence and deportation to [REDACTED].

<sup>63</sup> These documents have been reproduced with redactions and with the permission of two Anti-Slavery Australia clients.